

LOCAL ARRANGEMENTS FOR DEALING WITH COMPLAINTS ABOUT MEMBERS UNDER THE LOCALISM ACT 2011

1. Introduction

1.1 These "arrangements" set out how you may make a complaint that an elected or co-opted Member of Lincolnshire County Council (the Council) has failed to comply with the Council's Code of Conduct. They also set out how the Council will deal with any complaints of a failure to comply with the Code of Conduct.

1.2 The Council must appoint at least one Independent Person, whose views must be sought by the Council before it makes a decision on an allegation that it has decided to investigate. The Independent Person may also be consulted by the Monitoring Officer at any stage of these arrangements and may be consulted by a Member. References to the Independent Person in this document are references to any person appointed by the Council as an Independent Person at the given time.

1.3 These arrangements reflect the commitment of Group Leaders to maintaining high standards of conduct and their wish to demonstrate that commitment by playing a leading role.

2. Making a Complaint

2.1 A complaint must be made in writing by post or e-mail to:

The Monitoring Officer

County Offices

Newland

Lincoln

LN1 1YS

E-mail: monitoring.officer@lincolnshire.gov.uk

- 2.2 Any complaint must provide sufficient detail about why the person complaining (the Complainant) considers that there has been a failure to comply with the Code of Conduct.
- 2.3 The Council will not consider anonymous complaints unless there is a clear public interest in doing so. In the interests of transparency and fairness, the identity of the Complainant will be made known to the subject of the complaint (the Subject Councillor) and those who have to deal with the complaint. When a Complainant requests confidentiality, this will be considered by the Monitoring Officer who retains ultimate discretion as to whether to release details to the Subject Councillor or other officers.
- 2.4 The Monitoring Officer's decisions at all stages are final and there is no right of appeal or review of their decision.

3. Initial Assessment of a Complaint

- 3.1 On receipt of a complaint the Monitoring Officer will acknowledge receipt within five working days and inform the Complainant what will happen next. **The Monitoring Officer will also inform the Subject Councillor and relevant Group Leader that a complaint has been received.** The Monitoring Officer will keep the Complainant, Subject Councillor and relevant Group Leader informed of progress at regular intervals.
- 3.2 **The Monitoring Officer will then carry out an initial assessment of the complaint.** At this initial assessment stage, the Monitoring Officer will review the complaint and may consult the Independent Person before making a decision about whether to take any further action concerning the complaint. The Monitoring Officer may require further information from the Complainant or Subject Councillor before making a decision on the initial assessment.
- 3.3 No further action will be taken on any complaint if, in the opinion of the Monitoring Officer:-

- 3.3.1 the behaviour complained of falls outside of the Code of Conduct; or
- 3.3.2 the Subject Councillor was not acting in their capacity as a member of the County Council
- 3.4 Whether the Subject Councillor was acting in their capacity as a member of the County Council is a judgment to be made in individual cases. Relevant considerations will include the degree to which the behaviour was public including whether it involved the use of publicly available social media and whether the Subject Councillor claimed to act or gave the impression that they were acting in their capacity as a member or representative of the County Council.
- 3.5 A complaint will not normally progress beyond the initial assessment stage if it is considered by the Monitoring Officer to be within any of the following criteria:
- 3.5.1 If the complaint is the same or substantially the same as a previous complaint (regardless of whether it is the same Complainant)
- 3.5.2 If the time since the alleged behaviour is significant so as to be inequitable, unreasonable or otherwise not in the public interest to pursue
- 3.5.3 If the complaint (in the view of the Monitoring Officer) discloses only a minor or trivial breach of the Code of Conduct that it is not in the public interest to pursue
- 3.5.4 If the complaint is or appears to be (in the view of the Monitoring Officer) malicious or otherwise submitted with an improper motive and the complaint is not considered to disclose sufficiently serious potential breaches of the Code of Conduct to merit further consideration

- 3.5.5 If the complaint is considered by the Monitoring Officer to be persistent and/or vexatious and is not considered (in the view of the Monitoring Officer) to disclose sufficiently serious potential breaches of the Code of Conduct to merit further consideration
- 3.5.6 If the Subject Councillor has remedied or made reasonable endeavours to remedy the subject matter of the complaint and the complaint does not (in the view of the Monitoring Officer) disclose sufficiently serious potential breaches of the Code of Conduct
- 3.5.7 If the complaint is about a person who is no longer a member of the Council and there is (in the view of the Monitoring Officer) no overriding public interest in pursuing the complaint further.
- 3.6 The standards complaints process does not exist to determine how well a Member or co-opted Member fulfils their role on the Council or determine dissatisfaction on the part of a resident as to the way a member has responded to their concerns. Examples would include delay or failure to respond. These are matters for the democratic process with which it would be inappropriate for the Monitoring Officer to become involved. If in the view of the Monitoring Officer a complaint relates to the Subject Councillor's fulfilment of their role they will refer the complaint to the relevant Group Leader to consider
- 3.7 These arrangements are not intended to apply to allegations of criminal offences or other regulatory breaches which will be referred by the Monitoring Officer to the Police or other regulatory body. If the matter is referred to the Police or other relevant regulatory body the Monitoring Officer will take no further action on the complaint.
- 3.8 If, following the initial assessment, the Monitoring Officer determines that no further action should be taken, the Monitoring Officer will notify the Complainant of this fact and the reasons for their decision. The Monitoring

Officer will also notify the Subject Councillor (copying the relevant Group Leader) with details of the decision made and the reasons for the same.

- 3.9 If, following the initial assessment, the Monitoring Officer determines that further action should be taken, the Monitoring Officer may
- 3.9.1 Arrange appropriate actions (e.g. mediation or training)
 - 3.9.2 Refer the complaint to the relevant Group Leader for informal action; or
 - 3.9.3 Arrange a formal investigation of the complaint.
- 3.10 The Monitoring Officer will inform the Complainant, the Subject Councillor and the relevant Group Leader of the result of the initial assessment within 15 working days of receipt of the complaint by the Monitoring Officer or if further information is required under paragraph 3.2 above, within 15 working days of receipt of all such further information.

4. Where further action is required

- 4.1 Where the Monitoring Officer (in consultation with the Independent Person) considers that the complaint should progress beyond the initial assessment stage and that some form of action should be taken, they will inform the Subject Councillor and relevant Group Leader of their decision. The Monitoring Officer will seek representations from the Subject Councillor, will consult with the relevant Group Leader and may consult with the Independent Person before determining the next steps.
- 4.2 In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Where the Subject Councillor makes a reasonable offer of informal resolution which the Complainant is not willing to accept, the Monitoring Officer will take this into account when deciding whether the complaint merits formal investigation.

4.3 In determining whether to proceed to a formal investigation the Monitoring Officer will consider:-

4.3.1 whether there is evidence to support the complaint;

4.3.2 whether the subject matter is something that it is possible to investigate;

4.3.3 whether an investigation would be proportionate; and

4.3.4 whether the behaviour complained of has a sufficiently significant impact on public perception of or trust in the Council or local democracy that an investigation would be in the public interest.

4.4 Where the Monitoring Officer determines that a formal investigation is required, they will appoint a suitable person to investigate the complaint.

4.5 Where the Monitoring Officer, in consultation with the Independent Person, on the basis of the results of the investigation finds that there has not been a breach of the Code of Conduct, the Monitoring Officer will notify the Subject Councillor, Group Leader and Complainant of the outcome.

4.6 Where the Monitoring Officer, in consultation with the Independent Person, on the basis of the investigation, finds that a breach of the Code of Conduct has occurred, the Monitoring Officer may seek to resolve the matter informally or make arrangements for a Local Hearing.

5. A Local Hearing

5.1 A Local Hearing will be conducted by at least three non-Executive members of the Council from at least two political groups, drawn from the Audit Committee of the Council as nominated by the Chairman of the Audit Committee. The Chairman of the Audit Committee will consult with Group Leaders on these nominations

5.2 The Local Hearing will be conducted in accordance with the Hearing Process attached at Appendix A to these arrangements.

5.3 Where the Local Hearing determines that a breach of the Code of Conduct has occurred they will, except in the circumstances described in paragraph 5.4, make recommendations to the relevant Group Leader who will decide the appropriate actions and notify the Subject Councillor and the Monitoring Officer. The Monitoring Officer will notify the Complainant.

5.4 Where the Local Hearing, having consulted with the Independent Person, decides that a breach has occurred and that the breach is of extreme seriousness the Local Hearing may determine that a motion of censure or reprimand of the Subject Councillor be referred to the next full Council meeting.

5.5 The Monitoring Officer or Local Hearing have no power to suspend or disqualify the Subject Councillor, to withdraw Member's basic or special responsibility allowances or to recommend other outcomes.

6. Special Applications

6.1 In cases where the Subject Councillor complained about is not part of a recognised political grouping, the Monitoring Officer will proceed as detailed above save from liaison with any Group Leader.

6.2 In cases where the complaint is against a Member who is a Group Leader, the Monitoring Officer will proceed as detailed above save that the Monitoring Officer will consult a Senior Member from outside the Council (nominated for that purpose in advance of any complaint by the Group Leader) in all cases where they would have consulted a Group Leader. In such cases, the Local Hearing will consult that Senior Member in addition to the Independent Person. In such cases the Local Hearing will make recommendations as to the action to be taken under paragraph 5.3 above to the relevant Deputy Group Leader who will decide the appropriate action to be taken.

- 6.3 Where the Monitoring Officer is unable to act in relation to these arrangements by reason of any conflict of interest or otherwise he may appoint a Deputy Monitoring Officer for the purpose from within the Council or appoint an independent Monitoring Officer from another authority to act as Monitoring Officer for the purposes of this arrangement

7. Revision of these Arrangements

- 7.1 The Council may by resolution agree to amend these arrangements and has delegated to the Monitoring Officer the right to depart from these arrangements where they consider that it is expedient to do so to secure the effective and fair consideration of any matter.

8. Appeals

- 8.1 There is no right of appeal for the Complainant or Subject Councillor against a decision of the Monitoring Officer or the decision or recommendations of the Local Hearing. If a Complainant believes that the Council has failed to deal with their complaint properly, they may submit a complaint to the Local Government Ombudsman.

APPENDIX

LOCAL HEARING UNDER THE MEMBERS CODE OF CONDUCT

HEARING PROCESS

Introduction

- 1 This document sets out the Procedure to be followed at meetings of a Local Hearing Panel constituted under paragraph 5 of the Local Arrangements for Dealing with Standards Complaints under the Council's Constitution.
- 2 The role of the Panel is to consider the Investigators Report and representations, the Subject Councillor's representations and to consult the Independent Person and decide whether there has been a breach of the Members Code of Conduct

Persons Attending

- 3 The following persons shall be in attendance at the Hearing which shall be conducted in private.
 - 3.1 the Panel;
 - 3.2 the Monitoring Officer;
 - 3.3 the Independent Person;
 - 3.4 a clerk to take notes of the Hearing
 - 3.5 the Subject Councillor";
 - 3.6 one person to accompany and assist the Subject Councillor; and

3.7 the investigator.

Notice of the Hearing

4 At least 7 days' notice of the Hearing will be given to the Panel, the Subject Councillor and the investigator unless a shorter time is agreed at the request of the Subject Councillor. The notice shall be accompanied by the investigator's report and accompanying documents and a copy of this Hearing Process.

Process at the Hearing

5 The process at the Hearing will be as follows:-

5.1 The Panel Chairman will make introduction and explain the process to be followed

5.2 The investigator will present their Report and conclusions and the evidence on which it is based

5.3 The Subject Councillor will have an opportunity to ask questions of the investigator

5.4 The Panel and Independent Person will have an opportunity to ask questions of the investigator

5.5 The Subject Councillor presents his or her case

5.6 The investigator will have an opportunity to ask questions of the Subject Councillor

5.7 The Panel and Independent Person will have an opportunity to ask questions of the Subject Councillor

5.8 The investigator summarises the results of their investigation

5.9 The Subject Councillor summarises his or her response including making any representations as to the steps he or she would wish the Panel to take if it decides that there has been a breach of the Members Code of Conduct

5.10 The Panel Chairman declares the Hearing to be closed

6 When the Panel Chairman declares the Hearing closed the Councillor and the investigator will withdraw.

7 The Panel will deliberate taking advice on issues from the Independent Person and on process from the Monitoring Officer.

- 8 On reaching a decision the Subject Councillor and the investigator will be called in and the Panel Chairman will inform the Subject Councillor of their decision and, where their decision is that there has been a breach of the Members Code of Conduct, whether they will make recommendations to the relevant Group Leader or put a motion of censure to the Council.

After the Hearing

- 9 As soon as reasonably practicable after the Hearing the Monitoring Officer will prepare a formal decision notice in consultation with the Panel Chairman and send a copy to the Subject Councillor and (where applicable) the Subject Councillor's Group Leader. The decision notice will include the reasons for the decision.
- 10 The Monitoring Officer will send the decision notice to the complainant and make the decision notice available for public inspection on the expiry of two working days after the formal decision notice was sent to the Subject Councillor and (where applicable) Group Leader and will report the decision to the next convenient meeting of the Audit Committee.

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