

# ARRANGEMENTS FOR DEALING WITH COMPLAINTS ABOUT THE CONDUCT OF ELECTED MEMBERS

## Introduction

1. This procedure applies when a complaint is received that a Member, Co-opted Member or Parish Member has or may have failed to comply with the relevant Code of Conduct for Members.
2. The person making the complaint will be referred to as “the Complainant” and the person against whom the complaint is made will be referred to as the “Subject Member.”
3. No Member or Officer will participate in any stage of the arrangements if he or she has, or may have, any personal conflict of interest in the matter.

## 4. **Making a complaint**

A complaint must be made in writing by post or email to: –

The Monitoring Officer  
Chorley Council  
Town Hall  
Market Street  
Chorley  
PR7 1DP

OR

[chris.moister@chorley.gov.uk](mailto:chris.moister@chorley.gov.uk)

The Monitoring Officer will acknowledge receipt of the complaint within 5 working days of receiving it and, at the same time, write to the Subject Member with details of the allegations (subject to any representations from the Complainant on confidentiality, which are accepted as valid by the Monitoring Officer). The Subject Member may, within 5 working days of receipt, make written representations to the Monitoring Officer which he must take into account when deciding how the complaint will be dealt with. Representations received after this time may be taken into account, at the discretion of the Monitoring Officer, but will in any event not be considered after the Monitoring Officer has issued his Initial Complaint Assessment.

Complaints in relation to conduct by Parish Councillors towards the Parish Clerk

Where a complaint relates to the conduct of a Parish Councillor towards the Parish Clerk, the complaint should be submitted by the chair or the parish council as a whole. In exceptional circumstances complaints will be accepted when made by the Clerk themselves.

## 5. **Early Resolution**

The Monitoring Officer is authorised to determine whether complaints fall within the scope of a standards complaint (without the need for the initial assessment stage) and to deal with them accordingly. The Monitoring Officer is further authorised to resolve minor complaints without the need for the initial assessment stage, eg where

minor complaints are resolved by explanation or an apology from the Member. Action in this situation will be subject to agreement with the Independent Person.

## 6. **Complaint Initial Assessment**

The Monitoring Officer will review the complaint and, after consultation with the Independent Person, take a decision (a Complaint Initial Assessment) as to whether it merits formal investigation, or another course of action. This decision will normally be taken within 21 days of receipt of a complaint.

If the complaint fails one or more of the following tests, it will be rejected:

- The complaint must be against one or more named Members or co-opted Members of the Council or a parish council within its district;
- The Subject Member must have been in office at the time of the alleged conduct and the Code of Conduct was in force at the time;
- The complaint, if proven, would be a breach of the Code of Conduct under which the subject Member was operating at the time of the alleged misconduct.

### **Public Interest Test**

If appropriate, the Monitoring Officer will then go on to consider the following questions in deciding whether a complaint should be accepted for investigation, dealt with informally, or rejected:

- a. Is there evidence which supports the complaint?
- b. Is the conduct something which it is possible to investigate?
- c. Is an investigation proportionate and in the public interest?

In assessing the public interest the following will be considered:

- Whether a substantially similar allegation has previously been made by the Complainant, or the complaint has been the subject of an investigation by another regulatory authority;
- Whether the complaint is about something that happened so long ago that those involved are unlikely to remember it clearly enough to provide credible evidence, or where the lapse of time means there would be little benefit or point in taking action now, complaints older than 6 months will not normally be investigated;
- Whether the incident witnessed by a third party and the independence of that third party.
- Whether the allegation is anonymous;
- Whether the allegation discloses a potential breach of the Code of Conduct, but the complaint is not serious enough to merit any action and:-
  - (i) the resources needed to investigate and determine the complaint are wholly disproportionate to the allegations;

- (ii) whether, in all the circumstances, there is no overriding public benefit in carrying out an investigation;
- Whether the complaint appears to be malicious, vexatious, politically motivated or tit-for-tat;
- Whether the complaint although in itself minor in nature suggests that there is a wider problem throughout the authority;
- Whether it is apparent that the subject of the allegation is relatively inexperienced as a Member, or has admitted making an error and the matter would not warrant a more serious sanction;

## **7. Additional Information**

The Monitoring Officer may obtain additional factual information to come to a decision and may request information from the Subject Member. Where the complaint relates to a Parish Councillor, the Monitoring Officer may also inform the Parish Council of the complaint and seek the views of the Parish Council before deciding whether the complaint merits formal investigation or other action. In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for an investigation. Such informal resolution may involve the Subject Member accepting that his/her conduct was unacceptable and offering an apology, or taking other steps. Where the Subject Member or the authority (in appropriate cases) make a reasonable offer of Local Resolution, but it is rejected by the Complainant, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

If the complaint identifies criminal conduct or breach of other regulations by any person, the Monitoring Officer is authorised to report this to the Police or other prosecuting or regulatory authorities.

## **8. Confidentiality**

If a Complainant has asked for their identity to be withheld, this request will be considered by the Monitoring Officer at the Complaint Initial Assessment stage.

As a matter of fairness and natural justice, the Subject Member should usually be told who has complained about them and receive details of the complaint. However, in exceptional circumstances, the Monitoring Officer may withhold the Complainant's identity if on request from the Complainant, or otherwise, they are satisfied that the Complainant has reasonable grounds for believing that they or any witness relevant to the complainant may be at risk of physical harm, or his or her employment may be jeopardised if their identity is disclosed, or where there are medical risks (supported by medical evidence) associated with the Complainant's identity being disclosed.

If the Monitoring Officer decides to refuse a request by a Complainant for confidentiality, they will offer the Complainant the option to withdraw the complaint, rather than proceed with his or her identity being disclosed. The Monitoring Officer will balance whether the public interest in taking action on a complaint will outweigh the Complainant's wish to have his or her identity withheld from the Subject Member.

## **9. Investigation**

If the Monitoring Officer decides that a complaint merits formal investigation, they will appoint an Investigating Officer, who may be a Council officer, an officer of another Council, or an external investigator.

The Investigating Officer will follow guidance issued by the Monitoring Officer on the investigation of complaints. The guidance will follow the principles of proportionality and the cost-effective use of Council resources and shall be interpreted in line with these principles.

The Investigating Officer will ensure that the Subject Member receives a copy of the complaint – subject to a Monitoring Officer decision on Confidentiality.

At the end of their investigation, the Investigating Officer will produce a draft report and will send copies of that draft report to the Complainant and to the Subject Member, for comments. The Investigating Officer will take such comments into account, before issuing their final report to the Monitoring Officer.

**10. Investigating Officer finding of insufficient evidence of failure to comply with the Code of Conduct**

The Monitoring Officer will review the Investigating Officer's report and, if they are satisfied that the Investigating Officer's report is satisfactory, will make a Confirmation Decision to confirm the finding of no failure to comply with the Code of Conduct.

The Monitoring Officer will write to the Complainant and the Subject Member (and to the Parish Council, where the complaint relates to a Parish Councillor), with a copy of the Confirmation Decision and the Investigating Officer's final report.

If the Monitoring Officer is not satisfied that the investigation has been conducted satisfactorily, he may ask the Investigating Officer to reconsider their report and conclusion.

**11. Investigating Officer finding of sufficient evidence of 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 Independent Person, seek Local Resolution.

**12. Local Resolution**

If the Monitoring Officer considers that the matter can reasonably be resolved without the need for a hearing, they will consult with the Independent Person and the Complainant and seek to agree a fair resolution. In determining that course of action, the Monitoring Officer should consider matters previously determined by a Standards Hearing Sub-Committee to decide whether local resolution is an appropriate action. Such resolution may include the Member accepting that their conduct was unacceptable and offering an apology, and/or other remedial action. If the Member accepts the suggested resolution, the Monitoring Officer will report the outcome to the Governance Committee and the Parish Council (if appropriate) for information, but will take no further action. If the Complainant or the Subject Member refuses Local Resolution in principle or to engage with the agreed outcome, the Monitoring Officer will refer the matter for a Local Hearing without further reference to the Complainant or the Subject Member.

**13. Local Hearing**

Where, in the opinion of the Monitoring Officer, Local Resolution is not appropriate or the Complainant and/or Subject Member refuse to co-operate, then 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 Council has agreed a procedure for local hearings, which is attached as Appendix A to these arrangements.

**14. Constitution of the Hearings Panel**

The Hearings Panel is a Sub-Committee of the Council's Governance Committee. The Council has decided that a Hearings Panel will be comprised of a maximum of three Members, and comprising Members should be drawn from at least 2 different political parties. There is no requirement for political proportionality and Members who sit on a Hearings Panel have a duty to the Council's Code of Conduct and will be expected to consider matters accordingly.

The Independent Person is invited to attend all meetings of the Hearings Panel and their views are sought and must be 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 Hearings Panel are not bound by the views of the Independent Member but where they depart from the view their decision should contain reasons why.

**15. 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 –

- 15.1 Is, or has been within the past 5 years, a Member, co-opted Member or officer of the authority;
- 15.2 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
- 15.3 Is a relative, or close friend, of a person within paragraph 14.1 or 14.2 above. For this purpose, "relative" means –
  - 15.3.1 Spouse or civil partner;
  - 15.3.2 Living with the other person as husband and wife or as if they were civil partners;
  - 15.3.3 Grandparent of the other person;
  - 15.3.4 A lineal descendent of a grandparent of the other person;

- 15.3.5 A parent, sibling or child of a person within paragraphs 15.3.1 or 15.3.2;
- 15.3.6 A spouse or civil partner of a person within paragraphs 15.3.3, 15.3.4 or 15.3.5; or
- 15.3.7 Living with a person within paragraphs 15.3.3, 15.3.4 or 15.3.5 as husband and wife or as if they were civil partners.

**16. Independent Person**

The Independent Person supports the Council's Standards Regime. They are expected to provide a residents view of the conduct of members and the application of the Code of Conduct. The Independent Person will have an observer role at Governance Committee and, with the permission of the Chair, is entitled to speak (but not vote) on Standards Matters. They can, through the Monitoring Officer, bring matters to the Governance Committee in relation to the Code of Conduct and associated procedures.

The role of the Independent Person is not limited to the functions outlined in the "Arrangements for Dealing with Complaints about the Conduct of Elected Members" and the Monitoring Officer may approach the Independent Person concerning complaints at any stage.

**17. Action the Hearings Panel may take where a Member has failed to comply with the Code of Conduct**

Where a Hearings Panel find that a member has failed to comply with the Code of Conduct, the Panel will publish its findings in respect of the Members conduct. In addition, 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 –

- 17.1 Report its findings to Council (or to the Parish Council) for information;
- 17.2 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;
- 17.3 Recommend to the Leader of the Council that the Member be removed from the Executive, or removed from their Portfolio responsibilities;
- 17.4 Instruct the Monitoring Officer to (or recommend that the Parish Council) arrange training for the Member;
- 17.5 Remove (or recommend to the Parish Council that the Member be removed) from all outside body appointments to which they have been appointed or nominated by the Council (or by the Parish Council);
- 17.6 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

17.7 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.

**18. Revision of these arrangements**

The Council may by resolution or delegation to the Monitoring Officer agree to amend these arrangements and has delegated to the Chair of the Hearings Panel 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.

**19. Appeals**

The subject of the complaint has the right to appeal both against findings of breach of the code and against sanction.

The appeal must be in writing and received by the Monitoring Officer within 7 days of the date of the Hearing Sub-Committee decision being made. The appeal must state whether the challenge is against the finding of breach or against the sanction imposed only.

The Monitoring Officer will arrange for an Appeal Sub-Committee to be convened within 7 days of the receipt of any appeal. The Appeal Sub-Committee comprising of 3 Members will be drawn from the Governance Committee and will not include Members who sat on the Hearing Sub-Committee. A different Independent Member will also be used. The Appeal will follow the procedure used for Hearing Panels.

Subject to Judicial Review, or a decision of the Local Government Ombudsman, there is no further right of appeal against a decision of the Monitoring Officer or of the Appeals Panel.

# HEARING PROCEDURE

## Stage 1: Setting the scene

1. After all the everyone involved has been formally introduced, the Chair will explain how the Committee is going to run the hearing.
2. The Chair will introduce the Independent Member and advise the Member that whilst they do not have a decision making role they are present to provide an independent view which the Committee are obliged to consider.
3. The Chair will ensure that the Member is ready and happy to proceed. If the Member indicates that they are not ready, they must give reasons why. The Committee will decide whether the hearing should proceed and must act reasonably in coming to that decision. Where the Member has indicated they are not ready but the Committee decide to proceed they should given reasons why.

## Stage 2: Making findings of fact

4. The Committee will ask the Member whether there are any significant disagreements about the facts contained in the Investigating Officer's report. If there is no disagreement about the facts, the Committee can move on to the next stage of the hearing.
5. If there is a disagreement, the Investigating Officer, will be invited to make representations on the challenged facts, but these are to be confined to matters contained within the report.
6. The Member will then have the opportunity to make representations to support their stated position.
7. At any time, the Committee may question the Investigating Officer or the Member.
8. If the Member disagrees with most of the facts, the Committee may invite the Investigating Officer to make representations on all the relevant facts, instead of discussing each fact individually.
9. If the Member disagrees with any relevant fact in the Investigating Officer's report, without having given prior notice of the disagreement, they must give good reasons for not mentioning it before the hearing.
10. After considering the Member's explanation for not raising the issue at an earlier stage, the Committee may then:
  - continue with the hearing, relying on the information in the Investigating Officer's report
  - allow the Member to make representations about the issue, and invite the Investigating Officer to respond
  - postpone the hearing to allow the Investigating Officer to consider and investigate the new issue.
11. The Committee will usually move to another room to consider the representations and evidence in private also present will be the clerk to the Committee and the Independent Member. On their return, the Chair will announce the Committee's findings of fact.



### **Stage 3: Did the Member fail to follow the Code of Conduct?**

12. Having made the finding on the facts the Committee will then consider whether the Member has failed to follow the Code.
13. The Member should be invited to give relevant reasons why the Committee should decide that they have not failed to follow the Code.
14. The Committee should then consider any verbal or written representations from the Investigating Officer.
15. The Committee may, at any time, question anyone involved on any point they raise on their representations.
16. The Member should be invited to make any final relevant points.
17. The Committee will then move to another room to consider the representations. The Independent Member will accompany them and their views should be sought and considered by the Committee. Where the Committee depart from the view of the Independent Member they should record the reasons why.
18. On their return, the Chair will announce the Committee's decision as to whether the Member has failed to follow the Code.

### **If the Member has not failed to follow the Code of Conduct**

19. If the Committee decides that the Member has not failed to follow the Code, the Committee will notify the Member accordingly and record the decision.

### **If the Member has failed to follow the Code of Conduct**

20. If the Committee decides that the Member has failed to follow the Code, it will consider any verbal or written representations from the Investigating Officer and the Member as to:
  - whether the committee should apply a sanction
  - what form any sanction should take
21. The Committee may question the Investigating Officer and Member, and take legal advice, to make sure they have the information they need in order to make an informed decision.
22. The Committee will then deliberate with the Independent Member in private to consider whether to impose a sanction on the Member and, if so, what sanction it should be. As previously the Independent Member will not be able to participate in making the decision (ie vote) but their views must be considered by the Committee. Where the Committee depart from the Independent Members views they must record reasons why.
23. The Committee will be limited to the sanctions listed in the procedure for the administration of complaints. The Committee must ensure that any sanction is reasonable and proportionate to the breach.
24. On their return, the Chair will announce the Committee's decision