



North Kesteven District Council Arrangements for Dealing with Conduct Allegations under the Localism Act 2011

Contents

1.0	Introduction	2
2.0	The Code of Conduct	2
3.0	Making a Complaint	2
4.0	Initial Assessment	3
5.0	Additional Information.....	5
6.0	Local Resolution.....	5
7.0	Criminal Conduct.....	6
8.0	Confidentiality.....	6
9.0	Investigation	6
10.0	Investigating Officer finding of insufficient evidence of failure to comply with the Code of Conduct	7
11.0	Investigating Officer finding of sufficient evidence of failure to comply with the Code of Conduct	7
12.0	Local Resolution following an investigation	7
13.0	Hearing.....	8
14.0	Action the Standards Committee may take where a Member has failed to comply with the Code of Conduct.....	8
15.0	Revision of these arrangements.....	9
16.0	Appeals	9
17.0	Independent Person – Role.....	10
	Appendix 1 - Hearings of the Standards Committee	11

1.0 Introduction

- 1.1 This procedure applies when a complaint is received that a Member, co-opted Member or Parish Member has or may have failed to comply with the Code of Conduct for Members.
- 1.2 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 "Respondent".
- 1.3 No Member or Officer will participate in any stage of the arrangements if he or she has, or may have, any personal conflict of interest in the matter.
- 1.4 The Monitoring Officer of North Kesteven District Council is the Proper Officer to receive complaints of failure to comply with the Code of Conduct.

2.0 The Code of Conduct

- 2.1 North Kesteven District Council has adopted a Code of Conduct for Members, which is available for inspection on the authority's website and on request from Democratic Services at:-

North Kesteven District Council Offices,
Kesteven Street,
Sleaford, NG34 7EF

- 2.2 The town and parish councils in North Kesteven have adopted their own codes of conduct. They may be seen on websites if the councils have one, or on request to the town or parish clerk. Democratic Services will forward enquiries if requested.

3.0 Making a Complaint

- 3.1 A complaint must be made in writing by post or email to:-

Monitoring Officer
North Kesteven District Council
Council Offices,
Kesteven Street,
Sleaford, NG34 7EF

Or

Email – nk-monitoring@n-kesteven.gov.uk

- 3.2 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 the system in respect of complaints of Member misconduct.
- 3.3 Anonymous complaints will not be investigated unless there is clear documentary evidence to support the complaint and it is sufficiently serious to warrant consideration.
- 3.4 The standard complaint form should be used, which can be obtained from the Monitoring Officer or can be downloaded on the Council's website, in order that all required information is included.
- 3.5 The Monitoring Officer will normally acknowledge receipt of the complaint within 5 working days of receiving it and, at the same time, write to the Respondent (and in the case of a complaint about a Parish Councillor to the Clerk of the Parish Council as well) with a summary of the allegations (subject to any representations from the Complainant on confidentiality, which are accepted as valid by the Monitoring Officer).
- 3.6 The Respondent may, within 5 working days of receipt of details of the complaint unless otherwise agreed with the Monitoring Officer, make written representations to the Monitoring Officer which must be taken into account when deciding how the complaint will be dealt with. Representations received after this time may be taken into account, at the discretion of the Monitoring Officer, but will in any event not be considered after the initial assessment of the complaint has been carried out.
- 3.7 The Respondent whose behaviour is the subject of the complaint may seek the views of the Independent Person.

4.0 Initial Assessment

- 4.1 The Monitoring Officer will, in consultation with the Independent Person (or reserve Independent Person):-
- i) determine whether a complaint merits formal investigation and to arrange such investigation;
 - ii) seek resolution of complaints without formal investigation wherever practicable; and
 - iii) Refer decisions on investigation to the Standards Committee where the Monitoring Officer feels that it is inappropriate for the Monitoring Officer to take the decision, subject to the Monitoring Officer

reporting to the Standards Committee at least annually on the discharge of this function.

4.2 If the complaint does not meet all of the following criteria it will be rejected or the complaint must meet all of the following criteria otherwise it will be rejected:

- the complaint is against one or more named Councillor or co-opted Members of the Council or of a Parish Council within the District;
- the Respondent was in office at the time of the alleged conduct and the Code of Conduct was in force at the time;
- the subject of the complaint relates to the Respondent in his/her capacity as a Councillor; and
- The complaint, if proven, would be a breach of the Code of Conduct under which the Respondent was operating at the time of the alleged misconduct.

4.3 If appropriate, the Monitoring Officer and the Independent Person will then go on to apply the following criteria in deciding whether a complaint should be accepted for investigation, for other action, dealt with informally, or rejected:

- Sufficiency of Information – Is there sufficient information or evidence provided with the allegation? If it is clear that substantiating evidence may be available, but has not been provided, the Monitoring Officer may ask for that additional evidence, but the onus is on the complainant to ensure all relevant information is included.
- Seriousness of the Complaint – Is the complaint Trivial, vexatious, malicious, politically motivated or ‘tit for tat’? Are the resources/cost involved in investigating and determining the complaint wholly disproportionate to the allegations?
- Duplication – Is the complaint substantially similar allegation has previously been made by the Complainant to Standards for England, or the Standards Committee, or has the complaint been the subject of an investigation by another regulatory authority? If a single event gives rise to similar complaints from a number of different complainants, wherever possible these complaints will be considered, but will be determined individually.
- Length of Time – Did the events or behaviour to which the complaint relates take place more than 6 months ago. Does the time lapse involved mean that those involved are unlikely to remember it clearly

enough to provide credible evidence, or where the lapse of time means there would be little benefit or point in taking action now? Such allegations are only likely to be considered in exceptional circumstances, such as where the conduct relates to a pattern of behaviour which has recently been repeated.

- Public Interest - Would the public interest or any public benefit be served in referring the complaint for investigation or other action? For example, it may be not in the public interest which the Member has died, resigned or is seriously ill. Similarly, if the Member has offered an apology or other remedial action. If it is clear that the subject of the allegation is relatively inexperienced as a Member, or has admitted making an error, and the matter would not warrant a more serious sanction.
- Other Action – Whether the complaint can be dealt with best by informal resolution, including training or conciliation.
- Wider Application – Does the complaint have wider applications, such as suggesting a wider problem throughout the Council concerned.

4.4 Where it would be inappropriate for the Monitoring Officer to assess a complaint, it shall be referred to the Standards Committee for assessment. An example would be where the Monitoring Officer has previously advised the Member on the matter or the complaint is particularly sensitive.

4.5 There is no right of appeal against the determination following initial assessment.

5.0 Additional Information

The Monitoring Officer may require additional information to come to a decision and may request information from the Respondent. Where the complaint relates to a Parish Councillor, the Monitoring Officer may also inform the Clerk of the Parish Council of the complaint and seek the views of the Clerk of the Parish Council before deciding whether the complaint merits formal investigation or other action.

6.0 Local Resolution

In appropriate cases, the Monitoring Officer, in consultation with the Independent Person may seek to resolve the complaint informally, without the need for an investigation. Such informal resolution may involve the Respondent accepting

that his/her conduct was unacceptable and offering an apology, or taking other steps. Where the Respondent or the authority (in appropriate cases) make a reasonable offer of local resolution, but it is rejected by the Complainant, the Monitoring Officer and the Independent Person will take account of this in deciding whether the complaint merits formal investigation.

7.0 Criminal Conduct

If the complaint identifies criminal conduct or breach of other regulations by any person, the Monitoring Officer is authorised to report this to Lincolnshire Police or other prosecuting or regulatory authorities. The Council's dealing with the allegation will cease on the referral.

8.0 Confidentiality

8.1 If a Complainant has asked for their identity to be withheld, this request will be considered by the Monitoring officer and Independent Person at the initial assessment stage.

8.2 Unless the Monitoring Officer in consultation with the Independent Person otherwise agree, the Respondent will be given a summary of the complaint but will be told the identity of the Complainant at the Initial Assessment stage. However, in exceptional circumstances, the Monitoring Officer may withhold the Complainant's identity if on request from the Complainant, if they are satisfied that the Complainant has reasonable grounds for believing that they or any witness relevant to the complaint may be at risk of physical harm, or his or her employment may be jeopardised if their identity is disclosed, or where there are medical risks (supported by medical evidence) associated with the Complainant's identity being disclosed.

8.3 If the Monitoring Officer, in consultation with the Independent Person decides to refuse a request by a Complainant for confidentiality, the Monitoring Officer may offer the Complainant the option to withdraw the complaint, rather than proceed with his or her identity being disclosed.

9.0 Investigation

9.1 The Monitoring Officer will appoint an Investigating Officer where a complaint merits formal investigation. The Investigating Officer may be a Council officer, an officer of another Council, or an external investigator.

9.2 The Investigating Officer may interview the Respondent, complainant, and/or relevant witnesses, and may seek access to certain relevant correspondence and other documents.

9.3 The Investigating Officer will ensure that the Respondent receives a copy of the complaint subject to any previous decision on Confidentiality.

9.4 At the end of the investigation, the Investigating Officer will produce a draft report and will send copies of that draft report to the Complainant and to the Respondent for comments. The Investigating Officer will take such comments into account, before issuing the final report to the Monitoring Officer.

10.0 Investigating Officer finding of insufficient evidence of failure to comply with the Code of Conduct

10.1 The Monitoring Officer, in consultation with the Independent Person, will review the Investigating Officer's report. If they agree the Investigating Officer's report is satisfactory, will make a decision to confirm the finding of no failure to comply with the Code of Conduct.

10.2 The Monitoring Officer will write to the Complainant and the Respondent (and to the Clerk of the Parish Council, where the complaint relates to a Parish Councillor), with a copy of the Decision.

10.3 If the Monitoring Officer or the Independent Person are not satisfied that the investigation has been conducted satisfactorily, the Investigating Officer may be asked to reconsider their report and conclusion.

11.0 Investigating Officer finding of sufficient evidence of failure to comply with the Code of Conduct

The Monitoring Officer, in consultation with the Independent Person will review the Investigating Officer's report and will then **either** seek a local resolution **or** refer the matter for a Hearing.

12.0 Local Resolution following an investigation

12.1 If the Monitoring Officer, after consultation with the Independent Person, considers that the matter can reasonably be resolved without the need for a hearing, the Monitoring Officer will consult with the Complainant and seek to agree a fair resolution. Such resolution may include the Member concerned accepting their conduct was unacceptable and offering an apology, and/or other remedial action.

12.2 If the Member accepts the suggested resolution, the Monitoring Officer will report the outcome to the Standards Committee and the Clerk to the

Parish Council (if appropriate) for information, but will take no further action. If the Complainant or the Respondent refuses local resolution in principle or to engage with the agreed outcome, the Monitoring Officer will refer the matter for a Hearing without further reference to the Complainant or the Respondent.

13.0 Hearing

- 13.1 Where, in the opinion of the Monitoring Officer, after consultation with the Independent Person, local resolution is not appropriate or the Complainant and/or Respondent refuse to co-operate in any local resolution, then the Monitoring Officer will report the Investigating Officer's report to the Standards Committee which will conduct a hearing before deciding 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.
- 13.2 The Hearing will be conducted in accordance with the hearings procedure set out in the Appendix 1 to this document.

14.0 Action the Standards Committee may take where a Member has failed to comply with the Code of Conduct

Where the Standards Committee finds that a Member has failed to comply with the Code of Conduct, the Committee will consider any one or a combination of the following sanctions:-

- Censure the Respondent;
- Request the Respondent to submit a written apology in a form specified by the Standards Committee;
- Request the Respondent to undertake such training as the Standards Committee considers to be appropriate;
- Request that the Respondent participates in such conciliation / mediation as the Standards Committee considers appropriate;
- Report to the relevant Council on the outcome of the hearing with an appropriate recommendation;
- Issue the Member with a single point of contact at the Council;
- Recommend to Council that the Member be removed from all outside appointments to which they have been appointed or nominated by the authority;
- Withdraw facilities provided to the Member of the Council, such as a computer, website and/or email and Internet access;
- Exclude the Member from the Council's offices or other council-owned premises, with the exception of public areas and meeting rooms as necessary for attending Council and Committee meetings.

- For District Council Members:
 - advise the Leader of the Council and/or Leader of the Political Group to which the person belongs, of the outcome of the hearing in order that they can consider whether, and if so what appropriate disciplinary or other action should be taken, issue a press release setting out the outcome of the hearing such other sanction as may be permitted under the law.
 - Recommend to the Member's Group Leader (or in the case of ungrouped Members, recommend to the Council or to Committees) that they be removed from any or all Committees or Sub Committees of the Council;
 - Recommend to the Leader of the Council that the Member be removed from the Executive Board;

Notes:

1. The Standards Committee has no power to suspend or disqualify the Member or to withdraw Members' basic or special responsibility allowances.
2. In relation to town or parish council Members, the Standards Committee can only make recommendations for sanctions. The responsibility for agreeing and enforcing those sanctions will fall to the town or parish council, with the assistance and guidance of the Monitoring Officer.

15.0 Revision of these arrangements

The Monitoring Officer may amend or depart from these arrangements where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

16.0 Appeals and Local Government & Social Care Ombudsman

There is no right of appeal available against a decision on a Code of Conduct complaint, except through the courts by way of judicial challenge.

The Local Government and Social Care Ombudsman does not offer a right of appeal against a council's decision on member conduct complaints. They can only consider if there was fault in the way the council considered a complaint. This includes complaints against the alleged conduct of a parish or town councillor but not the actions of the town or parish council itself. The Ombudsman will only consider a complaint about fault if they consider there is sufficient injustice to warrant their involvement or in the public interest to do so.

There are some matters they cannot investigate:

- complaints made by people in their capacity as councillors (against other councillors) as they are not complaining as members of the public, and
- complaints about a failure to disclose a disclosable pecuniary interest, because this could be a criminal matter which would be for the police to investigate, and
- would not normally investigate a complaint if a separate appeal right exists, such as a planning applicant complaining about a councillor involvement in voting against their planning application.

17.0 Independent Person – Role

Note:

"Arrangements" adopted by Council must include provision for the appointment by Council of at least one Independent Person. North Kesteven District Council has appointed one Independent Person and one Reserve Independent Person.

The Independent Person must be consulted by the Monitoring Officer and the Standards Committee (as appropriate to the procedure set out above) before a decision is reached on an allegation and the Independent Person's view must be taken into account. In addition a person against whom a complaint is made may also seek the views of the Independent Person. The idea behind this is that if a Councillor feels victimised or pressured by a Member or Members of the Council or the authority, he or she can have access to the Independent Person for a view. This applies both to North Kesteven District Councillors and to the Parish Councillors.

Appendix 1 - Hearings of the Standards Committee

Hearing of the Standards Committee shall be held to receive reports from Investigating Officers, in relation to complaints under the Members' Code of Conduct, where local resolution is not possible or not appropriate.

- i. The meeting will normally be open to the public and press unless confidential information or exempt information as defined under Schedule 12A of the Local Government Act 1972 and any regulations, is likely to be disclosed.
- ii. The Subject Member will be invited to attend the meeting, along with a representative if they wish.
- iii. The complainant will be invited to the hearing but does not need to attend in order for the Hearing to proceed.
- iv. The Investigating Officer will present their report, call such witnesses as he/she considers necessary and make representations to substantiate their conclusion that the subject Member has failed to comply with the Code of Conduct.
- v. After considering the written and verbal presentations, the Standards Committee will reach and announce its decision.
- vi. After considering the Investigating Officer's report, and any comments from the complainant and Member concerned, the Committee may make one of the following findings:-
 - that the Member had not failed to comply with the Code of Conduct;
 - that the Member had failed to comply with the Code of Conduct but no action needs to be taken in respect of the matters which were considered at the hearing; or
 - That the Member had failed to comply with the Code of Conduct and that a sanction should be imposed.
- vii. As well as announcing its decision at the hearing and providing a short written decision on the day of the hearing, the Standards Committee will give the Member concerned its full written decision within 14 working days of the end of the hearing.
- viii. If the Standards Committee decides that an elected or co-opted Member of the district council has failed to follow the Code and that the Member should be sanctioned, it may do any one or a combination of the following:

- Censure the Respondent;
- Request the Respondent to submit a written apology in a form specified by the Standards Committee;
- Request the Respondent to undertake such training as the Standards Committee considers to be appropriate;
- Request that the Respondent participates in such conciliation / mediation as the Standards Committee considers appropriate;
- Report to the relevant Council on the outcome of the hearing with an appropriate recommendation;
- Issue the Member with a single point of contact at the Council; or
- Recommend to Council that the Member be removed from all outside appointments to which they have been appointed or nominated by the authority;
- Withdraw facilities provided to the Member of the Council, such as a computer, website and/or email and Internet access;
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