

Part 8.3

Member Complaints Procedure

Arrangements for dealing with allegations of breaches of North Northamptonshire Council’s Code of Conduct

The Council has adopted a Code of Conduct for Members, which is at Part 8.2 of the Constitution.

These “Arrangements” set out how you may make a complaint that a Member of this Council has failed to comply with the Council’s Members’ Code of Conduct, or in the case of a Parish or Town Councillor, that Parish or Town Council’s Code of Conduct, and sets out how the Council will deal with it.

These Arrangements include the appointment of at least two Independent Persons, whose views must be sought by the Council before it takes a decision on an allegation which it has decided warrants investigation, and whose views can be sought by the Council at any other stage, or by a Member against whom an allegation has been made.

1. Making a complaint

1.1 If you wish to make a complaint, please write to:

The Monitoring Officer
North Northamptonshire Council
Sheerness House
Kettering
NN16 8TL

or e-mail the Monitoring Officer at:

monitoringofficer@northnorthants.gov.uk

1.2 The Monitoring Officer is a senior officer of the Council who has statutory responsibility for maintaining the Register of Members’ Interests and who is responsible for administering the process in respect of complaints of alleged Member misconduct.

1.3 In order to ensure that we have all the information which we need to be able to process your complaint, we would recommend that you use the complaint form, which is available on request or can be downloaded at the following link:- ([Code of Conduct and Complaints](#)).

1.4 You are required to provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form, in which case we will not disclose your name and address to the Member against whom you make the complaint, without your prior consent. The Council does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

1.5 The Monitoring Officer will acknowledge receipt of your complaint as soon as possible after receiving it and will keep you informed of the progress of your complaint.

2. Initial Assessment of Complaints Received

2.1 The Monitoring Officer will review all complaints received by the Council and must consult with at least one of the Independent Persons (see section 13 below) at this stage. In assessing the complaint, the Monitoring Officer will apply the following 'public interest' test:

- a) 'CAN' we investigate your complaint?
 - (i) Is the person you are complaining about a Councillor?
 - (ii) Is the conduct complained about within the jurisdiction of the Code of Conduct?
 - (iii) Did the conduct occur within the last six months?
 - (iv) Is the conduct something that is covered by the code?

2.2 If a complaint has been made but does not fall within the scope or intent of these arrangements, the Monitoring Officer may still decide to take informal action in order to resolve the matter.

2.3 If the Monitoring Officer determines the complaint can be investigated, the following test will be applied:

- b) 'SHOULD' we investigate your complaint?
 - (i) Is there evidence which supports the complaint?
 - (ii) Is the conduct something which it is possible to investigate?
 - (iii) Would an investigation be proportionate and in the public interest?

2.4 If the Monitoring Officer determines the complaint should be investigated, they will then decide whether the complaint:

- a) warrants investigation or,
- b) may be suitable for alternative resolution without investigation

2.5 For the complaint to be admissible it must be in a legible format and relate to an existing Member of the Council.

- 2.6 In determining whether or not the complaint should be referred for investigation or to seek alternative resolution the Monitoring Officer and Independent Persons will have regard to a range of factors including the following: -
- a) Whether there is sufficient information upon which to base a decision;
 - b) How serious is the alleged complaint;
 - c) Is the complaint politically motivated, vexatious or tit for tat;
 - d) Did the action complained about occur recently or not;
 - e) Do the allegations relate to actions occurring whilst the Member was acting in their official capacity or do they relate to their private life;
 - f) Whether the matter is considered suitable for alternative resolution and whether either the Member concerned, or the complainant is not prepared to accept this as a solution.
- 2.7 The initial assessment of the complaint will be held as soon as possible after receipt of your complaint and you will be informed, in writing, of the outcome by the Monitoring Officer. You will be informed on progress throughout the process.
- 2.8 Unless exceptional circumstances exist that indicate otherwise, the Monitoring Officer will inform the Member concerned of the receipt and nature of the complaint and invite their comments.
- 2.9 Where the Monitoring Officer requires additional information in order to come to a decision, they may come back to you for such information, and may request information from the Member against whom your complaint is directed.
- 2.10 If, during the assessment of the initial complaint, it becomes clear that either the Monitoring Officer or the Independent Persons have a conflict of interest in relation to the complaint, they will not play any further role in the assessment of the complaint. In order that the complaint can be assessed, steps will be taken to appoint a Monitoring Officer (or suitably qualified person) or an Independent Person from another authority to assess the complaint and take any further steps required under this procedure.

3. Alternative Resolution

- 3.1 In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. The Monitoring Officer must consult with the Independent Persons about this course of action. Such informal resolution may involve the Member accepting that their conduct was unacceptable and offering an apology, or other remedial action by the Council. Where the Member or the Council makes a reasonable offer of informal

resolution, but you are not willing to accept that offer, the Monitoring Officer (and Independent Persons) will take account of this in deciding whether the complaint warrants a formal investigation.

- 3.2 If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police and other regulatory agencies.

4. If the Complaint is referred for Investigation how is the investigation conducted?

- 4.1 If the Monitoring Officer decides that a complaint merits formal investigation, they will appoint an Investigating Officer, who may be another senior officer of the Council, an officer of another Council or an external investigator. The Monitoring Officer will agree an investigation plan with the Investigating Officer. The Investigating Officer shall meet or speak to you to understand the nature of your complaint. If so, then you can explain your understanding of events and suggest what documents the Investigating Officer needs to see and who the Investigating Officer needs to interview. The Monitoring Officer will consult with the Independent Persons about the need for a formal investigation.

- 4.2 The Investigating Officer would normally write to the Member against whom you have complained and provide them with a copy of your complaint. The Member would be asked to provide their explanation of events. The Investigating Officer will identify what documents they need to see and who they need to interview. In exceptional cases, where it is appropriate to keep your identity confidential, or disclosure of details of the complaint to the Member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the Member, or delay notifying the Member until the investigation has progressed sufficiently.

- 4.3 At the end of their investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to you and to the Member concerned, to give you both an opportunity to identify any matter in that draft report which you disagree with or which you consider requires further consideration.

- 4.4 Having received and taken account of any comments which you may make on the draft report, the Investigating Officer will send it to the Monitoring Officer.

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

- 5.1 The Monitoring Officer will, in consultation with the Independent Person, review the Investigating Officer's report and, if they are satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the Member concerned, notifying you that no further action is required.

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

6.1 The Monitoring Officer will, in consultation with the Independent Person, review the Investigating Officer's report and will then either send the matter for local hearing before the Sub Committee made up of Councillors from the Council's Democracy and Standards Committee or seek an alternative resolution.

6.2 Local Resolution

6.2.1 The Monitoring Officer and Independent Persons may consider that the matter can be resolved without the need for a hearing. Such resolution may include the Member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the Council. If the Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Democracy and Standards Committee for information but will take no further action.

6.3 Local Hearing

6.3.1 If the Monitoring Officer and Independent Person consider that local resolution is not appropriate or it isn't possible to achieve, the Monitoring Officer will report the Investigating Officer's report to the Sub Committee which will conduct a local hearing to decide 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.

6.3.2 In summary, the Monitoring Officer will conduct a "pre-hearing process", requiring the Member to give their response to the Investigating Officer's report. This is in order to identify what is likely to be agreed and what is likely to be contentious at the hearing.

6.3.3 It is intended that hearings should be conducted in a formal manner but the attendance of legally qualified representative advisors of the complainant and complained against councillor(s) is not encouraged. Accordingly, no assistance will be given towards the cost of any such legally qualified representatives. The Sub Committee will act in an inquisitorial manner, rather than an adversarial manner, seeking the truth in relation to the conduct of the councillor(s) on the balance of the information available to it, and will be able to commission further investigation or information where it needs to do so in order to come to a decision.

6.3.4 The Chair of the Sub Committee may issue directions as to the manner in which the hearing will be conducted. At the hearing, the Investigating Officer will present their report, call such witnesses as they consider necessary and make representations to substantiate their conclusion that the Member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask you, as the complainant, to attend and give evidence to the Sub Committee.

6.3.5 The Member will then have an opportunity to give their evidence, to call witnesses and to make representations to the Sub Committee as to why they consider that they did not fail to comply with the Code of Conduct. The Sub Committee, with the benefit of any advice from the Independent Persons, may conclude that the Member did not fail to comply with the Code of Conduct and so dismiss the complaint. Alternatively, if the Sub Committee finds that the Member did fail to comply with the Code of Conduct, the Chair will inform the Member of this finding and the Sub Committee will then consider what action, if any, the Sub Committee should take 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 Persons.

6.3.6 If the Member wishes to make representations to the Panel and/or consult with the Independent Persons the Hearing will adjourn, normally for one week, and reconvene to hear any representation or statement from the Member before either confirming or amending their decision. If the Member does not wish to make representations to the Panel, or consult with the Independent Persons, the decision of the Panel will stand as announced.

7. What action can the Sub Committee take where a Member has failed to comply with the Code of Conduct?

7.1 The Sub Committee must publish its findings in respect of the Member's conduct;

7.2 The Sub Committee may:

- a) Report its findings to the Council for information;
- b) Recommend that the Leader/Group Leader or Town/Parish Council, as applicable, remove the Member from Special Responsibilities – i.e. Executive/Committees/Outside Bodies;
- c) Instruct the Monitoring Officer to arrange training for the Member;
- d) Instruct the Monitoring Officer to mediate between the complainant and the Member;
- e) Recommend to Full Council or a Town or Parish Council as applicable, that the Member be removed from any or all outside appointments to which they have been appointed or nominated by the Council where the complaint relates to that appointment and for a specified period of time;
- f) Recommend to Full Council or a Town or Parish Council as applicable, the withdrawal of any facilities provided to the Member by the Council that may have been abused or improperly used; or

- g) Recommend to Full Council the exclusion of the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings;
- h) Recommend that the member concerned makes a formal written or verbal or written and verbal apology to the Full Council and/or the complainant.

7.3 There are no powers that allow the Council or the Democracy and Standards Committee to suspend or disqualify the Member or to withdraw Members' basic allowances. (Although, removing a Member from the Executive or other Committee would lead to a loss of any Special Responsibility Allowance that position was entitled to for the period of the suspension).

8. What happens at the end of the hearing?

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

8.2 As soon as reasonably practicable thereafter and subject to any adjournment as set out in 6.3.6 above, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Sub Committee and send a copy to you and to the Member. The decision notice will be made available for public inspection after 20 working days have elapsed from the date the decision notice was issued (provided there has not been a request for a review under paragraph 9 of these Arrangements) and the decision reported to the next convenient meetings of the Democracy and Standards Committee and of the Council.

9. Appeals and Reviews

9.1 There is no right of appeal for you as complainant or for the Member against a decision of the Monitoring Officer of Sub Committee. A complaint can be lodged with the Ombudsman about process.

10. Sub Committees

10.1 The Sub Committees are panels of the Council's Democracy and Standards Committee. They will comprise three Members of the Democracy and Standards Committee; and for Town and Parish Council complaints a Town/Parish representative who is a member of the Democracy and Standards Committee.

10.2 The Independent Persons are invited to attend all meetings of the Sub Committee and their views are sought and taken into consideration before the Sub Committee takes any decision 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.

11. Who are the Independent Persons?

11.1 The Council has three Independent Persons.

11.2 A person cannot be “independent” if they:

- a) are, or have been within the past five years, a Member, co-opted Member or officer of the Council or of a parish council within the Council’s area; or
- b) are a relative or close friend of a person within paragraph 13.1. For this purpose, “relative” means:
 - (i) the other person’s spouse or civil partner;
 - (ii) living with the other person as husband and wife or as if they were civil partners;
 - (iii) a grandparent of the other person;
 - (iv) a lineal descendant of a grandparent of the other person;
 - (v) a parent, sibling or child of a person within paragraphs (i) or (ii);
 - (vi) the spouse or civil partner of a person within paragraph (iii), (iv) or (v); or
 - (vii) living with a person within paragraph (iii), (iv) or (v) as husband and wife or as if they were civil partners.

12. Being accompanied at a Sub Committee

12.1 Both you and the Member you complained about may choose to bring another person with them to the Sub Committee meeting (if one takes place) to support them. It shall be a matter for the Chair of the Sub Committee to issue directions as to the manner in which a supporting person may participate in the meeting, to ensure there is a balance between a party’s need to be supported and the need for the Sub Committee and/Review Panel to conduct its business fairly and efficiently.

13. Principles of Natural Justice

13.1 For the avoidance of doubt, it is expressly stated that the procedures in these Arrangements must be conducted in accordance with the principles of natural justice. In summary, in the context of these Arrangements, the principles of natural justice mean that each party has the right to a fair hearing, the right to make their case to an impartial person/group of people, and that the decision makers in this process act without bias or apparent bias, act impartially and do not create any procedural irregularities.

14. Service

14.1 Where it is necessary for any documentation to be sent to a member against whom an allegation of breach of the Code has been made, those documents may be sent by recorded delivery post to that members usual address and/or by e-mail to the e-mail address notified to the Council. Any documents sent by such a method are deemed to be served for the purpose of these

arrangements.

15. Revision of these arrangements

- 15.1 The Council may by resolution agree to amend these arrangements and has delegated to the Chair of the Sub Committee (and the Chair of the Review Panel in cases where there is a review), the right to depart from these arrangements where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

**End of Arrangements for dealing with allegations of breaches of North
Northamptonshire Council's Code of Conduct**

August 2022