

COMPLAINTS AGAINST MEMBERS

CODE OF CONDUCT

This is a protocol setting out how to complain about a member of the Council and explaining the arrangements for dealing with such complaints

1. The Code of Conduct

The Council has adopted a Code of Conduct for members. The Code can be found on the website as part of the Council's constitution.

2. Making a complaint

If you wish to make a complaint, please contact –

The Monitoring Officer
Town Hall, Bridge
Street, Peterborough
PE1 1HG

fiona.mcmillan@peterborough.gov.uk

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 complaints of member misconduct.

To process a complaint, a complaint form must be completed. The form is available from the Council's website or on request from the Monitoring Officer. Complaints can be made in writing without completing the form, but using the form will help ensure that all the available information is available.

The person making the complaint must provide the Monitoring Officer with their name and a contact address or email address, so that the Monitoring Officer can acknowledge receipt of the complaint and update on progress of the complaint.

3. Anonymous complaints

The Council does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

Any person making a complaint who would like to keep their name and address confidential can indicate this on the complaint form. Where a person has asked for confidentiality the Monitoring Officer will not disclose their name and address to the member complained about without prior consent.

The Monitoring Officer has to balance the rights of the member to understand who is making a complaint against them, against the rights of the person making the complaint. The person making the complaint will have to provide reasons why their name ought to remain confidential. If the Monitoring Officer does not consider those reasons justify anonymity, the person making the complaint will be given the opportunity to withdraw the complaint if they do not wish to proceed without anonymity.

Even where anonymity is agreed at the outset of the complaint it may not always be possible to bring the matter to hearing without the person making the complaint agreeing to give evidence at the hearing.

4. Initial Assessment of Complaints Received

The Monitoring Officer will acknowledge the complaint within 5 working days of receiving it.

The Member against whom the complaint is made will also be informed of the complaint at this stage.

The Monitoring Officer will undertake an initial assessment of the complaint to determine firstly, whether the complaint is admissible and if so to decide whether:-

- a) it warrants investigation or,
- b) it may be suitable for alternative resolution without investigation or,
- c) it does not warrant any further action.

For the complaint to be admissible it must be in a legible format, relate to an existing member of the authority and contain sufficient supporting information.

In determining whether or not the complaint should be referred for investigation the Monitoring Officer may decide to consult the Independent Person. The Independent Person is appointed by the Council to provide an impartial and independent opinion regarding the conduct of the member. The Independent Person is not an elected member of the Council.

When deciding whether to refer a matter for investigation the Monitoring Officer will have regard to a range of factors including the following:-

- i) Whether there is sufficient information upon which to base a decision
- ii) How serious the alleged action is
- iii) Is the complaint politically motivated, vexatious or tit for tat;
- iv) Has there been any delay between the action complained of and the complaint ;
- v) Do the allegations relate to actions occurring whilst the subject member was acting in their official capacity;

- vi) The opinion of the elected member regarding the complaint

The initial assessment of the complaint will normally be completed within 28 days of receiving the complaint and the person making the complaint and the member will be informed, in writing, of the outcome.

Unless exceptional circumstances exist, the Monitoring Officer will always inform the member of the receipt and nature of the complaint and invite their comments.

Where the Monitoring Officer requires additional information to come to a decision, they may refer back to the person making the complaint or ask the member against whom the complaint is directed.

5. Referral to Constitution and Ethics Committee

In all cases it is expected that the Monitoring Officer will assess the complaint and make the decision regarding investigation. In exceptional cases the Monitoring Officer may refer the complaint to the Constitution and Ethics (Hearings Panel) to decide whether the complaint warrants further investigation. This referral can only be made at the request of the person complaining or the subject member where the Monitoring Officer is satisfied that the complaint is exceptional.

This referral will be made in a written confidential report by the Monitoring Officer to the Constitution and Ethics Committee (Hearings Panel). The decision of whether to investigate will be made by the Committee based upon the contents of the report. As this is not a public hearing there will be no opportunity for the person complaining or the member to attend the Committee to make representations regarding the complaint.

6 Alternative Resolution

In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the member accepting that their conduct was unacceptable and offering an apology. Where the member or the authority makes a reasonable offer of local resolution, but the person complaining is not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint warrants formal investigation or no further action.

If the complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer is authorised to refer the complaint to the Police and other regulatory agencies.

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

If the Monitoring Officer and Independent Person decide that a complaint merits formal investigation, they will appoint an Investigating Officer. This could be another officer of the authority, or of another authority or an external investigator. The decision regarding the appointment will depend upon a variety of factors including staff capacity and nature of the complaint.

The investigating officer will decide to whom they need to speak. It is likely that they will begin the investigation by speaking to the person making the complaint and to gather any documents the investigating officer needs to see. This will also help the investigating officer to decide whom they need to interview.

The investigating officer would normally

- write to the member complained of
- provide them with a copy of the complaint,
- ask the member to provide their explanation of events,
- identify what documents they need to see and
- make a list of interviewees

In exceptional cases, where disclosure of the details of the complaint to the member might prejudice the investigation, the investigating officer may delay notifying the member until the investigation has progressed sufficiently.

At the end of the investigation, the investigating officer will produce a draft report which makes a finding on whether the code of conduct has been breached or not. The investigating officer will send copies of that draft report, in confidence, to the person making the complaint and to the member concerned, giving both an opportunity to identify any matter in that draft report which they disagree with or which they consider requires more investigation.

Having received and taken account of any comments which may be made on the draft report, the investigating officer will send the final report to the Monitoring Officer. The Council aims to conclude the investigation stage within 3 months of a complaint being received.

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

The Monitoring Officer will, in consultation with the independent person, review the investigating officer's report and, if they are satisfied that the investigating officer's report is sufficient, the Monitoring Officer will write to the person making the complaint and to the member concerned, notifying both persons that no further action is required.

9. What happens if the investigating officer concludes that there is evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer will, in consultation with the Independent Person, review the Investigating Officer's report and will then either send the matter for local hearing before the Hearings Panel, or seek an alternative resolution.

10 What is Local Resolution?

The Monitoring Officer and Independent Person may consider that the matter can be

resolved without the need for a hearing. Such resolution may include the member accepting that their 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 report the matter to the authority's Constitution and Ethics Committee for information, but will take no further action.

11. What is a local hearing?

If the Monitoring Officer and Independent Person consider that local resolution is not appropriate or is impossible to achieve, the Monitoring Officer will report the Investigating Officer's report to the Hearings Panel of the authority's Constitution and Ethics Committee, which will conduct a local hearing to decide 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.

The Monitoring Officer will conduct a "pre-hearing process", asking the member to give their response to the Investigating Officer's report. This will identify what is likely to be agreed and what is likely to be in contention at the hearing. The Chairman of the Hearings Panel may decide, in consultation with the Monitoring Officer to give instructions about the way in which the hearing will be conducted.

At the hearing, the Investigating Officer will present their report, call such witnesses as they consider necessary, and make representations to substantiate their conclusion that the member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask the person making the complaint to attend and give evidence to the Hearings Panel.

The member will then have an opportunity to give their evidence, to call witnesses and to make representations to the Hearings Panel as to why they consider that they did not fail to comply with the Code of Conduct.

The Hearings Panel, 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.

Alternatively, if the Hearings Panel finds that the member did fail to comply with the Code of Conduct, the Chairman will inform the member of this finding and the Hearings Panel will then consider what action, if any, the Hearings Panel should take as a result of the member's failure to comply with the Code of Conduct. In doing this, the Hearings Panel will give the member an opportunity to make representations to the Panel and will consult the Independent Person.

12. What action can the Hearings Panel take where a member has failed to comply with the Code of Conduct?

The Council has delegated to the Hearings Panel such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly the Hearings Panel may:-

- a. Publish its findings in respect of the member's conduct;
- b. Report its findings to Council for information;

- c. Recommend to the member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that they be removed from any or all Committees or Sub-Committees of the Council;
- d. Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- e. Recommend to Council to remove the member from all outside appointments to which they have been appointed or nominated by the authority;
- f. Recommend to Council that it withdraws facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
- g. Recommend to Council that it excludes the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

The Hearings Panel has no power to suspend or disqualify the member or to withdraw members' allowances.

13. What happens at the end of the hearing?

At the end of the hearing, the Chairman will state the decision of the Hearings Panel as to whether the member failed to comply with the Code of Conduct and set out any actions which the Hearings Panel resolves to take.

The Monitoring Officer will prepare a formal decision notice in consultation with the Chairman of the Hearings Panel, and send a copy to the person making the complaint, to the member, and make the decision notice available for public inspection. If appropriate the Monitoring Officer will report the outcome of the hearing to the next Council meeting

14. Who are the Hearings Panel?

The Hearings Panel is a Sub-Committee of the Council's Constitution & Ethics Committee. The Constitution & Ethics Committee comprises 7 members of the Council appointed annually in proportion to the political balance of the Council.

The Independent Person is invited to attend all meetings of the Hearings Panel and their views are sought before the Hearings Panel takes any decision on whether the member's conduct constitutes a failure to comply with the Code of Conduct and determines any action to be taken following a finding of failure to comply with the Code of Conduct.

15. Who is the Independent Person?

The Council is required under the Localism Act 2011 to appoint at least one "independent person" whose views have to be sought, and taken into account, before the Council decides what action should be taken against a member or co-opted member who has been found to be in breach of the Code of Conduct. They must be appointed by a positive vote from a majority of all the members of Council.

A person cannot be “independent” if they –

- a. are, or have been within the past 5 years, a member, co-opted member or officer of the City Council or any parish council within the City Council area;
- b. are a relative or close friend, of a person within paragraph a above. For this purpose, “relative” means –
 - i. Spouse or civil partner;
 - ii. Living with the other person as husband and wife or as if they were civil partners;
 - iii. Grandparent of the other person;
 - iv. A lineal descendent of a grandparent of the other person;
 - v. A parent, sibling or child of a person within paragraphs i or ii;
 - vi. A spouse or civil partner of a person within paragraphs iii, iv or v; or
 - vii. Living with a person within paragraphs iii, iv or v as husband and wife or as if they were civil partners.

16. Revision of these arrangements

The Council may by resolution agree to amend these arrangements, and has delegated to the Chairman of the Hearings Panel the right to depart from these arrangements where they consider it is expedient to do so to secure the effective and fair consideration of any matter.

17. Appeals

There is no right of appeal for either the complainant or for the subject member against a decision of the Monitoring Officer or of the Hearings Panel.

If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.

Members' Ethics Complaints Procedure Flowchart

