

DERBYSHIRE COUNTY COUNCIL

PROCEDURE FOR CONSIDERING COMPLAINTS THAT MEMBERS HAVE BREACHED THE CODE OF CONDUCT

1. Introduction

These arrangements set out how Derbyshire County Council (the Council) will deal with allegations that an elected or co-opted member of the Council has breached the Code of Conduct.

The person making the complaint will be referred to as “the Complainant” and the person against whom the complaint is made will be referred to as “the Subject Member”.

2. The Code of Conduct

The Council has adopted a Code of Conduct for elected members. This is available for inspection on the Council’s website.

3. Making a Complaint

All complaints must be submitted in writing to:

The Monitoring Officer
Derbyshire County Council
County Hall
Matlock
Derbyshire DE4 3AG
Email: helen.barrington@derbyshire.gov.uk

The Council is committed to ensuring that its services are accessible to all and reasonable adjustments will be made to enable persons with protected characteristics to utilise this process.

The complaint must include;

- The Complainant’s name and contact details; If the Complainant seeks to make an anonymous referral they should detail what they consider to be the exceptional compelling reasons why an anonymous complaint could be accepted without detriment to the process and how the allegation can be evidenced without reference to the complainant
- the name of the member(s) the complainant believes has breached the Code of Conduct;

- What the Subject Member has allegedly done that the Complainant believes breaches the Code of Conduct; and
- If necessary, details of why the Complainant believes their name and/or the details of the complaint should be withheld.

In order to ensure that the Council has all the information to be able to process the complaint, a complaint form is available to complete on the Council's website. If the Complainant decides not to use the complaint form, they must still provide the Monitoring Officer with all the information set out above otherwise the Monitoring Officer will not be able to consider the complaint.

4. Data Protection

The complaint will be processed in accordance with the Data Protection Act 2018 and UK General Data Protection Regulation (GDPR). Personal data will be processed fairly and lawfully at every stage of the process. Reasonable expectations of privacy will be balanced against the public interest.

5. Conflict of Interest

Where the Monitoring Officer considers that he/she has a conflict of interests, for example, as a result of a close professional relationship with the Subject Member, the Monitoring Officer will pass the complaint to the Deputy Monitoring Officer to deal with. Where the Deputy Monitoring Officer similarly has a conflict of interest, arrangements may be made for a Monitoring Officer from another local authority in Derbyshire to deal with the complaint.

6. Criminal Conduct

If the complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer will refer the matter to the Police or another regulatory agency as appropriate.

7. Acknowledging the Complaint

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

The Monitoring Officer will write to the Subject Member with details of the allegations (subject to any representations from the Complainant that confidentiality or concerns that disclose of the complaint would prejudice any potential investigation) and notifying the Subject Member of their right to consult one of the Independent Persons

The Monitoring Officer will also write to one of the Independent Persons with details of the allegations.

The Subject Member will be requested to provide within 10 working days of the date of the letter, or such longer period as the Monitoring Officer may agree, any written representations in response to the complaint which the Monitoring Officer will take into account when deciding how the complaint will be dealt with.

8. Initial Filtering of Complaints

Code of Conduct complaints can only be accepted if they relate to a members' behaviour whilst that member is acting, or giving the impression that they are acting, in their official capacity and not a private matter. Complaints which clearly relate to a member acting in the private capacity or otherwise fall outside the scope of the Code of Conduct and can be rejected by the Monitoring Officer without notifying the Subject Member or seeking the views of the Independent Person.

If there is any doubt, as to whether the Subject Member was acting in their official capacity and not a private matter, 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. On rejecting a complaint for this reason, the Monitoring Officer will inform the Complainant and the Subject Member of the decision and the reasons for that decision in writing.

9. Additional Information

If the Complainant does not submit sufficient information to enable the Monitoring Officer to reach a decision, the Monitoring Officer may ask the Complainant for such information and may request additional information from the Subject Member.

The Monitoring Officer may also carry out pre-assessment enquiries, which will not amount to an investigation. This may include obtaining documentation, such as minutes of meetings.

10. Confidentiality

As a matter of fairness and natural justice, the Subject Member should be told who has complained about them. There may be occasions where the Complainant requests that their identity is withheld. Such a request may be granted in circumstances that the Monitoring Officer considers to be exceptional, for example;

- (a) the Complainant has reasonable grounds for believing that they will be at real risk of intimidation, victimisation, or physical harm if their identity is disclosed;
- (b) the Complainant is an officer who works closely with the Subject Member and they are afraid of the consequences to their employment if their identity is disclosed; or
- (c) the Complainant suffers from a serious health condition which might be adversely affected if their identity is disclosed.

If the Monitoring Officer decides to refuse a request by the Complainant for confidentiality the Monitoring Officer will offer the Complainant, the option to withdraw the complaint rather than proceed with disclosure of the Complainant's identity.

As a matter of fairness and natural justice, the Subject Member should also be informed of the nature of the complaint. If, however, the Monitoring Officer considers that disclosure of details of the complaint to the Subject Member might prejudice the investigation, the Monitoring Officer can agree to delay notifying the Subject Member until consideration of the complaint has progressed sufficiently.

It is important to preserve the integrity of the complaints process and to minimise any negative effect of the complaint on all the people affected by it, that information relating to the complaint is treated as confidential. The assessment of complaints will therefore be conducted by the Monitoring Officer in private. The parties to a complaint are expected to maintain confidentiality as well. Parties are not prohibited from discussing the complaint to seek advice and support; however, it should not be discussed in the public domain.

11. Initial Assessment of Complaint

The Monitoring Officer will review the complaint together with any representations received from the Subject Member and, after consultation with the Independent Person, take a decision as to whether this complaint merits formal investigation or whether it should be dealt with informally or rejected.

This decision will normally be taken within 20 working days of receipt of the complaint or within 10 days of the Subject Member's written representations, whichever is the later. The Monitoring Officer shall have discretion to amend the timetable as appropriate.

The Monitoring Officer will inform the Complainant, the Subject Member of the decision on initial assessment and the reasons for that decision in writing.

The decision of the Monitoring Officer will also be reported to the Standards Committee for information. Where the Monitoring Officer has determined that if the complaint is proven, there would potentially be a breach of the Code of Conduct and recommended an informal resolution, it is in the public interest for the Subject Member to be named. However, where the Monitoring Officer has made a finding of no breach, the Subject Member will not be identified.

Each complaint will be assessed to determine whether it is one the Monitoring Officer can and should investigate.

The Monitoring Officer will consider the following in deciding whether the complaint can be investigated;

- (a) is the complaint about the conduct of a named, elected, or co-opted member of the County Council?

- (b) Does the complaint relate to matters where the councillor was acting as a councillor or representative of the authority and it is not a private matter ;was the Code of Conduct in force at the time the alleged misconduct took place?
- (c) if the complaint is proven, would there potentially be a breach of the Code under which the Subject Member was operating at the time of the alleged misconduct?

If the complaint fails one or more of these threshold tests, it will be rejected.

The Monitoring Officer will then consider the following in deciding whether the complaint should be investigated, dealt with informally or rejected;

1. the complaint appears to be trivial, vexatious, malicious, politically motivated or tit for tat;
2. the complaint is anonymous. The Monitoring Officer will not usually investigate anonymous complaints unless there is a clear public interest in doing so;
3. the Complainant has not provided any evidence that supports the complaint. The Monitoring Officer will not usually investigate where a Complainant has simply made an allegation that the Councillor has failed to act in way that is required by the Code;
4. a significant period of time has elapsed since the events, which are the subject of the complaint. This could be because, where a matter is serious, it would be reasonable to expect the Complainant to make a complaint promptly, or because the passage of time may make it more difficult to obtain documentary evidence and reliable witness evidence. The Monitoring Officer will normally reject a complaint where the last event complained of took place more than six months prior to the date of the complaint. The Monitoring Officer will however consider any reason why there had been a delay in making the complaint;
5. the complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter. This could be where the matter is such that there is unlikely to be any firm evidence on the matter. An example of this could be a telephone conversation where there were conflicting accounts of what was said in the call was no independent verification of the contents of the telephone call.
6. the complaint or a substantially similar allegation has previously been the subject of an investigation and there is nothing more to be gained by further action being taken;
7. a complaint suggests that there is a wider problem throughout the authority, and this will be considered differently and as part of that wider resolution;
8. the complaint discloses a potential breach of the Code, but the Subject Member has remedied or made reasonable endeavours to remedy the issue to which the complaint relates and the complaint does not disclose sufficiently serious potential breaches of the Code of Conduct to merit further consideration;
9. the complaint discloses a potential breach of the Code, but the complaint is not serious enough to merit an investigation in circumstances where the resources needed to investigate are wholly disproportionate to the allegations and there is no overriding public interest in carrying out an investigation. Public interest is regarded as something which is of serious concern and benefit to the public.

12. Informal 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 Subject Member accepting that his/her conduct was unacceptable and

- offering an apology;
- agreeing to attend a training course;
- agreeing to engage in the process of conciliation/mediation; or
- the Council introducing some other remedial action (such as changing procedures)

Where the Subject Member makes a reasonable offer of informal resolution, but the Complainant is not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

Where the Monitoring Officer recommends informal resolution, but the Subject Member is not willing to accept that his/her conduct was unacceptable or is not willing to accept the informal resolution proposed, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

The Local Government Association Guidance 2021¹ provides the below examples of matters which may be suitable for informal resolution:

- the same particular breach of the Code by many members, indicating poor understanding of the Code and the authority's procedures;
- a general breakdown of relationships, including those between members and officers, as evidenced by a pattern of allegations of minor disrespect, harassment or bullying to such an extent that it becomes difficult to conduct the business of the authority;
- misunderstanding of procedures or protocols;
- misleading, unclear or misunderstood advice from officers;
- lack of experience or training;
- interpersonal conflict;
- allegations and retaliatory allegations from the same members;
- allegations about how formal meetings are conducted;
- allegations that may be symptomatic of governance problems within the authority, which are more significant than the allegations in themselves.

If the Monitoring Officer considers a complaint can be dealt with through informal resolution they should consult with the Independent Person and they should inform the Subject Member and the Complainant and give them the opportunity to comment before making a final decision.

¹ [Guidance on Member Model Code of Conduct Complaints Handling | Local Government Association](#)

13. Investigation

If the Monitoring Officer decides that the complaint merits formal investigation, he/she will appoint an Investigating Officer, who may be another senior officer of the authority, an officer of another authority or an external investigator. The Investigating Officer will decide whether he/she needs to meet or speak to the Complainant to understand the nature of the complaint.

The Investigating Officer would normally write to the Subject Member and provide the Subject Member with a copy of the complaint, and ask the Subject Member to provide his/her explanation of events and to identify what documents the Investigating Officer needs to see and who she/he needs to interview. In exceptional cases, where it is appropriate to keep the Complainant's identity confidential or the Monitoring Officer considers that disclosure of details of the complaint to the Subject Member might prejudice the investigation, the Investigating Officer can delete the Complainant's name and address from the papers given to the Subject Member, or delay notifying the Subject Member of the actual complaint until the investigation has progressed sufficiently.

At the end of the end of the investigation, the Investigating Officer will produce a draft report and send copies of that draft report, in confidence, to the Complainant and to the Subject Member concerned to give them both an opportunity to identify any matter in that draft report which they disagree with or which they consider requires more consideration. Both parties will be given ten working days to make representations or, in exceptional circumstances, such other period as the Investigating Officer consider reasonable.

Having received and taken account of any comments on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer.

14. Investigating Officer Concludes that there is No Evidence of a Breach of the Code of Conduct

The Monitoring Officer will review the Investigating Officer's report and, if he/she is satisfied that the Investigating Officer's report is sufficient, will send to the Complainant and the Subject Member a copy of the Investigating Officer's final report and confirm the finding of no breach of the Code of Conduct. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider his/her report.

Investigating Officer concludes that there is evidence of a breach of the Code of Conduct the Monitoring Officer will review the Investigating Officer's report and will then either send the matter for a hearing before the Hearing Panel (the Panel) or after consulting the Independent Person, seek local resolution.

a) Local Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, the Monitoring Officer will consult with the Independent Person and the Complainant and seek to agree what the Complainant considers to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such informal resolution may involve the Subject Member accepting that his/her conduct was unacceptable; and

- offering an apology;
- agreeing to attend a training course;
- agreeing to engage in a process of conciliation; or
- the council introducing some other remedial action (such as changing procedures)

If the Subject Member complies with the suggested resolution, the Monitoring Officer will issue a Decision Notice. The Decision Notice will include a brief statement of facts, the provisions of the Code of Conduct engaged by the allegations, the views of the Independent Person, the reasons for the decision and any sanctions applied. A copy of the Decision Notice will be sent to the Complainant, to the Subject Member and published on the Council's website and reported to the next convenient meeting of the Standards Committee.

However, if the Complainant tells the Monitoring Officer that any suggested resolution would be not be adequate or the Subject Member refuses to accept the resolution the Monitoring Officer will refer the matter for a local hearing.

b) Hearing

If the Monitoring Officer considers that local resolution is not appropriate, or the Complainant is not satisfied by the proposed resolution, or the Subject Member is not prepared to undertake any proposed remedial action then the Monitoring Officer will report the Investigating Officer's report to the Hearing Panel which will conduct a Hearing before deciding whether the Subject Member has failed to comply with the Code of Conduct and, if so, whether to take any action.

The Monitoring Officer will conduct a pre-hearing process, requiring the Subject Member to give his/her response to the Investigating Officer's report in writing in order to identify what is likely to be agreed and what is likely to be in contention at the hearing. The Chairman of the Panel may issue directions as to the manner in which the Hearing will be conducted. The Local Government Association Guidance 2021 details areas where preliminary consideration and direction would be of assistance.

The role of the panel is to decide factual evidence on the balance of probabilities

At the hearing, the Investigating Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to

substantiate his/her conclusion that the Subject Member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask the Complainant to attend and give evidence to the Panel. The Subject Member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Panel as to why he/she considers that he/she did not fail to comply with the Code of Conduct. The Panel can allow witnesses to be questioned and cross examined by the Subject Member, the Monitoring Officer, the Investigating Officer (or their representative, including a Solicitor or Barrister), directly or through the Chairman. The Panel can also question witnesses.

The Independent Person will be invited to attend to observe but will not participate in the hearing. The Panel will seek the views of the Independent Person and take those views into account before making its decision.

The Panel may conclude that the Subject Member did not breach the Code of Conduct, and if so, will dismiss the complaint.

If the Panel concludes that the Subject Member did breach the Code of Conduct, the Chairman will inform the Subject Member of this finding and the Panel will then consider what action, if any, the Panel should take as a result of the Subject Member's failure to comply with the Code of Conduct. In doing this, the Panel will give the Subject Member an opportunity to make representations to the Panel and seek the views of the Independent Person and take those into account before making its decision.

15. Sanctions

The Council have delegated to the Panel powers to take action in respect of individual members as maybe necessary to promote and maintain high standards of conduct. The Local Government Association Guidance 2021 provides that when deciding on a sanction, the panel should ensure that it is reasonable, proportionate and relevant to the subject member's behaviour. Examples of factors which the panel may wish to consider are detailed within the above guidance. Accordingly, the Panel may do one or a combination of the following;

- (a) Send a formal letter to the Subject Member;
- (b) Issue a formal censure in writing.
- (c) Publish its findings in respect of the Subject Member's conduct;
- (d) Report its findings to the Council for information;
- (e) Recommend to the Subject Member's Group Leader (or in the case of ungrouped members, recommend to the Council or to Committees) that the Subject Member be removed from any or all committees or sub-committees of the Council;
- (f) Recommend to the Leader of the Council that the Subject Member may be removed from the Cabinet or removed from particular portfolio responsibilities;

- (g) Recommend to the Council that, if the Subject Member is the Leader of the Council, that the Subject Member be removed as Leader and from the Cabinet;
- (h) Instruct the Monitoring Officer to arrange training for the Subject Member;
- (i) Recommend to the Subject Member's Group Leader that the Subject Member is removed from all outside appointments to which he/she has been appointed or nominated by the authority;
- (j) In the case of a co-opted member, recommend to the Council that he/she be removed from the Council or any of its committees, sub-committees or working groups;
- (k) Withdraw facilities provided to the Subject Member by the Council (such as a computer, website and/or email and internet access) for a specified period; or
- (l) Exclude the Subject Member from the Council'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.

The Hearings Panel has no power to suspend or disqualify the Subject Member or to withdraw members or special responsibility allowances. It also has no power to impose a sanction which would fetter the otherwise appropriate activities of a democratically elected representative.

16. What Happens at the end of the Hearing?

At the end of the Hearing the Chairman will state the decision of the Panel as to whether the Subject Member has breached the Code of Conduct and as to any actions which the Panel resolves to take.

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a Formal Decision Notice in consultation with the Chairman of the Panel. The Decision Notice will include a brief statement of facts, the provisions of the Code of Conduct engaged by the allegations, the views of the Independent Person, the reasons for the decision and any sanctions applied. A copy of the Decision Notice will be sent to the Complainant, the Subject Member, published on the Council's website and reported to the next convenient meeting of the Standards Committee.

17. What is the Hearing Panel?

The Hearing Panel is a sub-committee of the Council's Governance Ethics and Standards Committee. The Panel will be comprised of three members drawn from the Governance, Ethics and Standards Committee who have undertaken appropriate training. The Panel will be politically balanced, and a Chairman of the Panel will be nominated and determined by the Panel at its first meeting.

The Independent Person is invited to attend all meetings of the Panel and his/her views will be sought by the Panel and taken into consideration by the Panel before the Panel takes any decision on whether the Subject Member's conduct constitutes a breach of the Code of Conduct and as to any action to be taken following a finding of a breach of the Code of Conduct.

However, the Independent Person is not a member of the Panel. Whilst his/her views will be taken into account by the Panel, the Independent Person will not take part in the making of a decision.

18. Who is the Independent Person?

The Independent Person is a person who has been appointed by the Council under Section 28 of the Localism Act 2011. The Localism Act requires that the Independent Person's views must be taken into account before a decision on an allegation can be made. The views of the Independent Person may also be sought by the Subject Member.

In accordance with legislation, the Monitoring Officer will consult the Independent Person as set out in these arrangements but has the discretion to consult the Independent Person on any other issues arising out of an allegation that a member has breached the Code of Conduct. The Council has appointed **two** Independent Persons.

19. Complaints relating to the Police and Crime Commissioner.

If a police and crime commissioner is a member or co-opted member of the Council an allegation against the commissioner should be referred to the police and crime panel for the commissioner's police area.

If, in response to an allegation referred to it the police and crime panel makes a report or recommendation to the police and crime commissioner under section 28(6) of the Police Reform and Social Responsibility Act 2011, the panel may also make a report or recommendation on the allegation to the Council .

The Council must take any such report or recommendation into account in determining— (a) whether the police and crime commissioner has failed to comply with the authority's code of conduct, (b) whether to take action in relation to the commissioner, and (c) what action to take.

20. Revision of these Arrangements

The Governance, Ethics and Standards Committee has the power to amend these arrangements. The Panel and the Monitoring Officer has the right to depart from these arrangements where it considers that it is expedient to do so in order to secure the effective and fair consideration of any matters.

21. Appeals

There is no right of appeal against a decision of the Monitoring Officer or the Panel.

If the Complainant feels that the Council has failed to deal with a complaint properly, he/she may complain to the Local Government and Social Care Ombudsman.