

Councillor Conduct Committee

Procedural Guidance for investigations about Member conduct allegations under the Localism Act 2011

Background

1. This guidance applies to those Councillor misconduct complaints where the Councillor Conduct Committee has requested an investigation after the Screening process.
2. It sets out the approach that will be taken when the Councillor Conduct Committee considers the Investigators report, the report of the Independent Person and any other relevant information.

Relevant people

3. The Committee – the Councillor Conduct Committee
4. The Investigator – an individual appointed by the Monitoring Officer to investigate the allegation
5. The Independent Person – someone not connected to the Council who has been appointed by the Council to provide independent oversight of conduct cases and whose views must be taken into account by the Committee before it makes a decision after an investigation
6. The Monitoring Officer – a senior officer who advises the Committee on the procedure and the law
7. The Complainant – the person making the complaint about a Councillor
8. The subject Member – the Councillor or co-opted Member about whom the complaint is made

Initial process

9. Once the Councillor Conduct Committee has decided to request an investigation, the Monitoring Officer will appoint a suitably qualified Investigator, normally outside of the Council. The Monitoring Officer will write to inform the subject Member, the Complainant and where applicable the Clerk of the relevant Parish Council. He will also write to the Independent Person.

Investigation

10. The Investigator will contact the subject Member, the Complainant and any witnesses and conduct an investigation to establish to the best of their knowledge and belief, the facts of the alleged misconduct. They will also be expected to say in their opinion whether the subject Councillor has breached the Code of Conduct. If a breach is found in the opinion of the Investigator they will be expected to confirm what action if any the Committee should take. The investigation will be expected to complete wherever possible within 3 months of instruction. Interviews of relevant people may take place in writing, over the telephone or in person.
11. In the unusual event that the Investigator finds evidence that suggests a criminal offence may have been committed she or he will contact the Monitoring Officer who will refer the matter to the police. The investigation will be suspended at that point until the police investigation concludes.
12. The subject Member and the Complainant should be asked to comment on a draft report from the Investigator which should indicate that it does not necessarily represent the Investigators final conclusions. Any comments should be included in a final report. The final report should include the Investigators conclusion on facts, breach and where relevant sanction.
13. Where the Investigator finds that the Code of Conduct has not been breached, the Committee will be invited by the Monitoring Officer to consider that together with the report of the Independent Person and to decide whether the complaint process should not progress any further. They should give reasons for that decision.

Independent Person

14. The Independent Person will be invited to comment on the outcome of the investigation whether a breach has been found or not.
15. Where a breach has been found in the opinion of the Investigator and or the Independent Person, their report will be considered by the Committee before deciding on whether a breach of the Code of Conduct has happened.

Pre- Committee Meeting process

16. Once the Investigator's report and the Independent Person's report have been received by the Monitoring Officer, the Subject Member and the Complainant will be notified of the date that the Committee will be considering the reports and making their final decisions.
17. Both parties will be invited to comment on whether an informal resolution is possible. If that is the case then the Monitoring Officer should take all reasonable steps to facilitate the informal resolution and should notify the Committee at the next available meeting.
18. If that is not the case then the preparations for the meeting will continue. The complainant will be entitled to attend the meeting but will not normally be invited to contribute to the meeting as their complaint will have been fully investigated by this stage.
19. The subject Member will be asked to confirm whether they wish to attend and whether they object to any parts of the Investigator's report stipulating how they object and whether they wish to call witnesses. It will be at the discretion of the Monitoring Officer in consultation with the Chairman of the Committee where relevant to manage the pre-Committee hearing process. Witnesses who have not been previously notified to the Investigator will not normally be allowed accept in exceptional circumstances.

The Committee Meeting.

20. The consideration of the Investigator's report, the Independent Person's report and any other information will be conducted in accordance with the procedure outlined below. The meeting will not take evidence under oath and the questioning of people present will be through the Chairman of the Committee. The decision on the facts of the case will be on the balance of probabilities. The Committee will be expected to give reasons for its findings of fact, any decision on whether or not the subject Member has breached the Code of Conduct and any decision as to sanction.

21. The Subject Member may be represented at their own expense by a barrister or solicitor. The consent of the Committee will be required for any other person to represent the Subject Member.

Meeting Procedure

22. The meeting to consider the Investigator's report will be closed to the press and public after resolution where any of the conditions in the Local Government Act 1972 Schedule 12A are met. The complainant and the subject Member will be entitled to stay in the meeting if this decision is made.
23. The Monitoring Officer or their nominee will support the Committee to make their decision. Any advice given by the Monitoring Officer will be reported to all those present in the meeting.
24. The Chairman or the Monitoring Officer will confirm who is present.
25. If the subject Member declines to attend or cannot attend for some specified reason the Committee will decide whether to proceed in absence giving reasons.
26. The Chairman or Monitoring Officer will outline the procedure.

Decision on the facts

27. The Investigating Officer if present or the Monitoring Officer will outline the Investigator's report and findings on the facts.
28. Through the Chairman the complainant, the subject Member or their representatives may ask questions of the Investigator if present on their findings on the facts.
29. The Committee may ask questions of the Investigator on their findings on the facts.
30. The complainant if present may address the Committee on the facts and call witnesses to the facts otherwise the Committee will consider the complainant's written comments. Witnesses who have not been previously notified to the Investigator and/or the Committee will not normally be allowed accept in exceptional circumstances.
31. The Committee may ask the complainant and any witnesses questions about the facts.
32. The subject Member or their representative if present may address the Committee on the facts and call witnesses to the facts otherwise the

Committee will consider the subject Member's written comments. Witnesses who have not been previously notified to the Investigator and/or the Committee will not normally be allowed accept in exceptional circumstances.

33. The Committee may ask the subject Member and any witnesses questions about the facts.
34. The complainant and then the subject Member or their representative may make any final comments on the facts.
35. The Committee will retire to a separate room or ask everyone apart from the Committee Clerk to leave the room and make a decision on the facts of the case. They will return to the Committee room or invite everyone back and the Chairman will announce their decision with reasons.

Decision on breach

36. The subject Member or their representative will be invited to address the Committee on whether the facts as found give rise to a breach of the Code of Conduct.
37. The Committee will consider the report of the Investigator and the Independent Person as to breach and if present will ask them questions if necessary.
38. The Committee will retire to a separate room or ask everyone apart from the Democratic Services Officer to leave the room and make a decision on the whether the facts of the case give rise to a breach of the Code of Conduct. They will return to the Committee room or invite everyone else back and the Chairman will announce their decision with reasons.

Decision on sanction

39. The subject Member or their representative will be invited to address the Committee on what sanction if any the Committee should decide for the breach of the Code of Conduct.
40. The Committee will consider the views of the Investigator and of the Independent Person and if present ask them questions if necessary.
41. The Committee will retire to a separate room or ask everyone apart from the Democratic Services Officer to leave the room and make a decision on sanction for the breach of the Code of Conduct. They will return to the Committee room or invite everyone else back and the Chairman will announce their decision with reasons.

Guidance on sanctions

42. When deciding what sanction if any to impose the Committee should consider the following matters together with any relevant matters to ensure that the sanction is proportionate to the Subject Member's behaviour and will ensure compliance with the Code of Conduct in the future.

43. Features that could make the matter more serious or aggravating factors could include:

- Dishonesty
- Continued denial of the facts
- Failure to heed officer advice
- A pattern of behaviour which the Committee has considered before
- Breach of trust
- Likelihood of repetition

44. Features that could make the matter less serious or mitigating factors could include:

- An honestly held but mistaken view that the conduct was not a breach of the Code
- A member's previous good record
- Recognition of wrong doing and attempts at reparation

45. the following are the possible sanctions that the Committee could impose:

- Censure of the subject Member either by the Committee or a recommendation that the censure be made by full Council at the next meeting.
- Recommendation to the subject Member's Group Leader that she/he be removed from any or all Committees.
- Recommendation to the Leader of the Council that she/he be removed from the Cabinet or removed from particular Portfolio Holder responsibilities.
- Recommendation that the subject Member write a letter of apology to the Complainant.

- Instruction to the Monitoring Officer that training in the Code of Conduct is arranged for the subject Member.
- Recommendation to full Council or to the relevant Parish Council that the Member be removed from all outside bodies she/he has been appointed to by the Council.
- Recommendation to the Chief Executive or the relevant Parish Council via their Clerk that facilities such as access to premises, computer, email or other support be withdrawn for a defined period but not such as to prevent the Member from attending any meetings to which they are entitled to attend as a Councillor.
- Recommendation to the Chief Executive or the relevant Parish Council via their Clerk that all contact with the subject Member be through named officers.

After the meeting

46. The decision of the Committee will be included in the minutes of the meeting. Where the decision is that there was no breach of the Code of Conduct, the subject Member and the Complainant will not normally be identified.
47. Where the decision is that there was a breach the Member will be identified.
48. The Complainant will only be identified where they have expressly agreed to this.

Appeal

49. There is no right of appeal by either party against a decision of the Monitoring Officer or of the recommendations of the Councillor Conduct Committee.
50. There is a right for any complainant, who is a member of the public, to refer the matter to the Local Government Ombudsman (LGO). The LGO does not have any powers to overturn the decision of the committee but may ask the committee to reconsider the matter or change its procedures if there is evidence of maladministration

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