NEWCASTLE·UNDER·LYME
BOROUGH COUNCIL

ARRANGEMENTS FOR DEALING WITH STANDARDS ALLEGATIONS UNDER THE LOCALISM ACT 2011

1. Context

These 'arrangements' set out how you may make a complaint that an elected or co-opted Member of this council or of a Parish Council in the Borough has failed to comply with the Authority's Code of Conduct and sets out how the Authority will deal with allegations of a failure to comply with the Authority's Code of Conduct.

Under Section 28(6) and (7) of the Localism Act 2011, the Council must have in place such 'arrangements. These have to provide for the Authority to appoint at least one Independent Person, whose views must be sought by the Authority before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the Authority at any other stage, or by a Member or co-opted Member against whom an allegation has been made.

Code of Conduct complaints are dealt with as Strictly Private and Confidential.

2. The Code of Conduct

The Council has adopted a Code of Conduct for Members, which is attached as Appendix A to these arrangements and is available for inspection on the Authority's website and on request from the Monitoring Officer. Parish Councils may choose to adopt this Code or one of their own.

3. Making a complaint

If you wish to make a complaint, please complete the Code of Conduct form

and email it to:

MemberCodeOfConduct@newcastle-staffs.gov.uk

Or write to:

The Monitoring Officer
Castle House
Barracks Road
Newcastle-under-Lyme,
Staffordshire, ST5 1BL

The Monitoring Officer has statutory responsibility for maintaining the Register of Members' Interests and is responsible for administering the system in respect of complaints of Member misconduct.

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

4. Will your complaint be investigated?

The Monitoring Officer will review every complaint received and, and may speak to the complainant, subject member and any other individual to help reach their decision. The Monitoring Officer will usually consult with the Independent Person and the Chair of the Audit and Standards Committee before making their decision about how to deal with the complaint. The Monitoring Officer will inform you of the decision and the reasons for that decision. The decision however is that of the Monitoring Officer.

Code of Conduct complaints are subject to the public interest test.

The Monitoring Officer will consider all the factors put forward in the complaint and each of the public interest factors below in reviewing a complaint.

These are factors are not exhaustive and not all may be relevant in every case. The weight attached to each of these factors may also vary in each case.

c) The public interest factors are:

(i) The seriousness of the alleged breach;
(ii) Whether the allegation is that the subject member has misused a position of trust or authority, including a breach of confidentiality and caused harm to a person;
(iii) Whether there is evidence of previous, similar behaviour on the part of the subject member;
(iv) Whether the alleged breach is such that it may damage public confidence in elected members;
(v)The resources that would be required to undertake an investigation, compared to the seriousness of the alleged breach and the likely sanction if the subject member was found to have breached the Code;
(vi) Any admission of guilt, apology or other action already taken by the subject member to resolve or mitigate the complaint; and
(viii) Whether the complaint appears to be malicious, vexatious, politically motivated or trivial retaliation.

a) The Monitoring Officer will consider the complaint, taking into account the Public Interest Test, and may decide to:

(i) Take no action;

(ii) Resolve the matter informally without investigation. This will be done after taking account of the views, if possible, of the complainant and the subject member, and may involve:

- An apology being made;
- Remedial action being taken;
- A recommendation for training to be undertaken; or
- Mediation.

(iv) Arrange a formal investigation of the complaint; or

(v) Refer the matter to the police or other relevant regulatory agency.

Where possible, the Monitoring Officer will seek to resolve complaints informally.

There is no appeal against the decision of the Monitoring Officer.

5. How is the investigation conducted?

If the Monitoring Officer decides that a complaint merits formal investigation, they may undertake it themselves or appoint an Investigating Officer, who may be another officer of the Authority, or an external person; as the Monitoring Officer considers appropriate.

The Investigating Officer will decide whether to meet or speak with you to understand the nature of your complaint and so that you can explain your understanding of events, suggest any documents the Investigating Officer needs to see, and who in your view it would be helpful for the Investigating Officer to interview.

The Investigating Officer would normally write to the Member against whom you have complained, provide him/her with a copy of your complaint, and ask the Member to provide his/her explanation of events, to identify what documents he needs to see and whom they feel it would be helpful to interview.

In exceptional cases, 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.

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 you and to the Member concerned, to give you both an opportunity to identify any matter in that draft report with which you disagree or which you consider requires more consideration.

Having received and taken account of any comments which you may make on the draft report, the Investigating Officer will send their final report to the Monitoring Officer who will take it through the remaining process.

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

The Monitoring Officer will review the Investigating Officer's report and, if satisfied that the report is sufficient, will write to you and to the Member concerned notifying you that they are satisfied that no further action is required and give you both a copy of the final report. If the member complained of is a Parish Councillor the Parish Clerk will also be informed.

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

The Monitoring Officer will review the Investigating Officer's report and will then either send the matter for local hearing before the Hearings Panel or, after consulting the Chair of the Audit and Standards Committee and the Independent Person, and taking into account the Public Interest Test, seek local resolution without a hearing.

In such a case, they will consult with the Independent Person and with you as complainant and seek to agree a fair resolution which also helps to ensure higher standards of conduct for the future.

Such resolution may include the Member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the authority.

If the Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee and the Parish Clerk for information but will take no further action.

However, if you tell the Monitoring Officer that any suggested resolution would not be adequate, the Monitoring Officer will refer the matter for a local hearing.

8. What is a Local Hearing

When a local resolution after investigation is not appropriate the Monitoring Officer will report the Investigating Officer's report to the Hearings Panel which will conduct a local 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.

The procedure for local hearings is attached.

The Hearings Panel is a sub-committee of the Council's Audit and Standards Committee. It comprises three Members of the Council and is politically proportionate.

The Independent Person is invited to attend all meetings of the Hearings Panel and their views are sought and taken into consideration before the Hearings Panel 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.

The Monitoring Officer will 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 before the hearing as to how the hearing will be conducted, including as to how many witnesses may reasonably be called by the Investigating Officer or the Member.

At the hearing, the Investigating Officer will present his/her report, call such witnesses as they consider 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 you as the complainant to attend and give evidence to the Hearings Panel. The Member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Hearings Panel as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

The Hearings Panel, with the benefit of any advice from the Independent Person, may conclude that the Member did not fail to comply with the Code of Conduct, and so dismiss the complaint.

If the Hearings Panel concludes that the Member failed to comply with the Code of Conduct, the Chair will inform the Member of this finding and the Hearings Panel will then consider what action, if any, the Hearings Panel should take. In doing this, the Hearings Panel will give the Member an opportunity to make representations to the Panel and will consult the Independent Person, but will then decide what action, if any, to take

in respect of the matter.

9. What action can the Hearings Panel take where a Member has failed to comply with the Code of Conduct?

The Hearings Panel may:

- Censure or reprimand the Member;
- Publish its findings in respect of the Member's conduct;
- Report its findings to Council or to the Parish Council for information;
- Recommend to the Member's Group Leader (or in the case of un-grouped Members, recommend to 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 Cabinet, or removed from particular Portfolio responsibilities;
- Recommend to Council that the Member be replaced as Executive Leader;
- Instruct the Monitoring Officer to or recommend that the Parish Council arrange training for the Member;
- Remove or recommend to the Parish Council that the Member be removed from all outside appointments to which he/she has been appointed or nominated by the authority or by the Parish Council;

The Hearings Panel has no power to suspend or disqualify the Member or to withdraw any allowances.

10. What happens at the end of the hearing?

At the end of the hearing, the Chair will state the decision of the Hearings Panel as to whether the Member failed to comply with the Code of Conduct and as to any actions which the Hearings Panel 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 Hearings Panel, and send a copy to you, to the Member and the Parish Council, make that decision notice available for public inspection and report the decision to the next convenient meeting of the Council.

11. Revision of these arrangements

The Chair of the Hearings Panel may depart from these Hearing Panel arrangements where they consider that it is expedient to do so in order to secure effective and fair consideration of any matter.

12. Appeals

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

If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.

ARRANGEMENTS FOR THE CONDUCT OF A CODE OF CONDUCT COMPLAINT BY THE HEARINGS PANEL

These arrangements apply when an investigation into a complaint has been taken place, the final report of the Investigating Officer is received and in the view of the Monitoring Officer it is not possible to deal with the complaint other than by a hearing.

The Monitoring Officer will report the complaint to the Hearing Panel who will conduct a hearing before deciding if the Member has failed to comply with the Code of Conduct and if so what sanctions to apply.

These arrangements are part of the Council's arrangements for dealing with an alleged breach of the member Code of Conduct.

Preliminaries:

1. The Monitoring Officer will propose a date for the hearing to the Member and to the members of the Panel. This will normally be no less than four weeks in advance.
2. The Monitoring Officer will at that time ask the Member if they intend to attend the hearing; of any issues of fact that they disagree with in the Investigating Officers report and see if findings of fact can be agreed; ask if the member wishes to give oral evidence and call any witnesses and if so, who; and will ask the Investigating Officer if they wish to call witnesses and if so, who.
3. If either the Member or the Investigating Officer wishes to call witnesses the Monitoring Officer may consult with the Chair of the Panel who will rule on whether it is reasonable for the Panel to hear from those witnesses
4. The Panel and the parties will be provided with a bundle of documents at least five working days prior to the hearing.
5. The Panel will have three members appointed from the members of the Audit and Standards Committee. The quorum is two members.
6. All matters are decided by a simple majority of votes cast from members present; the chair has a casting vote.
7. If the Member fails to attend the hearing the Panel will take account of any representations received and may then decide either to proceed in the Members absence or adjourn to another date.
8. The Member may choose to be represented or accompanied by a legal representative, fellow member, friend or colleague; except that any legal representation should be notified to the Monitoring Officer no less than 14 days prior to the date set for the Hearing Panel .

Conduct of the Hearing[1]

The order of Business is as follows:

1. Elect a Chair (unless already elected at a previous meeting)
2. Apologies for absence
3. Declarations of interest
4. If the Member is absent, consideration of whether to go ahead with the hearing
5. Introduction of parties by the Chair

[1] The Chair can amend the procedure at any time. As advisers to the Panel the Monitoring Officer and Independent Person may ask questions of the parties or clarification at any time.

6. Consideration of whether the hearing should be held in public or private
7. The Investigating Officer presents their report and calls any witnesses
    a. The Member [2]questions the Investigating Officer and witnesses
    b. The members of the Panel question the Investigating Officer and witnesses
8. The Members present their case and calls any witnesses
    a. The Investigating officer questions the Member and witnesses
    b. The members of the Panel question the Member and witnesses
9. The Investigating Officer sums up their case
10. The Member sums up their case
11. The Chair invites the Independent Person to express a view
12. The Panel adjourn and deliberate in private assisted by the Monitoring Officer as required. They may come out of private session to seek additional evidence if necessary. If so, and this cannot be provided they may adjourn and issue direction about the provision of that evidence.
13. The Panel make their decision based on the evidence they had before them and reconvene
14. The Chair announces their findings on the alleged breach and any sanctions applied by the Panel.
15. The meeting closes.

There is no right of appeal against the decisions of the Panel.

[2] If the Member is legally represented this and all other actions of the member except giving evidence, may be done by their legal representative