

Redditch Borough Council

Arrangements for Managing Standards Complaints under the Localism Act 2011

1. Introduction

- 1.1 Sections 28(6) and (7) of the Localism Act 2011 require the Borough Council to have in place “arrangements” under which allegations that a member or co-opted member of the authority or of a parish council within the authority’s area, or of a committee or sub-committee of the authority, has failed to comply with the authority’s Code of Conduct can be investigated and decisions made on such allegations.
- 1.2 Such arrangements must provide for the authority to appoint at least one Independent Person, whose views must be sought by the Borough Council before it takes a decision on an allegation which it has decided shall be investigated, and whose views may be sought by the authority at any other stage, or the member or co-opted member against whom an allegation has been made.
- 1.3 These arrangements set out how a complaint that an elected or co-opted member of the authority or of a parish council within the authority's area has failed to comply with the authority’s Code of Conduct can be made, and how such allegations will be dealt with.

2. The Code of Conduct

- 2.1 The Council has adopted a Code of Conduct for members, which is attached as Appendix 1 to these arrangements. The Code is available on the authority’s website at the following linkinsert link..... *or is available on request from Reception at the Town Hall (see contact details at 3.1 below) or the Customer Service Centre (if so, add CSC address)*
- 2.2 *Each parish council is also required to adopt a Code of Conduct need to insert details advising that it is the same as the Code adopted by the Borough Council.*

3. Making a complaint and complaint acknowledgement

- 3.1 Complaints must be made in writing to:

Mrs. C. Felton
 Monitoring Officer
 Redditch Borough Council

Email: c.felton@bromsgroveandredditch.gov.uk

- 3.2 In order to ensure that the authority has all the information it needs to be able to process a complaint, the model Complaint Form should ideally be completed. The form can be downloaded from the authority's website at the link detailed at point 2.1 *or is available on request from Reception at the Town Hall or the Customer Service Centre (see 2.1 and 3.1 for contact details)*
- 3.3 Complainants are asked to provide their name and contact details in order that the Monitoring Officer can acknowledge receipt of the complaint and keep the complainant informed of progress with this. If a complainant wishes to keep his/her name and address confidential, this should be indicated on the form. *Please note however that the authority will only consider anonymous complaints where there is a clear public interest in doing so.*
- 3.4 The Monitoring Officer will issue a written acknowledgement of a complaint to the complainant within 3 working days of receiving it. At the same time the Monitoring Officer will write to the member against whom the complaint has been made (the 'subject member') to notify them of the complaint (*subject to point 5.4 below*). Both the complainant and the subject member will be kept informed of progress with the complaint.
- 4.2 Where the Monitoring Officer requires additional information in order to come to a decision, she may request information from the complainant, subject member or any other relevant party. Examples of a relevant party include, for example:
- a Leader of a Political Group;
 - a Chair, Vice-Chair, Clerk or Executive Officer of a Parish Council;
 - a Representative of the Worcestershire Association of Local Councils;
 - a Representative of the Police or other relevant regulatory body;
 - the Borough Council's Chief Executive; or
 - any other party who the Monitoring Officer is of the opinion might be in a position to assist in providing information in relation to a complaint.
- 4.3 If a complaint identifies *possible* criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to refer the matter to the Police or other regulatory agency. The Monitoring Officer will, at the same time and in consultation with the Independent Person, continue to undertake any separate course of action which might be deemed necessary on behalf of the authority in relation to the complaint, with a view to maintaining high standards of member conduct.

- 4.4 The Monitoring Officer will review every complaint received and after consultation with the Independent Person, and subject to 4.3 above, the Monitoring Officer may decide:
- that no further be taken with the complaint (which would apply where, for example, a complaint is found to be factually incorrect and therefore has no basis, or where a complaint is unsubstantiated or does not relate to a possible breach of the Code of Conduct);
 - to seek to resolve the complaint informally, via local resolution; or
 - that a formal investigation into the complaint is required.
- 4.5 Where the Monitoring Officer attempts to deal with a complaint informally via local resolution she will liaise with the relevant parties to seek to agree a way forward. “Relevant Parties” will always include the relevant Party Group Leader. If the subject member accepts that his/her conduct was unacceptable and offers an apology, and/or other remedial action is offered/undertaken by either the subject member or the authority, the Monitoring Officer will notify the complainant of any reasonable terms offered by either the subject member or the authority.
- 4.6 If the complainant and the subject member accept the terms offered the Monitoring Officer will write to all relevant parties detailing the outcome and the matter will be closed.
- 4.7 If the complainant or the subject member (in consultation with the relevant Group Leader) does not accept the terms offered the Monitoring Officer will, in consultation with the Independent Person, refer the matter to an assessment sub committee to determine whether the complaint merits formal investigation.
- 5.1 The Council has adopted a procedure for the investigation of misconduct complaints, which is attached as Appendix Two to these arrangements.*
- 5.2 If the sub committee decides that a complaint merits formal investigation, the Monitoring officer will appoint an Investigating Officer, who may be another senior Officer of the authority, an Officer of another authority or an external investigator.
- 5.3 The Investigating Officer will conduct the investigation and in doing so will liaise with any relevant parties, as appropriate. The Investigating Officer will decide whether he/she needs to meet or speak with the complainant, the subject member or any other parties to understand the nature of the complaint and so any parties can explain their understanding of events and suggest what documents the Investigating Officer might need to see, and who the Investigating Officer may need to interview.
- 5.4 In exceptional cases, where it is appropriate to keep a complainant's identity confidential or disclosure of details of the complaint to the

subject member might prejudice the investigation, the Monitoring Officer can delete the complainant's name and address from the papers given to the member, or delay notifying the member until the investigation has progressed sufficiently.

- 5.5 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 subject member, to give both an opportunity to identify any matters which are not agreed or which require further attention.
- 5.6 Having received and taken account of any comments which either the complainant or the subject member might make on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer.
- 5.7 The Monitoring Officer will review the Investigating Officer's Final Report in consultation with the Independent Person and will determine the next course of action. If the Monitoring Officer is not satisfied that that the investigation has been conducted properly and feels that any aspect of the Investigating Officer's Report is incomplete or requires further attention she may ask the Investigating Officer to reconsider his/her report.

6. If the Investigating Officer finds that there is no evidence of a failure by the subject member to comply with the Code of Conduct

If the Investigating Officer finds that there is no evidence of a failure by the subject member to comply with the Code of Conduct and the Monitoring Officer is satisfied with the Investigating Officer's findings, the Monitoring Officer will, following consultation with the Independent Person, write to the complainant, the subject member, and if the complaint relates to a Parish Councillor the Parish Council Clerk/Executive Officer, confirming that she is satisfied that no further action is required. A copy of the Final Report will be sent to the complainant and subject member and the matter will be closed.

7. If the Investigating Officer finds that there is evidence of a failure by the subject member to comply with the Code of Conduct?

- 7.1 If the Investigating Officer finds that there is evidence of a failure by the subject member to comply with the Code of Conduct and the Monitoring Officer is satisfied with the Investigating Officer's findings, the Monitoring Officer will, following consultation with the Independent Person and depending on the nature and seriousness of the failure in question, determine whether to send the matter for a local hearing of the Hearings Panel of the Standards Committee or to seek to resolve the matter via local resolution.

Local Resolution

- 7.2 If the Monitoring Officer attempts to conclude the matter via local resolution she will liaise with the relevant parties to seek to agree a fair resolution, with a view to ensuring higher standards of conduct by the subject member in the future. If a fair resolution is agreed and the subject member complies with the suggested resolution the Monitoring Officer will write to the relevant parties to confirm the position and will report the matter to the Standards Committee for information. The matter will then be closed.
- 7.3 If the complainant tells the Monitoring Officer that any proposed resolution is not adequate, or if the subject member is not prepared to undertake any proposed action, such as giving an apology, the Monitoring Officer will, in consultation with the Independent Person, determine whether to close the matter without further action or to refer it for a local hearing. The Monitoring Officer will write to the relevant parties to confirm her decision and the reasons(s) for the decision.

Local Hearing

- 7.4 The Council has agreed a procedure for local hearings, which is attached as Appendix 3 to these arrangements.
- 7.5 The Hearings Panel will 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.
- 7.6 Where a local hearing is to take place, the Monitoring Officer will conduct a "pre-hearing process" which is aimed to facilitate the smooth running of the hearing. The subject Member will be required 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, and the Chair of the Hearings Panel may issue directions as to the manner in which the hearing will be conducted.
- 7.7 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 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 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.
- 7.8 The Hearings Panel may, with the benefit of any advice from the Independent Person, conclude that the member did not fail to comply with the Code of Conduct, and dismiss the complaint. If the Hearings Panel concludes that the member did fail 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 as a result of the member's failure to comply with the Code of Conduct.

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.

8. Action the Hearings Panel can take where a member has failed to comply with the Code of Conduct

8.1 The Council has delegated to the Hearings Panel such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly the Hearings Panel may –

8.1.1 Publish its findings in respect of the member's conduct;

8.1.2 Report its findings to Council [*or to the Parish Council*] for information;

8.1.3 Recommend to the member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;

8.1.4 Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;

8.1.5 Instruct the Monitoring Officer to (or recommend that the Parish Council) arrange training for the member;

8.1.6 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);

8.1.7 Withdraw (or recommend to the Parish Council that it withdraws) facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or

8.1.8 Exclude (or recommend that the Parish Council exclude) 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.

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

9. Decision of the Hearings Panel

9.1 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 any actions which the Hearings Panel resolves to take.

- 9.2 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 the complainant, the member members (and to the Parish Council if the subject member is a parish councillor), make that decision notice available for public inspection and report the decision to the next convenient meeting of the Council.

10. Who are the Hearings Panel?

- 10.1 The Hearings Panel is a Sub-Committee of the Council's Standards Committee.
- 10.2 The Independent Person is invited to attend all meetings of the Hearings Panel and his/her views are sought and taken into consideration before the Hearings Panel takes any decision on whether the subject 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. 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 the appointed by a positive vote from a majority of all the members of Council.

A person cannot be "independent" if he/she –

- 11.1 Is, or has been within the past 5 years, a member, co-opted member or Officer of the authority;
- 11.2 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
- 11.3 Is a relative, or close friend, of a person within paragraph 11.1 or 11.2 above. For this purpose, "relative" means –
- 11.3.1 Spouse or civil partner;
 - 11.3.2 Living with the other person as husband and wife or as if they were civil partners;
 - 11.3.3 Grandparent of the other person;
 - 11.3.4 A lineal descendent of a grandparent of the other person;
 - 11.3.5 A parent, sibling or child of a person within paragraphs 11.3.1 or 11.3.2;
 - 11.3.6 A spouse or civil partner of a person within paragraphs 11.3.3, 11.3.4 or 11.3.5; or

- 11.3.7 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.

12. Revision of these arrangements

The Council may by resolution agree to amend these arrangements, and has delegated to the Chairman of the Hearings Panel 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

- 13.1 There is no right of appeal for you as complainant or for the member against a decision of the Monitoring Officer or of the Hearings Panel. Any decision would however, be open to judicial review by the High Court if it was patently unreasonable, or if it were taken improperly, or if it sought to impose a sanction which the Council had no power to impose.
- 13.2 If a complainant feels that the authority has failed to deal with his/her complaint properly, he/she may make a complaint to the Local Government Ombudsman.

Appendix 1 The authority's Code of Conduct
Appendix 2 Procedure for Investigations
Appendix 3 Procedure for Hearings