

# **STOCKTON-ON-TEES BOROUGH COUNCIL**

## **ARRANGEMENTS FOR DEALING WITH A COMPLAINT AGAINST A COUNCILLOR**

## 1. INTRODUCTION

- 1.1 Stockton-On-Tees Borough Council has adopted a [Code of Conduct](#) for the 56 Members (otherwise referred to as Councillors) who have been elected to represent the 26 wards in the Borough. The 18 Parish and Town Councils in the Borough also have Codes of Conduct for their Members.
- 1.2 These Arrangements set out the process the Council has adopted for dealing with complaints that an Elected Member has failed to comply with the Members' Code of Conduct. They are made under Section 28 of the Localism Act 2011.

## 2. MAKING A COMPLAINT

- 2.1 Complaints alleging a breach of the Code of Conduct by a Member must be made in writing to the Monitoring Officer using the Members' Code of Conduct [Complaint form](#). Assistance will be offered to Complainants who have difficulty in making their complaint in writing
- 2.2 Complaints will be acknowledged in writing within 3 working days of receipt and an indication of the timescale for handling the complaint will be provided at this time. We aim to handle all complaints as quickly as possible.
- 2.3 The Monitoring Officer may delegate the matter to be dealt with by one of the Deputy Monitoring Officers or in exceptional cases an external investigator may be appointed.
- 2.4 The Council has appointed Independent Persons, in accordance with the requirements of Section 27 of the Localism Act 2011, to assist with the handling of complaints alleging a breach of the Code of Conduct by a Member.
- 2.5 One of the Independent Persons will be consulted and have his or her views taken into account to assess the appropriate course of action with regard to the complaint.

## 3. NOTIFICATION OF THE COMPLAINT TO THE MEMBER COMPLAINED ABOUT

- 3.1 Once a complaint is received and acknowledged and subject to any representations from the Complainant on confidentiality (see paragraphs 3.2 - 3.5 below), the Monitoring Officer will notify the Subject Member of the complaint. The Monitoring Officer may also notify the Subject Member's Group Leader, if appropriate. This information is given in confidence and the Subject Member is expected to respect that confidence.
- 3.2 If the Complainant has asked for their identity to be withheld, this request will be considered by the Monitoring Officer in consultation with the Independent Person when they initially assess the complaint.
- 3.3 As a matter of fairness and the principles of natural justice, the Subject Member will usually be told who the Complainant is and will also receive a summary of the complaint. However, in exceptional circumstances, it may be appropriate to keep the Complainant's identity confidential or not disclose details of the complaint to the Subject Member during the early stages of an investigation. The Monitoring Officer may withhold the

Complainant's identity if they are satisfied that the Complainant has reasonable grounds for believing that they or any other person (e.g. a witness):

- a) Is either vulnerable or at risk of threat, harm or reprisal.
- b) May suffer intimidation or be victimised or harassed.
- c) Works closely with the Subject Member and are afraid of the consequences.
- d) Suffers from a serious health condition and there are medical risks associated with their identity being disclosed (medical evidence will need to be provided to substantiate this).
- e) May receive less favourable treatment, because of the seniority of the person they are complaining about, in terms of any existing Council or Parish Council service provision or any tender/contract they may have with, or are about to submit to the Council or Parish Council.

OR where early disclosure of the complaint:

- a) May lead to evidence being compromised or destroyed; or
- b) May impede or prejudice the investigation; or
- c) Would not be in the public interest.

3.4 If the Monitoring Officer decides to refuse the Complainant's request for confidentiality, they will offer the Complainant the option to withdraw their complaint. The Complainant will be notified of the Monitoring Officer's decision, with reasons, by the Monitoring Officer.

3.5 There is no right of appeal against the Monitoring Officer's decision to refuse the Complainant's request for confidentiality.

#### **4. PRELIMINARY TESTS**

4.1 The Monitoring Officer will determine whether the complaint is accepted for investigation in consultation with the Independent Person.

4.2 The following preliminary test criteria will be applied:

- a) Was the person complained of a Member at the time of the alleged conduct?
- b) Was the person complained of acting in an official capacity at the time of the alleged conduct?
- c) Did the alleged conduct occur when the person complained of was acting as a Member of another authority?
- d) Does the alleged conduct constitute potential criminal conduct or breach of regulations?

- e) If the facts could be established as a matter of evidence, could the alleged conduct be capable of a breach of the Code of Conduct?
  - f) Is the complaint about dissatisfaction with the Council's decisions, policies and priorities, etc?
  - g) Is the complaint submitted in writing?
  - h) Is the Subject Member of the complaint named?
  - i) Is the complaint a 'repeat complaint', or supported by new or further evidence substantiating or indicating that the complaint is exceptionally serious or significant?
  - j) Is the complaint anonymous, or supported by independent documentary evidence substantiating or indicating that the complaint is exceptionally serious or significant?
  - k) Is there sufficient information/evidence to substantiate the complaint has been submitted by the Complainant?
  - l) Is the complaint malicious, trivial, politically motivated or retaliatory?
  - m) Is the Complainant unreasonably persistent, malicious and/or vexatious?
  - n) Did the alleged misconduct happen more than 6 months ago?
  - o) Is the complaint relatively minor and would dealing with the complaint have a disproportionate effect on both public money and officers' and Members' time?
  - p) Have the circumstances changed so much that there would be little benefit arising from an investigation or other action?
  - q) Has the complaint been the subject of an investigation or other action and there is nothing more to be gained by further action being taken?
  - r) Is the complaint such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter, e.g. where there is no firm evidence?
  - s) Is the complaint about a deceased person?
  - t) Is the complaint about a person who is no longer a Member?
- 4.3 The Monitoring Officer may ask the Complainant and the Subject Member for additional information before deciding how to deal with the complaint.
- 4.4 The Monitoring Officer may invite the Subject Member to submit initial views on the complaint, which will be taken into account by the Monitoring Officer when they decide how to deal with the complaint.
- 4.5 If the complaint identifies criminal conduct or breach of other regulations by the Subject Member or any other person, the Complainant will be advised by the Monitoring Officer

to report the complaint to the police or other prosecuting or regulatory authority. Where a Complainant has been advised to refer a matter to the police, or the Monitoring Officer has referred the matter to the police, the complaints process under these Arrangements will be suspended, pending a decision/action by the police or other prosecuting or regulatory authority. Where the police or other prosecuting or regulatory authority decide to take no action on the complaint, the Monitoring Officer will lift the suspension and in consultation with the Independent Person will resume the investigation into the matter.

- 4.6 The Monitoring Officer in consultation with the Independent Person, will take no action on the complaint when one or more of the following apply:
- a) On-going criminal proceedings or a police investigation into the Subject Member's conduct.
  - b) Investigation cannot proceed without investigating similar alleged conduct or needing to come to conclusions of fact about events which are also the subject of some other investigation or court proceedings.
  - c) The investigation might prejudice another investigation or court proceedings.
  - d) On-going investigation by another prosecuting or regulatory authority.
  - e) Genuine long-term (3 months or more) unavailability of a key party.
  - f) Serious illness of a key party.
- 4.7 If the complaint is rejected for investigation, the Complainant and the Member complained about will be notified accordingly, with reasons, normally within 10 working days of receipt of the complaint by the Monitoring Officer.
- 4.8 If the complaint is accepted for investigation, the Complainant and the Member complained about will be notified and will be informed whether the complaint will initially be dealt with via the informal or the formal route. The reasons for this decision on the appropriate route will be shared with both parties normally within 10 working days of receipt of the complaint by the Monitoring Officer.
- 4.9 There is no right of appeal against the Monitoring Officer's decision on the preliminary tests.

## **5. INFORMAL RESOLUTION**

- 5.1 The Monitoring Officer will, in consultation with the Independent Person, determine whether the complaint can be resolved through informal resolution.
- 5.2 Informal resolution may be the simplest and most cost-effective way of resolving the complaint and may be appropriate where:
- a) The Subject Member appears to have a poor understanding of the Code of Conduct and/or Council procedures; or

- b) There appears to be a breakdown in the relationship between the complainant and the Subject Member; or
  - c) The conduct complained of appears to be a symptom of wider underlying conflicts which, if unresolved, are likely to lead to further misconduct or allegations of misconduct; or
  - d) The conduct complained of appears common to a number of Members
  - e) The conduct complained of appears to the Monitoring Officer not to require a formal censure; or
  - f) The complaint appears to reveal a lack of guidance, protocols and procedures within the Council or
  - g) The complaint consists of allegations and retaliatory allegations between Councillors; or
  - h) The complaint consists of allegations about how formal meetings are conducted; or
  - i) The conduct complained of may be due to misleading, unclear or misunderstood advice from officers.
- 5.3 Informal resolution may consist of one or more, (but not limited to), of the following actions, which do not have to be limited to the Subject Member, but may extend to other Councillors, where it may be useful to address systemic behaviour:
- a) Training;
  - b) Conciliation/mediation;
  - c) Mentoring;
  - d) Apology;
  - e) Implementing changes to the Council's procedures.
  - f) Conflict management;
  - g) Development of the Council's protocols;
  - h) Other remedial action by the Council; or
  - i) Other steps if it appears appropriate to the Monitoring Officer in consultation with the Independent Person.
- 5.4 If the Subject Member complies with the informal resolution process, the Monitoring Officer will take no further action against the Subject Member.
- 5.5 Where the Subject Member will not participate in the informal resolution process or if, having agreed to one or more actions under the informal resolution process, the

Subject Member refuses or fails to carry out any agreed action, the Monitoring Officer will instigate the formal process (below).

## **6. FORMAL RESOLUTION**

6.1 The Monitoring Officer, in consultation with the Independent Person, may refer the complaint for formal investigation when:

- a) It is serious enough, if proven, to justify the range of sanctions available to the Standards Panel.
- b) The Subject Member's behaviour is part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the Council or Parish Council and there is no other avenue left to deal with it, short of investigation, and, in considering this, the Monitoring Officer may take into account the time that has passed since the alleged conduct occurred.

6.2 Within 10 working days of notifying the Subject Member and the complainant that a formal investigation is to be undertaken the Monitoring Officer will contact the Subject Member and the Complainant and:

- a) Detail the procedure to be followed in respect of the investigation and the relevant timescales for responses and concluding the investigation;
- b) Detail the sections of the Members' Code of Conduct that appear to be relevant to the complaint;
- c) Request contact details of any potential witnesses; and
- d) Require that confidentiality is maintained and that the complaint not be disclosed, Members or otherwise, as may be required by law or regulation – the fact that an investigation is being conducted does not need to remain confidential.

6.3 It is strongly recommended that the Subject Member engages in the investigation process. If the Subject Member declines to participate in the process, the investigation will proceed in their absence.

6.4 It may be necessary for the Monitoring Officer to agree with the Subject Member which documents will be submitted in evidence. This will generally include documents that will be relied on, or in support of, the Subject Member's case and which are relevant to the complaint.

6.5 Witnesses must be identified at the investigation stage and their evidence supported by signed and dated witness statements and/or notes of interview with the Monitoring Officer. The Monitoring Officer cannot compel the attendance of witnesses or their co-operation.

6.6 The Monitoring Officer will not make recommendations on sanctions but may be asked to suggest possible sanctions.

- 6.7 On the conclusion of their investigation, the Monitoring Officer will issue a draft report (clearly labelled DRAFT), to the Monitoring Officer, for review.
- 6.8 The draft report will be sent in confidence to the Subject Member and the Complainant (not witnesses) for comment. The draft report will be marked 'CONFIDENTIAL' and watermarked with the name of the addressee, and will detail:
  - a) The relevant provisions of the law and the relevant paragraphs of the Code of Conduct.
  - b) A summary of the complaint.
  - c) The Subject Member's response to the complaint.
  - d) Relevant information, explanations, etc, which the Monitoring Officer has obtained in the course of the investigation.
  - e) A list of any documents relevant to the matter.
  - f) A list of those persons/organisations who have been interviewed.
  - g) A statement of the Monitoring Officer's draft findings of fact and reasons.
  - h) The Monitoring Officer's conclusion as to whether the Subject Member has or has not failed to comply with the Members' Code of Conduct; and
  - i) That the Monitoring Officer will present a final report once they have considered any comments received on the draft.
- 6.9 The Subject Member and Complainant will have 5 working days in which to consider the draft report and submit a response to the Monitoring Officer.
- 6.10 Once the Monitoring Officer has considered all responses received from the Subject Member and/or the Complainant, they will finalise the draft report and make their final conclusions in consultation with the Independent Person and recommendations within 5 working days. The report will be clearly labelled FINAL, marked CONFIDENTIAL, and watermarked with the name of the addressee.
- 6.11 Where the Monitoring Officer, having consulted with the Independent Person, concludes that there is no evidence of a failure to comply with the Members' Code of Conduct, they will inform the Parties, in writing, that no further action is considered necessary.
- 6.12 Where the Monitoring Officer, having consulted with the Independent Person, concludes that there is evidence of a failure to comply with the Members' Code of Conduct, they will either seek informal resolution or refer the matter for consideration by the Standards Panel (see below).
- 6.13 There is no right of appeal against the Monitoring Officer's decision.

## **7. THE STANDARDS PANEL**

- 7.1 The legal requirements for publishing agendas, minutes and calling meetings, will apply to the Standards Panel. The hearing will be held in public no earlier than 14 working days and no later than 28 days after the Monitoring Officer has copied the Investigating Officer's final report to the complainant and the Subject Member. Schedule 12A of the Local Government Act 1972 (as amended) will be applied where it is necessary to exclude the public and press from meetings of the Standards Panel, where it is likely that confidential or exempt information will be disclosed.
- 7.2 The Monitoring Officer, in consultation with the Chair of the Standards Panel, will convene a meeting of the Standards Panel
- 7.3 The Independent Person will be invited to attend and participate in the Standards Panel meeting but will not have voting rights.
- 7.4 If the Subject Member is unavailable for the proposed date, the Monitoring Officer, in consultation with the Chair of the Standards Panel, will determine whether the meeting can be arranged outside of the prescribed timescale. If a meeting cannot be arranged within the prescribed timescale the Subject Member may be requested to provide a reasonable explanation to the Chair, along with any appropriate evidence of his/her unavailability.
- 7.5 Where the Subject Member fails to attend the Standards Panel and where the Standards Panel is not satisfied with their explanation for their absence from the hearing, the Standards Panel may, in the first instance, have regard to any written representations submitted by the Subject Member, and/or the Investigating Officer's report and may resolve to proceed with the hearing in the Subject Member's absence and make a determination. Alternatively, if the Standards Panel is satisfied with the Subject Member's reasons for not attending the hearing, it may adjourn the hearing to another date. The Standards Panel may resolve in exceptional circumstances, that it will proceed with the hearing on the basis that it is in the public interest to hear the allegations expeditiously. Standards Panel hearings shall only be adjourned once, if the Subject Member fails to attend a second scheduled meeting without exceptional circumstances, the meeting shall proceed in the Subject Member's absence.
- 7.6 The Subject Member may choose to be accompanied and/or represented at the Standards Panel by a fellow councillor, friend or colleague. The Subject Member will not be entitled to be represented by a solicitor or other legal representative, or by any Officer of the Council.
- 7.7 Witnesses may be called by either the Subject Member or the Investigating Officer, however, they cannot be compelled to attend the Standards Panel hearing. The Chair of the Standards Panel may limit the number of witnesses if he/she believes the number called is unreasonable.
- 7.8 Subject to paragraph 7.8 below, the order of business will be as follows:
  - a) Apologies for absence.
  - b) Declarations of interests.

- c) If the Subject Member is absent, consider whether to adjourn or to proceed with the hearing.
  - d) Receive representations from the legal advisor and/or Subject Member as to whether any part of the hearing should be held in private and/or whether any documents (or parts thereof) should be withheld from the public/press.
  - e) Determine whether the public/press are to be excluded from any part of the meeting and/or whether any documents (or parts thereof) should be withheld from the public/press. When the public/press are excluded from any part of the meeting, filming, photography and/or audio recordings of the meeting will be prohibited.
  - f) Consider the report of the Independent Person and the Subject Member's response and hear from witnesses and then determine the matter.
- 7.9 The Chair may exercise their discretion and amend the order of business or adjourn the hearing, where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.
- 7.10 Deliberations of the Standards Panel:
- a) Having heard the representations/views of all parties, the Standards Panel will adjourn the hearing and deliberate in private (assisted on matters of law by a legal advisor) to consider whether, on the facts found, the Subject Member has failed to comply with the Members' Code of Conduct, and if so, what sanctions should be applied.
  - b) Prior to reaching a decision, the Standards Panel will consider the views expressed by the Independent Person, including any views on sanctions to be applied and/or recommendations to the Council or Parish Council or Monitoring Officer.
  - c) Where the complaint has a number of aspects, the Standards Panel may reach a finding, apply a sanction and/or make a recommendation on each aspect separately.
  - d) The Standards Panel will make its decision on the balance of probability, based on the evidence before it during the hearing.
  - e) The Standards Panel may at any time come out of private session and reconvene the hearing in public, in order to seek additional evidence from the Monitoring Officer, the Subject Member or the witnesses. If further information, to assist the Panel, cannot be presented, then the Panel may adjourn the hearing and issue directions as to the additional evidence required and by whom.
  - f) If evidence presented to the Standards Panel highlights other potential breaches of the Council's or Parish Council's Members' Code of Conduct, then the Chair will outline the Panel's concerns and recommend that the matter be referred to the Monitoring Officer as a new complaint.

- g) All matters/issues before the Standards Panel will be decided by a simple majority of votes cast, with the Chair having a second or casting vote.

7.11 Having deliberated on its decision and/or recommendations and the application of any sanctions, the Standards Panel will reconvene the hearing in public and the Chair will announce:

- a) The Standards Panel decision as to whether or not the Subject Member has failed to comply with the Members' Code of Conduct, detailing the breaches, and the principal reasons for the decision.
  - b) The sanctions (if any) to be applied.
  - c) The recommendations (if any) to be made to the Council or Monitoring Officer.
- and
- d) That there is no right of appeal against the Standards Panel decision and/or recommendations.

## **8. POSSIBLE SANCTIONS**

8.1 Subject to paragraph 8.4 below, where the Standards Panel determines that the Subject Member has failed to comply with the Members' Code of Conduct, any one or more of the sanctions below or any further sanctions deemed appropriate by the Standards Panel may be applied/recommended:

- a) Recommend to the Council or Parish Council that the Subject Member be issued with a formal censure (i.e. the issue of an unfavourable opinion or judgement or reprimand) by motion.
- b) Recommend to the Leader of the Council that the Subject Member be removed from the Executive or removed from particular Portfolio responsibilities.
- c) Instruct the Monitoring Officer, or the Parish Council, to arrange training for the Subject Member.
- d) Recommend to the Council, or Parish Council, that the Subject Member is removed from all outside appointments to which they have been appointed or nominated by the Council, Executive or Parish Council.
- e) Instruct the Monitoring Officer, or Parish Council, to withdraw facilities provided to the Subject Member by the Council, or Parish Council, such as a computer, website and/or email and internet access.
- f) Instruct the Monitoring Officer, or Parish Council, to exclude the Subject Member from the Council or Parish Council's offices or other premises, with the exception of meeting rooms as necessary for Council or Parish Council Committee and sub-Committee meetings.

- g) Instruct the Monitoring Officer, or Parish Council, to apply the informal resolution process.
  - h) Instruct the Monitoring Officer, or Parish Council, to issue a press release or other form of publicity; or
  - i) Instruct the Monitoring Officer, or Parish Council, to restrict the Subject Member's access to confidential or exempt information.
- 8.2 The Standards Panel has no power to suspend or disqualify the Subject Member or to withdraw basic or special responsibility allowances.
- 8.3 The Standards Panel may specify that any sanction takes effect immediately or takes effect at a later date and that the sanction be time limited. If the sanctions are not complied with within the timescale directed by the Standards Panel, the Monitoring Officer will report the fact to the Chair of the Standards Panel, wherein further sanctions may be considered by the Standards Panel.
- 8.4 When deciding whether to apply one or more sanctions referred to in paragraph 8.1 above, the Standards Panel will ensure that the application of any sanction is reasonable and proportionate to the Subject Member's behaviour. The Standards Panel will consider the following questions along with any other relevant circumstances or other factors specific to the local environment:
- a) What was the Subject Member's intention, and did they know that they were failing to follow the Council's or Parish Council's Members' Code of Conduct?
  - b) Did the Subject Member receive advice from officers before the incident and was that advice acted on in good faith?
  - c) Has there been a breach of trust?
  - d) Has there been financial impropriety, for example: improper expense claims or procedural irregularities?
  - e) What was the result/impact of failing to follow the Council's or Parish Council's Members' Code of Conduct?
  - f) Was there an impact on others?
  - g) How serious was the incident?
  - h) Does the Subject Member accept that they were at fault?
  - i) Did the Subject Member apologise to the relevant persons?
  - j) Has the Subject Member previously been reprimanded or warned for similar misconduct?
  - k) Has the Subject Member previously breached the Council's or Parish Council's Members' Code of Conduct?
  - l) Is there likely to be a repetition of the incident?

## **9. PUBLICATION AND NOTIFICATION OF THE STANDARDS PANEL DECISION**

- 9.1 Within 5 working days of the Standard Panel's announcement of its decision and recommendations, the Monitoring Officer will publish the name of the Subject Member and a summary of the Standards Panel's decision and recommendations, and reasons for the decision and recommendations, on the Council's website.
- 9.2 Within 5 working days of the announcement of the Standards Panel's decision, a full written decision and the reasons for the decision, including any recommendations, will be sent to:
- a) The Subject Member.
  - b) The Complainant.
  - c) The Monitoring Officer; and
  - d) The Clerk to the Parish Council (if appropriate).