

CHESHIRE EAST 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 authority or of a Town or Parish Council within its area has failed to comply with the authority’s Code of Conduct. They also set 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 “arrangements” under which allegations that a member or co-opted member of the authority or of a Town or Parish Council within the authority’s area, or of a Committee or Sub-Committee of the authority, has failed to comply with that authority’s Code of Conduct can be investigated and decisions made on such allegations.

Such arrangements must 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 a member or co-opted member of a Town or Parish Council against whom an allegation has been made.

2 The Code of Conduct

The Council has adopted a Code of Conduct for members, which is available for inspection on the authority’s website and on request from the Monitoring Officer at Cheshire East Borough Council.

Each Town or Parish Council is also required to adopt a Code of Conduct. If you wish to inspect a Town or Parish Council’s Code of Conduct, you should look on their website in the first instance. You may also ask the Town or Parish clerk to allow you to inspect the Code of Conduct.

3 Making a complaint

Complaints must be submitted to **Cheshire East Borough Council’s Monitoring Officer using the** ~~If you wish to make a complaint, please complete the standard Complaint Form.~~

When completed, please send your complaint form to:

The Monitoring Officer
Cheshire East Borough Council
Westfields
Middlewich Road
Sandbach, CW11 1HZ

Or email: MonitoringOfficerCEC@cheshireeast.gov.uk

~~The complaint process will not commence until a form has been received. The Monitoring Officer will not consider a complaint unless a complaint form has been received.~~

The Monitoring Officer is a senior officer of the authority with statutory responsibility for maintaining the register of members' interests and who is responsible for administering the system in respect of complaints of member misconduct and is the Council's Proper Officer for all such matters.

In order to ensure that we have all the information which we need to be able to process your complaint you need to provide us with:

- the name of the member(s) you believe have breached the Code of Conduct
- the name of their authority
- what the member has done that you believe breaches the Code of Conduct. **If you are complaining about more than one member you should clearly explain what each individual person has done that you believe breaches the Code of Conduct.**
- **which paragraphs of the code you believe are engaged**

It is important that you provide all the information you wish to have taken into account regarding your complaint. For example:

- You should be specific, wherever possible about exactly what you are alleging the member said or did. For instance, instead of writing that the member insulted you, you should state what it was that they said.
- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide any relevant background information.

Whilst not acknowledging that your complaint is justified and without prejudice, it would help in dealing with your complaint to know what your desired outcome of ~~this complaint~~ might be. If you feel able to provide this information please do so.

The sanctions that can be imposed are;

- (a) Censure or reprimand the member;
- (b) Publish its findings in respect of the member's conduct.
- (c) Report its findings to Council or the Town or Parish Council for information and make any recommendations ;
- (d) Recommending to the member's Group Leaders (or in the case of ungrouped members, recommending to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- (e) Recommend to the Leader of the Council that the member be removed from the Executive, or removed from particular Portfolio responsibilities.
- (f) Instruct the Monitoring Officer to, or recommend that the Town or Parish Council arrange training for the member;
- (g) ~~Remove or~~ recommend to Authority Town or 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 Town or Parish Council;
- (h) Withdraw, or recommend to the Council or Town or 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
- (i) 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.

There is no power to suspend or disqualify a member, withdraw a member's allowance or change a decision that a member has made or has been involved in making as part of this process.

Please do 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 are making a complaint on behalf of a number of individuals, please nominate one person as the single point of contact to whom all correspondence will be addressed.**

If you want to keep your name and address confidential, please ensure that you complete section 5. You must also provide good reasons why you believe we should withhold your details. ~~It is expected that it is only in exceptional circumstances that~~ we will withhold your details from the member complained about~~the right for confidentiality will be granted~~, as this may prejudice the right of the subject member to respond to the complaint.

Please note that requests for confidentiality will not automatically be granted. The Monitoring Officer in consultation with an Independent Person will consider the request alongside the substance of your complaint. We will then contact you with the decision. If your request for confidentiality is not granted, we will usually allow you the option of withdrawing your complaint.

However, it is important to understand that in certain exceptional circumstances where the complaint is about a very serious matter, we can proceed with an investigation or other action and disclose your name even if you have expressly asked us not to.

Each rRequests for confidentiality will be considered on its merits and we will normally use using the following criteria -

- The complainant has reasonable grounds for believing that they will be at risk of physical harm if their identity is disclosed;
- The complainant is an officer who works closely with the Subject Member(s) and they are afraid of the consequences to their employment or of losing their job if their identity is disclosed;
- The complainant suffers from a serious health condition and there are medical risks associated with their identity being disclosed. Medical evidence may be requested in support of this criterion;
- Whether the complaint can be investigated without revealing the complainant's identity.

4. Will your complaint be investigated?

The Monitoring Officer has delegated power, in consultation with the Independent Person and the Chair of the Audit and Governance Committee or in his/her absence the Vice Chair of Audit and Governance, to approve a departure from the following arrangements when he/she considers it is expedient to do so to secure the effective and fair consideration of any matter. If a hearing is likely to be held, the Monitoring Officer will consult the Independent Person and the Chair of the hearing sub-committee.

The Monitoring Officer will acknowledge receipt of your complaint within 5 working days of receiving it, and will keep you informed of progress. A full copy of your complaint will then, subject to any ruling on disclosure, ordinarily be sent to the ~~m~~Member concerned inviting their written comments within 5 working days of receipt. The member will be asked not to talk to you about the complaint.

If the matter complained about also concerns a council service, your complaint may first need to be dealt with under the corporate complaints procedure before it is considered as a code of conduct matter. This is so that the outcome and any proposed action can be considered by the Monitoring Officer, in consultation with the Independent Person, when assessing the code of conduct complaint.

The Monitoring Officer will review every complaint received against the assessment criteria and, after consultation with the Independent Person, take a decision as to whether it merits formal investigation. This decision will normally be taken within 20 working days from the date of your notification letter, or 5 working days thereafter if the Subject Member has responded to the complaint. receipt of your complaint. Where the Monitoring Officer has taken a decision, he/she will inform you of his/her decision and the reasons for that decision.

Where he/she requires additional information in order to come to a decision, he/she may come back to you or the subject member for such information; which may extend the assessment period by a maximum of 15 working days. You will be notified if this occurs. He/she may also request information from the member against whom your complaint is directed. Where your complaint relates to a Town or Parish Councillor, the Monitoring Officer may also inform the Clerk of the Town or Parish Council of your complaint and may seek the views of the Town or Parish Council before deciding what action to take. whether the complaint merits formal investigation.

The decisions that can be made are:

(a) That no further action be taken – This might be because the complaint does not come within the remit of the code of conduct, it is not sufficiently serious to warrant an investigation, it is obsessive, vexatious, malicious or frivolous, it is broadly similar to a complaint against the same member about the same alleged incident, the complaint should not be investigated because there is a clear ulterior/political motive for it or it is just a tit for tat complaint, or that it is not in the public interest to investigate the complaint.

(b) That the Monitoring Officer will seek to resolve the complaint without the need for an investigation by informal resolution (e.g. by an apology, mediation, or training by the subject member).

(c) The complaint should be referred to the Group Leader for informal action (N.B. for complaints against Cheshire East Borough Councillors only and not generally an appropriate action if the complaint is from a member of the public).

(d) An investigation should take place.

(e) Refer the matter to the Police or other regulatory agency.

In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation for example, through mediation. Such informal resolution may involve the member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action suggested by the Monitoring Officer Authority. Where the member or the Monitoring Officer Authority make a reasonable offer of local resolution, but you are not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

~~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.~~

5 How is the investigation conducted?

If the Monitoring Officer decides that his or her attempts to resolve the matter informally have failed or that a complaint merits formal investigation, he/she will appoint an Investigating Officer. This may be another senior officer of the council Authority, an officer of another a Authority or another external investigator. The Investigating Officer will decide whether he/she needs to meet or speak to you to understand the nature of your complaint and so that you can:

- explain your understanding of events
- suggest what additional documents the Investigating Officer needs to see
- suggest who the Investigating Officer needs to interview.

The Investigating Officer will normally write to the member against whom you have complained and provide him/her with a copy of your complaint. He/she will also ask the member to provide his/her explanation of events, and to identify what documents the member thinks he/she needs to see and who the member thinks he/she needs to interview. In exceptional cases, where it is appropriate the Monitoring Officer will keep your identity confidential and may decide not to disclose of details of the complaint to the member if this might prejudice the investigation, ~~the Monitoring Officer can delete your name and address from the papers given to the member or.~~ In exceptional circumstances only, the Monitoring Officer, may decide to delay notifying the member initially.

At the end of his/her investigation, usually no later than 8 weeks from the date of referral, 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. This provides you both with the opportunity within 5 working days of the report being sent to you to identify any matter, in that draft report, that you disagree with or that you consider requires more consideration.

Having received and taken account of any comments which you may have made on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer. The report will include the investigator's findings about whether or not the code of conduct has been breached.

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 in consultation with the Independent Person and, if he/she is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the member concerned within 15 working days of receiving the report and to the member concerned notifying you that he/she is satisfied that no further action is required. He/she will also give you both a copy of the Investigating Officer's final report. Where your complaint relates to a tTown or pParish cCouncillor and the clerk has been informed about the complaint by the Council, the Monitoring Officer will also write to the Clerk of that council Authority.

If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider his/her report. This may involve the Investigating Officer carrying out further investigations and producing an amended report.

In any event the Monitoring Officer, in consultation with the Independent Person, may decide to refer the report to the Audit and Governance Hearing Sub-Committee.

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 after consulting the Independent Person will then send the matter for informal resolution or, ~~after consulting the Independent Person~~ seek a local hearing before the Hearing Sub-committee.

7.1 Informal Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with the Independent Person and with you as complainant to seek to agree what you consider to be a fair resolution and 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 agreed by the Authority. If the member complies with the suggested resolution, the Monitoring Officer will report the matter to the Audit and Governance Committee and the Town or Parish Council (where relevant) 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 may (but is not required to) refer the matter for a local hearing.

The emphasis, wherever possible, will be placed on the Monitoring Officer dealing with complaints in a timely manner. Where complaints do not raise serious issues the Monitoring Officer will seek informal resolution rather than refer them for investigation.

Consistent with his/her duty to uphold standards of conduct, the Monitoring Officer will seek the simplest and most cost-effective way of resolving the issue. This informal resolution process will not include a public hearing.

7.2 Local Hearing

If the Monitoring Officer considers that local resolution is not appropriate, or the member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will arrange for the investigation report ~~the Investigating Officer's report~~ to be considered by the Hearing Sub-Committee. That sub-committee will then conduct a local hearing before deciding whether the member has failed to comply with the Code of Conduct.

The Monitoring Officer will normally conduct a "pre-hearing process" **within 3 months of receiving the Investigating Officer's report**, requiring the member to give his/her response to the ~~Investigating Officer's~~ report. This is done to establish what is likely to be agreed and what is likely to be in contention at the hearing. The Chair of the Hearing Sub-committee may also issue directions as to the manner in which the hearing will be conducted, for example agreeing the number of witnesses. Directions may be given either before or at the hearing taking account of the advice of the Monitoring Officer. **Any meeting to deal with pre-hearing process issues will be held in private without you or the Subject Member present.**

If at any point during the investigation or hearing process, the Subject Member has resigned or lost their seat, is seriously ill or has died, the Monitoring Officer may terminate the investigation and the Hearing Sub-committee will only refer the matter for a hearing if it considers that the public interest will be served by so doing.

Prior to a hearing, any documentation sent out during the process must be treated by all recipients as confidential information until such time (if any) as the Investigator's report is made available to the press and public or the Sub Committee agrees that the press and public should not be excluded from the meeting at which the allegations are

going to be heard. This is because meetings of the Hearing Sub Committee are subject to the normal rules for publication of agendas and access to information.

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 you, as the complainant, to attend and give evidence to the Hearing Sub-committee. The subject member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Hearing Sub-committee ~~abouts to~~ why he/she considers that he/she did not fail to comply with the Code of Conduct.

If the Subject Member is not present, then the Sub Committee ~~0000~~ shall consider whether or not to proceed and may either proceed to consider the matter and make a determination in the absence of the Subject Member, or adjourn the hearing to another time or date unless the Subject Member has indicated that the hearing should proceed in his or her absence.

Should the Member's representative not be present, then the Sub Committee may proceed or adjourn as it considers appropriate in the particular circumstances.

The Hearing Sub-committee will decide, with the benefit of any advice from the Independent Person, whether they agree with the Investigating Officer that there has been a breach of the Code of Conduct. If it and may concludes that the subject member did not fail to comply with the Code of Conduct, it willand so dismiss the complaint. However if the Sub Committee still has some concerns it will issue a finding of no breach of the Code of Conduct, but may then proceed to consider whether it should make any general recommendations to bring to the attention of this Council, any tTown or pParish cCouncil or its members

Where the Hearing Sub-committee concludes that the member did fail to comply with the Code of Conduct, the Chair will inform the member of this finding. The Hearing Sub-committee will explain the reasons why any advice from the Independent Person has or has not been followed in giving its decision. The Hearing Sub-committee will then consider what action, if any, it should take as a result. The Hearing Sub-committee will give the member an opportunity to make his/her representations and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

8. What action can the Hearing Sub-committee take where a member has failed to comply with the Code of Conduct?

The Council has delegated to the Hearing Sub-committee 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 Hearing Sub-committee may –

- Censure or reprimand the member.
- Publish its findings in respect of the member's conduct;
- Report its findings to Cheshire East Borough Council or to the Town or Parish Council for information and make any recommendations;

- 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;
- Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- Instruct the Monitoring Officer to, or recommend that the Town or Parish Council, arrange training for the member;
- ~~Remove, or~~ recommend to the Authority, or Town or Parish Council to remove, the member from all outside appointments to which he/she has been appointed or nominated by the Authority or by the Town or Parish Council;
- Withdraw or recommend to the Authority, or Town or Parish Council that it withdraws facilities provided to the member by the Council, such as a computer, website and/or email and Internet access if relevant to the subject matter of the complaint;
- Exclude, or recommend that the Authority, or Town or 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 if relevant to the subject matter of the complaint.

The Hearing Sub-committee has no power to suspend or disqualify the member or to withdraw members' special responsibility allowances.

The Chair of the Hearing Sub-committee has the right to depart from the Hearing Sub-committee procedure, in consultation with the Monitoring Officer, at any hearing where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

9 What happens at the end of the hearing?

At the end of the hearing, the Chair will state the decision of the Hearing Sub-committee and any actions which the committee resolves to take.

As soon as reasonably practicable thereafter, **or in any event within 10 working days** the Monitoring Officer will prepare a formal decision notice in consultation with the Chair of the Hearing Sub-committee and send a copy to you, to the member, and to the ~~t~~Town or ~~p~~Parish Council, **if relevant**. He/she will also make that decision notice available for public inspection **by way of published minutes** and report the outcome ~~decision~~ to the ~~next convenient meeting of~~ the Audit and Governance Committee,

Informative Notes:

10 Who are the Hearing Sub-~~C~~committee?

The Hearing Sub-~~C~~committee is a Sub-Committee of the Council's Audit and Governance Committee. The Council has decided that it will be made up of 3 members and be drawn from a panel of 15 members of the Council

The Chair of the Hearing Sub-~~C~~committee is appointed by the three members who will sit at the particular hearing either in advance of the hearing or by vote at the start of the hearing.

The Independent Person is invited to attend all meetings of the Hearing Sub-Committee and his/her views are sought and taken into consideration before the Hearing 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 is the Independent Person?

The Independent Person is a person who has applied for the post following advertisement. He/she is appointed by 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 Town or 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 Monitoring Officer has delegated power, in consultation with the Independent Person and the Chair of the Audit and Governance Committee or in his/her absence the Vice Chair of Audit and Governance, to approve a departure from these arrangements when he/she considers it is expedient to do so to secure the effective and fair consideration of any matter. Moved to section 3~~

~~The Chair of the Hearing Sub-committee has the right to depart from the Hearing Sub-committee procedure, in consultation with the Monitoring Officer, at any hearing where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter. Moved to end of section 8~~

~~The Chair of the Hearing Sub-committee is appointed by the three members who will sit at the particular hearing either in advance of the hearing or by vote at the start of the hearing.~~
Moved to section 10

13 Is there an Appeals process?

There is no right of appeal for you as complainant or for the member against a decision of the Monitoring Officer or of the Hearing Sub-committee. If you feel that the [Council Authority](#) has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.