

Borough Council of
**King's Lynn &
West Norfolk**



Guidance on Member Code of Conduct Complaints Handling

1. Introduction

Under Section 28 of the Localism Act 2011, local authorities (other than parish and town councils) must have in place 'arrangements' under which allegations that an elected or co-opted councillor of the authority or of a town or parish council within the principal authority's area has failed to comply with the authority's Code of Conduct can be considered and decisions made on such allegations. This guidance sets out the Borough Council's 'arrangements'.

This guidance is directed towards those who are considering making a Code of Conduct complaint, but is equally intended to be used by subject members for their reference.

1.1 Explanation of Roles:

Complainant: if you make a Code of Conduct complaint, you will be the complainant.

Independent Persons (IPs): are people who are neither councillors nor officers of the authority but are appointed under Section 28 of the Localism Act 2011 to work with the authority to support them with Code of Conduct complaints and standards issues. Under the Localism Act their views must be sought and taken into account on any matter under investigation, the subject member may seek their views at any stage and the authority may also seek their views at any other stage of the process.

Monitoring Officer: is the officer employed by the Borough Council who has the responsibility for contributing to the promotion and maintenance of high standards of conduct by Councillors and has overall responsibility for the operation of the Code of Conduct regime

Subject member: is a reference to the councillor who is the subject of the allegation

Parish Council: means any parish or town council in the Borough of King's Lynn and West Norfolk

1.2 Who can you complain about

- Any Borough Councillor
- A Councillor of any Parish Council in the Borough

1.3 Contact Details

Email: monitoringofficer@west-norfolk.gov.uk

Address: Monitoring Officer, Legal Services King's Court Chapel Street King's Lynn
Norfolk PE30 1EX

Tel: (01553) 616200

2. Initial assessment of complaints

2.1 Preliminary reporting to the Monitoring Officer

If you wish to seek preliminary advice about your complaint from the Monitoring Officer in advance of making a formal written complaint, you can contact the Monitoring Officer using the contact details in section 1.3.

The Monitoring Officer will not provide a verbal conclusion to your complaint at this preliminary stage, for the sake of impartiality and fairness, however the Monitoring Officer will be able to discuss the generalities of the requirements of the Code of Conduct and how these are assessed.

An option to consider at this preliminary stage is whether any 'Informal Resolution' (see section 3) could be explored by agreement of the parties and without the need to commence the formal written Code of Conduct complaint process set out below.

If you remain dissatisfied, you will be advised to make a written Code of Conduct complaint (the Localism Act 2011 requires that formal complaints are made in writing).

Please note that where serious allegations against a Councillor are reported using this preliminary route, the Monitoring Officer may need to share the content of the allegation with other authorities or with the Council/Councillor concerned. The source of the allegation would not be shared unless the Monitoring Officer was compelled to do so by an order or rule of law.

2.2 Considerations before the submission of your Code of Conduct complaint

If you have decided to progress with a written complaint, we ask that your complaint be made using the Councillors' Code of Conduct Complaint Form. The form can be found on the Borough Council's website at https://www.west-norfolk.gov.uk/downloads/file/89/members_code_of_conduct

If you do not have access to the online form, a hardcopy form may be obtained by contacting the Borough Council Legal Services team on (01553) 616200.

If a disability prevents you from making your complaint in writing you may contact the Monitoring Officer for assistance.

If you have any questions about the form, please contact the Monitoring Officer in writing.

If you do not wish to use the Code of Conduct complaint form, complaints can be accepted in writing if, at a minimum, the following information is provided:

- your name, address and any other contact details for you e.g. email address, mobile number;
- who the complaint is about and the authority or authorities that the councillor belongs to;
- details of the alleged misconduct including, where possible, dates, witness details and other supporting information; and
- whether you wish your identity to remain confidential *see below

* Please note that only in exceptional circumstances would a complainant be granted confidentiality and that as a matter of fairness the complainant's identity would normally be disclosed to the subject member (see section 2.4 below on confidentiality).

If you wish to remain anonymous in the complaints process, then you can still report your complaint to the Monitoring Officer, and the Monitoring Officer will consider whether exceptional circumstances exist for you to remain anonymous as part of the Code of Conduct complaint process, or whether another route is available to address your complaint, for example by the Monitoring Officer using the Borough Council's Whistleblowing Complaint process.

If you cannot write your complaint in English, we can arrange to have the complaint translated for you.

2.3 Submission

Please submit your completed complaint form/written details of your complaint together any documents/evidence that supports your complaint using one of the following methods:

- Email: monitoringofficer@west-norfolk.gov.uk
- Address: Monitoring Officer, Legal Services King's Court Chapel Street King's Lynn Norfolk PE30 1EX
- Deliver in person to the above address.

If there is a reason you cannot submit your complaint using one of the above methods, please contact the Monitoring Officer to explain the reason. Reasonable adjustments will be made where necessary.

2.4 Anonymity & Confidentially

As set out above, that only in exceptional circumstances would a complainant be granted confidentiality and that as a matter of fairness the complainant's identity would normally be disclosed to the subject member.

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 that they have a right to be provided with a full copy of the complaint. We are unlikely therefore to withhold your identity or the details of your complaint unless the Monitoring Officer is of the opinion that it is in the public interest to do so. For example, where the disclosure of your personal details may result in the evidence being compromised or destroyed by the subject Member or if there is a real possibility of intimidation of the complainant or witnesses by the subject Member.

There may be exceptional compelling reasons why an anonymous complaint could be accepted without detriment to the process and where the allegation can be evidenced without reference to the complainant. For example, if an anonymous complainant submitted a video showing the councillor acting inappropriately, it may be considered that the public interest in investigating the allegation outweighed the issue of anonymity.

Please note that anonymity and confidentiality are different concepts. Anonymity means the complainant is not known whereas confidentiality means that the complainant is known to the authority but their identity has been withheld for a specific reason.

Complaints which identify criminal conduct or a breach of other regulations by any person may be referred to the police or any other relevant regulatory agency for consideration. In such cases the authority should consider pausing the assessment of the complaint pending action by the other body.

2.5 Data Protection

The impact of the Data Protection Act 2018 and UK General Data Protection Regulation (GDPR) will be considered to ensure that any personal data is processed fairly and lawfully at every stage of the process. Reasonable expectations of privacy need to be balanced against the public interest.

2.6 Acknowledging receipt of a complaint

When your complaint is received by, you will receive an acknowledgment along with a copy of this Guidance and a date by which the next step is to be taken.

We will also notify the subject member that a complaint has been received, provide a copy of the complaint to them and invite their comments on it within an identified timescale.

2.7 Pre-assessment enquiries and reports

When we notify the subject member that a complaint has been made about them, and seek any relevant comments, the subject member will usually be given 10 working days in which to submit their comments. This can be extended or shortened where the circumstances support this, in the view of the Monitoring Officer. The subject member will have the right to seek the views of the Independent Person at this stage.

Where a complaint is received about a Parish Councillor, we will also notify the clerk of that Parish Council and may ask for relevant factual information which would help in the assessment of the complaint, subject to the notification of the complaint to the clerk being prejudicial to the consideration of the complaint.

We may contact complainants for clarification of their complaint if either we or the subject member are unable to understand the substance of the complaint made or there are significant facts missing.

We may also carry out preliminary enquiries, for example making checks with Companies House or reviewing the minutes of a meeting(s).

2.8 Assessment

The assessment of a complaint is normally a two-step process, described as the 'can/should' stages – the first stage being 'can we deal with this complaint?' and the second being 'should we deal with this complaint?'.

2.8.1 First-step criteria

The first step is a jurisdictional test and would assess whether the complaint is:

- against one or more named councillors of the authority or of a parish or town that the council is responsible for;
- the named councillor was in office at the time of the alleged conduct;
- the complaint relates to matters where the subject member was acting as a councillor or representative of the authority and it is not a private matter (i.e. the subject member was acting in their official capacity);
- the complaint, if proven, could be a breach of the Code under which the subject member was operating.

In relation to the final bullet point above, the Monitoring Officer will not only consider any parts of the Code of Conduct identified by you, but will consider the whole of the relevant Code of Conduct to ascertain which parts the Monitoring Officer believes are engaged.

If the complaint fails one or more of the tests above, it cannot be investigated as a breach of the Code, and you will be informed that no further action will be taken in respect of the complaint. If there is any doubt, however, the allegation should proceed to the second stage. For example, if it is unclear whether the councillor was acting 'in capacity' or not then the second stage of assessment criteria should be used.

2.8.2 Second-step criteria

We will then assess your complaints against the following criteria by the Monitoring Officer:

- a) Does the complaint contain sufficient evidence to demonstrate a potential breach of the Code, even where further information is sought from the complainant?
- b) Is the matter serious enough and sufficiently in the public interest to warrant the public resource and expense of an investigation?
- c) Are there alternative, more appropriate, remedies that should be explored first?
- d) Does the complaint, in the view of the Monitoring Officer, appear malicious, politically motivated, or 'tit for tat'?
- e) Whether, even if proven, the complaint would not be serious enough to warrant any sanction (see section 5.1 on sanctions);
- f) Whether a substantially similar complaint has previously been considered and no new material evidence has been submitted within the current administration;
- g) Whether a substantially similar complaint has been submitted and accepted;
- h) Does the complaint relate to conduct in the distant past? This would include consideration of any reason why there had been a delay in making the complaint;
- i) Has the behaviour that is the subject of the complaint already dealt with? For example, through an apology at the relevant meeting;
- j) Does the complaint actually relate to dissatisfaction with a local authority decision rather than the specific conduct of an individual?
- k) Is it about someone who is no longer a councillor or who is seriously ill, thus impeding their ability to engage in the complaint process?

- l) Had the subject member acted on the advice of an officer or the Independent Person in relation to the conduct complained of?
- m) Did the conduct arise from lack of experience or training?
- n) is the subject matter of the complaint being dealt with through any other complaints, legal or regulatory process.

The above criteria is intended to be indicative rather than prescriptive, and the underlying public interest will always be considered when deciding on whether to take action on a complaint.

2.9 Decision

2.9.1 Initial assessment decisions

The Monitoring Officer will aim to complete their initial assessment of your complaint within 20 working days of receiving the complaint, subject to any extension of time provided to a subject member to provide their comments and any further clarifications sought from you.

Where the subject member has not commented and they have not provided a reasonable excuse for the delay, attempts will be made to ascertain that the subject member has received the correspondence. If after reasonable checks have been made and a response is still not received in a reasonable time, then the initial assessment will be undertaken, accounting for the lack of response and engagement of the subject member.

The Independent Person will be invited to give their views as part of the initial assessment, to be confirmed in writing.

One of the three following decisions will be reached on an allegation:

- no further action should be taken on the allegation;
- the matter should be dealt with through a process of informal resolution in the first instance (see section on informal resolution) or;
- the matter should be referred for a formal investigation (see section on investigations).

2.9.2 Decision to take no action

We may decide that no further action is required in respect of your complaint.

There is no right of internal appeal against a decision not to take any further action, but you are recommended to seek independent legal advice on judicial review if you wish to challenge the decision.

2.9.3 Referral for informal resolution

Please refer to the separate guidance below on informal resolution at section 3.

2.9.4 Referral for investigation

Please refer to the separate guidance below on investigations at section 4.

2.9.5 Notification of assessment decisions

In all cases, an initial assessment decision notice will be issued to you and the subject member.

If the subject member is a parish or town councillor and the authority has decided to take some action with regard to the complaint, a copy of the initial assessment decision notice will also be sent to the clerk with your name redacted out.

There is no legislative requirement for an initial assessment decision notice to be published. Nevertheless, please note that an initial assessment decision notice can be requested under the Freedom of Information Act 2000. Such request will be considered on its merits on a case by case basis.

3. Informal resolution

We may decide that some form of 'informal resolution' is needed at a local level. We may also decide that informal resolution may be more appropriate than referring a matter to a hearing following completion of an investigation.

You may also request informal resolution at any stage. Any such request will be considered by the Monitoring Officer, in consultation with the Independent Person where deemed necessary.

3.1 Why seek an informal resolution?

An informal resolution can be a more proportionate way of dealing with relatively minor allegations, one-off incidents or underlying disagreements between individuals. It should be borne in mind however that dealing with a matter by informal resolution at the initial assessment stage is making no finding of fact (unless the subject member accepts the facts).

3.2 Who can be the subject of informal resolution?

Informal resolution could either be directed at the councillor who is the subject of the complaint, both the subject member and the complainant, or at the authority more generally.

If the subject member refuses to comply with the informal resolution, this may mean that the complaint is referred for investigation.

3.3 Examples of informal resolution

- An apology;
- Training by the subject member;
- Policy/protocol change or adoption by the Council;
- Provision of advice from the Monitoring Officer to the Subject Member; or
- Mediation.

4. Investigations

4.1 Principles of investigation

While an investigation under the Localism Act 2011 is not covered by the right to a fair hearing under Article 6 of the European Convention on Human Rights as the outcome of any hearing will not impact upon the rights of the councillor to carry on the role as a

councillor, any investigation must nevertheless abide by the principles of natural justice¹. That means that the councillor must know what they are accused of and be given the opportunity to comment on the allegations.

Any investigation should therefore bear in mind some key principles:

- **Proportionality.** That is, the investigation should strive to be proportionate to the seriousness or complexity of the matter under investigation. Where a matter is straightforward or relatively simple, for example where the facts are not in dispute, there may be no need for any formal investigation, but a report can simply be produced. Equally not all of the steps in this guidance need be followed in every instance of a formal investigation – a judgment must be made in each case based on its complexity and contentiousness.
- **Fairness.** The investigation should make sure that the subject member knows what they are accused of and has an opportunity to make comments on the investigation, including on a draft report. Again, this may depend on the nature of the complaint – for example, an alleged failure to declare an interest may be largely a factual matter which needs little or no investigation rather than one that needs to involve evidence from other parties.
- **Transparency.** As far as is practical and having regard to an individual's right to confidentiality, investigations should be carried out as transparently as possible – all parties should be kept up to date with progress in the case.
- **Impartiality.** An investigator should not approach an investigation with pre-conceived ideas and should not be involved where they have a conflict of interest.

4.2 Conduct of the investigation

The Monitoring Officer will decide who conducts the investigation. The appointed investigator will be required to comply with the guidance on conducting investigations issued by the Local Government Association available at the following link:

<https://www.local.gov.uk/publications/guidance-member-model-code-conduct-complaints-handling>

You will be informed who is carrying out the investigation and of the timescales for completing the investigation. You will also have an opportunity to provide the investigator with any further information or documents that you consider relevant. You and/or other relevant witnesses may be asked for interview.

4.3 Disclosure and confidentiality of information

We will treat any information we receive during the course of an investigation as confidential to the investigative process until the investigation is completed unless there is a statutory requirement to disclose it. Similarly, you should note the confidential nature of the proceedings.

4.4 Starting an investigation

¹ R (Greenslade) v Devon County Council 2019

The investigator will establish the scope of the investigation and inform you and the subject member. If, for any reason, there is a change in the scope of the investigation, you will be notified of this.

The subject member will have the right to seek the views of the Independent Person at this stage and be represented at any interviews with the investigator.

4.5 Deferring an investigation

An investigation will be deferred when any of the following conditions are met:

- There are ongoing criminal proceedings or a police investigation into the councillor's conduct;
- We cannot proceed with your investigation 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 proceeding;
- The investigation might prejudice another investigation or court proceeding.

An investigation may also need to be deferred:

- when there is an ongoing investigation by another regulatory body;
- because of the serious illness of a key party;
- due to the genuine unavailability of a key party.

You will be notified in the event of a need to defer the investigation.

4.5 Confidentiality

We treat the information that we gather during the investigation as confidential, for fairness of the process. Maintaining confidentiality reduces the risk of evidence being viewed as biased and preserves the integrity of the investigation.

We will ask the people we interview, and anyone else aware of the investigation, to maintain confidentiality.

Please note that if you decide to publish details around the complaint before its determination, you could be exposed to an action for defamation. This would be brought by the subject member in a private capacity and is a matter over which we have no control.

When the complaint has been received by the authority, the authority is then a data controller in respect of the personal data contained within the complaint and also a body subject to the Freedom of Information Act 2000.

4.6 Draft and final reports

The report must make one of the following findings on the balance of probabilities:

- that there have been one or more failures to comply with the Code of Conduct; or
- that there has not been a failure to comply with the Code.

The investigator will produce a draft report to be shared with the parties for comment.

The Independent Person's views will be obtained and included within the final report.

Where criticism is made of a third party (for example a witness) who will not otherwise have an opportunity to comment on a draft report then a Maxwellisation process² should be followed before a draft report is completed.

The final report will be provided to the Monitoring Officer and Independent Person. The Monitoring Officer will issue the final report to you and the subject member with details of the next steps (see below).

4.7 Completion of an investigation

On completion of an investigation, the Monitoring Officer may decide:

- to take no further action;
- to seek to resolve the matter via informal resolution (see section 3); or
- to refer the matter to a Standards Committee hearing for determination.

In doing so the Monitoring Officer must consult with the relevant Independent Person.

There is no right of internal appeal against a decision not to take any further action, but you are recommended to seek independent legal advice on judicial review if you wish to challenge the decision.

5. The Hearing

As a complainant, you do not have the automatic right to attend the hearing. The investigation will be presented to the Standards Committee Panel by the investigator. If you are witness that the investigator wishes to call, you will be notified of this and provided with the relevant details for your attendance at the hearing.

Hearings may be held in public or private session. If the hearing is held in open session, you will be entitled to attend the hearing as a member of the public, subject to any requirements of the investigator to ensure a fair hearing (for example the investigator may not want you to hear the evidence of other witnesses before you give your evidence). If the hearing is held in private session, you will not be able to attend.

The Hearing Panel will be made up of elected Members appointed to the Council's Standards Committee.

At the end of the hearing, the Hearing Panel will determine whether there has been a breach of the Code of Conduct or not.

5.1 Sanctions

If the Hearing Panel finds that there has been a breach of the Code of Conduct then it will consider whether any sanctions should be applied or recommended onwards to the body/person that can determine whether to apply them or not.

Available sanctions include one or a combination of the following:

- report the findings in respect of the subject member's conduct to Full Council (or the relevant parish council);

² Maxwellisation is the process by which people who may be subject to criticism in public reports can comment on those proposed criticisms before the report is published.

- issue (or recommend to the parish council to issue) a formal censure at Full Council;
- request the subject member provide a written apology to any identified person and provide a copy of that apology to the Monitoring Officer;
- recommend to the subject member's group leader (or in the case of un-grouped councillors, recommend to any group leader that has provided that councillor with one of that group's seats) that the subject member be removed from identified committees or sub-committees of the authority (or recommend such action to the parish council). Any such identified committee/sub-committee will be its own separate recommended sanction;
- recommend to the Leader that the subject member be removed from any executive position of the Cabinet or any outside body appointed by Cabinet;
- require (or recommend that the parish council requires) the subject member to undergo identified training, to be arranged by the Monitoring Officer or the parish clerk, as required;
- recommend to Full Council (or recommend to the parish council) that the subject member be removed from a specified number or all outside appointments to which they have been appointed or nominated by Full Council (or by the parish council);
- recommend to Full Council (or recommend to the parish council) that it withdraws facilities provided to the subject member by the authority for a specified period, such as a computer, ipad, etc;
- recommend to Full Council (or recommend that the parish council) that it excludes the subject member from the authority's offices or other premises for a specified period, with the exception of meeting rooms as necessary for attending council, committee and sub-committee meetings and/or restricts contact with officers to named officers only;
- if relevant, recommend to Full Council that they resolve to invite the subject member to resign any civic role to which they are appointed by Full Council (or recommend that the parish council do so);
- if relevant, recommend to Full Council that they resolve to invite the subject member to resign any Chair or Vice-Chair appointment to any body which they are appointed to by Full Council (or recommend that the parish council do so); and
- if relevant, recommend to Full Council that the subject member be removed from their role as Leader.

Where the subject member is a parish or town councillor, the matter is referred back to their council to confirm that a breach of the Code has been found and with a recommended sanction. The town or parish council should then meet to consider whether to impose that sanction. The parish council cannot overturn the finding that there has been a breach of the Code or impose a different sanction to that recommended by the hearing panel.

The parish or town council will be asked to report back to the Monitoring Officer within three months to confirm that they have met to discuss the sanction, and if necessary, to write again once the sanction has been fulfilled. Please note parish or town Councils will be under no obligation to impose the sanctions recommended to them.

Sanctions involving restricting access to an authority's premises or equipment or contact with officers should not unnecessarily restrict the subject member's ability to carry out their responsibilities as an elected representative or co-opted member.

5.2 Publicising the findings

A decision notice will be published on the Council's website within 7 working days of the hearing.

5.3 Appeals

There is no internal right of appeal against a decision on a Code of Conduct complaint however we recommend that you seek independent legal advice should you not be happy with the outcome of a hearing.