

NORTH WEST LEICESTERSHIRE DISTRICT COUNCIL ARRANGEMENTS FOR DEALING WITH STANDARDS ALLEGATIONS UNDER THE LOCALISM ACT 2011

1. Context

These “Arrangements” set out how a person may make a complaint that an elected or co-opted member of this authority or of a Town or Parish Council has failed to comply with the Members’ Code of Conduct, and sets out how the authority will deal with allegations of a failure to comply with that Code.

Under Section 28(6) and (7) of the Localism Act 2011, the Council must have in place “Arrangements” under which allegations that a member or co-opted member of the authority or Town or Parish Council, or of a Committee or Sub-Committee of the authority, has failed to comply with the Code of Conduct can be investigated and decisions made on such allegations.

These arrangements also provide for the authority to appoint at least one Independent Person, whose views must be sought before a decision on an allegation is made and which it has decided shall be investigated, and whose views can be sought by the authority at any other stage, or by a member against whom an allegation has been made.

2. The Code of Conduct

The Council has adopted a Code of Conduct for members, which is available for inspection on the authority’s website and on request from Reception at the Civic Offices.

3. Making a complaint

If you wish to make a complaint, please write or email to:

“The Monitoring Officer
North West Leicestershire District Council
Council Offices
Coalville
Leicestershire
LE67 3FJ”

Or:

elizabeth.warhurst@nwleicestershire.gov.uk

If you have a disability that prevents you from submitting a complaint in writing, you can call the Customer Services team on 01530 454545 and arrangements will be made to transcribe your complaint for you.

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.

In order to ensure that all the information required is available with the complaint, the complainant will be asked to provide their name and a contact address or email address together with any relevant documents in support of their complaint. Supporting information may include:

- Dates and times of alleged misconduct;
- Details of any witnesses to the alleged misconduct;
- Any other authorities that the member belongs to.

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

Anonymous and Confidential Complaints

An anonymous complaint is one where the complainant is not known. The Council will not normally allow anonymous complaints as that would be against the principles of transparency and fairness and make matters much more difficult to investigate. However, there may be exceptional compelling reasons why an anonymous complaint could be accepted without detriment to the process and where the allegation can be evidenced without reference to the complainant. Where an anonymous complaint is received, the Monitoring Officer will make a decision on whether to proceed with the complaints process, depending on the nature of the alleged misconduct and the public interest.

A confidential complaint is one where the complainant makes themselves known but does not wish for their identity to be revealed during the complaints process. Where the complainant wishes to remain anonymous it will be at the Monitoring Officer's discretion as to whether the complaint proceeds. Consideration will be given to the public interest and whether the complaint can be justified or determined without the complainant's participation.

4. What happens to my complaint?

When a complaint is received, it will be acknowledged and the complainant may be asked for further information in order for the Monitoring Officer to carry out an initial assessment of the complaint.

The Monitoring Officer will review each complaint and will determine whether the initial tests have been met

1. Does the complaint relate to a member within the NWLDC area, in office at the time of the conduct complained of?
2. Was the member acting in their capacity as a councillor at the time of the conduct complained of?

3. The complaint, if proven, would be a breach of the Code under which the member operates?

When considering the initial tests, the Monitoring Officer may need to inform the Subject Member of the complaint and seek further information from them. The Monitoring Officer may also consult with and seek advice from the Independent Person during this time.

If the initial tests are not met, then the complaint cannot progress and the complainant will be informed.

If the initial tests are met then the Monitoring Officer will decide if the complaint is suitable for informal resolution, having regard to the jurisdictional test. The Monitoring Officer will not make a determination about whether Code of Conduct has been breached but will work with both parties to see whether the issue is one which can be resolved informally to the satisfaction of the complainant and the subject member.

Informal resolution can be a proportionate way of dealing with relatively minor allegations, one-off incidents or underlying disagreements between individuals. For the avoidance of doubt, dealing with a matter by alternative resolution at the initial assessment stage is making no finding of fact as there has been no formal investigation and therefore the Monitoring Officer will balance the interest in resolving a matter quickly and satisfactorily against the interest in the complainant having their complaint upheld or the member's desire to clear their name.

In the event that the Monitoring Officer considers informal resolution appropriate, it may, for example involve the member accepting that his/her conduct was unacceptable and offer an apology, or other remedial action / steps which are acceptable to both parties such as the member undertaking training. The Monitoring Officer may consult with or seek advice from the Independent Person when considering informal resolution.

5. What if Informal Resolution is not appropriate/successful?

In cases where Informal Resolution is not appropriate or successful the Monitoring Officer will prepare a report to the Assessment Sub-Committee.

The Assessment Sub-Committee ~~who~~ will determine the further steps to be taken in relation to the complaint or whether no further action is to be taken based on a consideration of the public interest test. The Assessment Sub-Committee will consist of members from the Council's Audit and Governance Committee (a politically proportionate committee). The report will detail all steps taken by the Monitoring Officer and the Independent Person prior to the Sub Committee. The Independent Person will be invited to attend the meeting of the Assessment Sub-committee and can offer guidance to members in reaching their decision on whether to take any further action on the complaint or not.

The Assessment Sub-Committee is subject to the normal Access to Information Procedures and Committee rules in relation to public meetings and it will take a decision at the start of the meeting to determine whether it is appropriate to hold the meeting in closed session. There will be a presumption that the committee is in closed session unless the committee determines that there is good reason for it to be made public.

The complainant and the Subject Member will not participate in the meeting but their views will have been sought prior to the meeting to enable their opinions to be presented. It will be at the Chair's discretion as to whether the complainant and/or Subject Member may be able to observe the meeting if it is being held in closed session.

If, on assessment of the facts, the Sub-Committee determines that no further action is required or there is no case to answer, this will be reported back to the complainant and the subject member who may be given leave by the Committee to appeal the decision. Such appeal will only be granted where there is new evidence in relation to the complaint.

There may be instances where the Sub-Committee consider the action of the subject member should be referred to the police (e.g. failure to disclose a Disclosable Pecuniary Interest). In such circumstances, the Sub-Committee will instruct the Monitoring Officer to refer the matter to the appropriate body for investigation.

Should the Committee determine that the matter warrants a detailed investigation, the Monitoring Officer will appoint an Investigating Officer who may be an officer of another authority (e.g. an Monitoring Officer from another council) 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 and will provide an opportunity for the complainant to explain their understanding of events and suggest what documents the Investigating Officer needs to see, and who the Investigating Officer needs to interview.

In exceptional cases, where it is appropriate to keep identities confidential or disclosure of details of the complaint to the member might prejudice the investigation, the Monitoring Officer can delete names and addresses from the papers given to the member, or delay notifying the member until the investigation has progressed sufficiently.

At the end of his/her investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to the complainant and to the member concerned, to give them both an opportunity to identify any matter in that draft report with which they disagree or consider requires more consideration.

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

Complaints in relation to members that sit on multiple authorities

There may be times when the same complaint is made against a member of more than one authority. For example, an allegation may allege that a councillor has failed to register an interest at both district and county level.

In such a case the Council will agree with the other authority who would carry out the initial assessment (if necessary, under an agreed delegation) and any subsequent action. This avoids the risk of two different actions or conclusions being reached.

For the avoidance of doubt, this would not arise where the councillor is on a town or parish council and as well as this Council because this Council is responsible for handling both complaints. It could however arise if the parish or town councillor were also on the county council in a two-tier area.

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

On completing their investigation the Investigating Officer will present their report to the Determination Sub-Committee who will take into account the facts and evidence produced.

The Determinations Sub-Committee is subject to the normal Access to Information and Committee rules in relation to public meetings and it will take a decision at the start of the meeting to determine whether it is appropriate to hold the meeting in closed session. There will be a presumption that the committee is open to the public unless there is good reason for it to be dealt with confidentially. It will be at the Chair's discretion as to whether the complainant and/or Subject Member may be able to observe the meeting if it is being held in closed session.

If satisfied that the Investigating Officer's report is sufficient, the Determinations Sub Committee will accept the findings of the report and request the Monitoring Officer to write to the complainant and to the member concerned notifying them that they are satisfied that no further action is required, and provide a copy of the Investigating Officer's final report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, they may ask the Investigating Officer to reconsider his/her report.

There may be instances where the Determinations Sub Committee wishes to ask questions of the complainant and the Subject Member in order to fully understand the circumstances of the complaint. Where this is requested by the Sub Committee, the meeting will be adjourned to enable the attendance of all parties. In such a situation, the Sub Committee will be conducted in a manner similar to other regulatory committees where each party may present their arguments.

At the end of the Committee the Chair will ask the subject member whether they are happy for the outcome of the matter to be published through public notice/press statement. It will be at the discretion of the subject member whether such action is taken.

7. What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?

Where the investigating officer has determined that there is a breach of the code of conduct they will present their report to the Determinations Sub Committee in accordance with the relevant timescales in section 14 below.

The Monitoring Officer may conduct a “pre-hearing process”, requiring the member to give his/her response to the Investigating Officer’s report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing. The Chair of the Hearings Panel may issue directions as to the manner in which the hearing will be conducted.

At the Sub Committee, 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 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 Sub Committee. The member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Sub Committee as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

The Sub Committee, with the benefit of any advice from the Monitoring Officer and an Independent Person, may conclude, in disagreement with the investigation officer that the member did not fail to comply with the Code of Conduct, and so dismiss the complaint. If the Sub Committee concludes that the member did fail to comply with the Code of Conduct, the Chair will inform the meeting of this finding and the Sub Committee will then consider what action, if any, should be taken as a result of the member’s failure to comply with the Code of Conduct. In doing this, the Sub Committee will give the member an opportunity to make representations to the Panel and will consult the Independent Person (and if appropriate the Parish Council), but will then decide what action, if any, to take in respect of the matter.

8. What action can the Determination Committee take where a member has failed to comply with the Code of Conduct?

The Council has delegated to the Audit and Governance Committee and its sub-committees such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Both the Assessment Sub-Committee and Determination Sub-Committee will each have their own procedures and the procedures for the Determination Sub-Committee will set out the factors that will be taken into account when determining a sanction. In such circumstances, the Committee may:

- Issue a formal letter to the member found to have breached the Code.
- Impose Formal censure.
- Make recommendations to Full Council to remove the member from committee(s) and other appointments subject to political balance requirements (where there are political groups, the decision could only be to recommend them to change their nominated appointees).
- A press release and other appropriate publicity.
- Recommend Training.
- Recommendation to Group Leader to remove the member from committee(s) and other appointments.

The Committee has no power to suspend or disqualify the member or to withdraw members' or special responsibility allowances.

[In relation to Parish Members, the Monitoring Officer can only make recommendations for sanctions against those Members. The responsibility for enforcing those sanctions will fall to the Parish Council as a whole with the assistance and guidance from the Monitoring Officer.]

9. What happens at the end of the hearing?

At the end of the hearing, the Chair will state the decision of the Committee as to whether the member failed to comply with the Code of Conduct and as to any actions which the Committee resolves to take.

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Committee, and send a copy to the complainant, to the member *[and to the Parish Council]*. The Council will publish the minute of the Determination Sub-Committee on its website.

10. Who are the Committees?

The Assessment and Determinations Sub Committees are Sub-Committee of the Council's Audit and Governance Committee.

The Independent Person is invited to attend all meetings of the sub-committees and their views are sought and taken into consideration before any decision is taken on whether the member's conduct constitutes a failure to comply with the Code of conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct. There may be more than one Independent Person involved throughout the complaint depending on whether they have been conflicted out of sitting on the Committee/Sub Committee due to being

approached by the Complainant or Subject Member for assistance throughout the process.

11. Who is the Independent Person?

The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the members of Council.

A person cannot be “independent” if he/she:

- is, or has been within the past 5 years, a member, co-opted member or officer of the authority;
- *[is or has been within the past 5 years, a member, co-opted member or officer of a parish council within the authority’s area], or*
- is a relative, or close friend, of a person within paragraph 11.1 or 11.2 above. For this purpose, “relative” means:
 - spouse or civil partner;
 - living with the other person as husband and wife or as if they were civil partners;
 - grandparent of the other person;
 - a lineal descendent of a grandparent of the other person;
 - a parent, sibling or child of a person within paragraphs 11.3.1 or 11.3.2;
 - a spouse or civil partner of a person within paragraphs 11.3.3, 11.3.4 or 11.3.5; or
 - living with a person within paragraphs 11.3.3, 11.3.4 or 11.3.5 as husband and wife or as if they were civil partners.

The Council is part of the pool arrangements which have been established with the other Leicestershire District and Borough Councils. This arrangement provides for a pool of 5 IPs which can be called upon by any Council.

Views may be sought from the Independent Person at the initial tests stage and in which case those views will not be made public. The Independent Person may also provide views at the Assessment Sub-Committee and/or the Determinations Sub-Committee.

In addition to the above, it is open to the complainant and/or the Subject Member to speak with the Independent Person also. If you wish to do this, you should arrange this through the Monitoring Officer.

12. Revision of these arrangements

The Council may by resolution agree to amend these arrangements, and has delegated to the Monitoring Officer in consultation with the Independent Person the right to 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.

13. Appeals

The Sub Committees have authority to allow, or not, a right of review following the Assessment Sub Committee's determination of the complaint, and following the determination of the complaint by the Determination Sub Committee. The process follows one similar to the court process, where Members be given leave to appeal a decision taken on their matter. That in order to avoid frivolous appeals, a stance of "unless new evidence is submitted/provided there will be no review".

Such request for a review to be received within 28 days of the decision by the relevant Sub Committee.

There is no right of appeal for the complainant or for the subject member:

- against a decision of the Monitoring Officer made under this process;
- a decision by the Assessment Sub-Committee or Determination Committee not to grant leave to appeal; or
- a decision made on review

If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government and Social Care Ombudsman. Details can be found here <https://www.lgo.org.uk/make-a-complaint/fact-sheets/other-topics/complaints-about-standards-and-member-conduct>

14. Timescales

The complaints process will proceed in line with the following timescales (unless otherwise agreed with the relevant parties):

Member to make comments on complaint – 10 working days from being notified

Initial assessment outcome – 15 working days from date complaint received

Investigations – completed within 6 months (where possible)

Notice of Determinations Sub-Committee hearing – at least 2 weeks prior to hearing
Determinations Sub-Committee hearing – within 3 months of report (but not within first 14 days)

Panel's written decision – within one week of the Determinations Sub-Committee hearing

Appendix

Flowchart of procedure