

## OVERVIEW FOR CONSIDERING COMPLAINTS THAT MEMBERS HAVE BREACHED THE CODE OF CONDUCT

Note: 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. Where a hearing is anticipated the Monitoring Officer will consult with the Independent Person and the Chairman of the Hearing Sub-Committee.

1. Complaints must be submitted to Cheshire East Borough Council's Monitoring Officer (MO) using the Council's Standard Complaint Form setting out in sufficient detail why the complainant considers there has been a failure to comply with the relevant Code of Conduct.

MO acknowledges receipt of the complaint within 5 working days

2. MO informs the Subject Member of:

- (a) the complaint, and provides the Subject Member with a copy of part 4 of the Complaint Form and the name of the Complainant, unless in exceptional circumstances where the Monitoring Officer, in consultation with the Independent Person has granted the Complainant's request for confidentiality. Under no circumstances must the Subject Member contact the Complainant direct regarding any of the issues raised.
- (b) his/her right to consult the Independent Person (IP) appointed by the Council, through the MO.
- (c) his/her right to provide the MO with his/her written response to the complaint. Any such response to be received by the MO within 5 working days after dispatch of the formal notification letter to receipt of the complaint by the subject member.

Should the complaint concern matters relating to Council services, it may be necessary to deal with this part of the complaint first in accordance with the Council's corporate complaints procedure.

3. Initial Assessment

MO, in consultation with IP, will make his/her initial assessment based on the adopted criteria, within 20 working days of dispatch of the formal notification letters receipt of the complaint and if applicable, an additional 5 working days from receipt of the written response, if one is received required, from the subject member. That initial assessment will determine one or more of the following outcomes:

- (a) The complaint does not come within the remit of the Code of Conduct.
- (b) The complaint is not sufficiently serious to warrant an investigation.
- (c) That it is not in the public interest to investigate the complaint.
- (d) He/she should 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).
- (e) The complaint should be referred to the Group Leader for informal action (NB for complaints against Cheshire East Borough Councillors only and not generally an appropriate action if the complaint is from a member of the public).

- (f) The Complaint should not be investigated because it is obsessive, vexatious, malicious or frivolous.
  - (g) The Complaint should not be investigated because it is broadly similar to a complaint against the same Member about the same alleged incident.
  - (h) 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.
  - (i) An investigation should take place.
  - (j) Refer the matter to the Police or other Regulatory Agency.
4. Before coming to his/her decision under para 3 the MO may request further information and/or clarification from the complainant and/or the subject member. Where this is the case time period may be extended up to a maximum of a further 15 working days, **notification of which will be sent to both parties.**
  5. If the MO decides that the complaint should be investigated, or his/her attempts to resolve the complaint without an investigation do not succeed, then he/she will carry out an investigation or appoint an investigator to carry out an investigation on his/her behalf.
  6. Investigation:  
The Investigator appointed under para 5 by the MO may be;
    - (a) A senior officer of the Town or Parish Council.
    - (b) A senior officer of Cheshire East Borough Council.
    - (c) An external investigator with relevant experience and appropriately trained.
  7. Before finalising his/her report the investigator shall send a copy of it to both the complainant and subject member and give them at least 5 working days to comment on it.
  8. A report into an investigation shall include the investigator's findings on whether the Code has been breached. If the investigator's final report finds there has not been a breach of the Code the MO can **within 15 working days of receipt of the report and, following** consultation with IP, decide to
    - (a) Take no action.
    - (b) Refer the report to the Audit and Governance Hearing Sub-Committee (Hearing Sub-Committee).
  9. If the investigator's report finds there has been a breach of the Code then the MO must refer the matter to the Hearing Sub-Committee **unless satisfied that an informal resolution of the case is possible.** ~~That committee will meet in public~~
  10. A "pre-hearing process" will take place **within 3 months of receipt of the Investigating Officer's report to** establish what is likely to be agreed or contended at the hearing. The Chair of the Hearing Sub-Committee will also issue directions as to the manner in which the hearing will be conducted. **The meeting will be held in private in the absence of the Complainant and the Subject Member.**
  11. **If during the investigation, the Subject Member has resigned/lost their seat, was seriously ill or had died, the Hearing Sub-committee would only refer the matter for a hearing if it considers that the public interest will be served by so doing.**
  12. **The documentation sent out must be treated by all recipients as confidential information until such time (if any) as the Investigating Officer'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 heard.**

13 Hearing Sub Committee:

When the matter has been referred to the Hearing Sub Committee by the MO, it will:

- (a) Allow the investigator to present his/her report and call witnesses, including the complainant.
  - (b) Allow the subject member to make representations and call witnesses.
  - (c) Decide if the subject member has or has not breached the Code of Conduct.
  - (d) Decide what sanction should be imposed if they decide the Code has been breached.
14. The sanctions the Hearing Sub Committee can impose, if they find a breach of the Code are;
- (a) Censure or reprimand the member;
  - (b) Publish its findings in respect of the member's conduct.
  - (c) Report its findings to the Council or the town or parish council for information and make any recommendations ;
  - (d) Recommending to the member's Group Leader (or in the case of ungrouped members, recommending to the 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 Cabinet, 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 the Council or to the town or parish council that the member be removed from all outside appointments to which he/she has been appointed or nominated by the Council 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, Cabinet, committee and sub-committee meetings.

The Hearing Sub Committee has no power to suspend or disqualify a member or to withdraw a member's allowance.

15. In reaching a decision as to whether there has been a breach of the Code and if so what sanction should be imposed the Hearing Sub Committee will consult and consider the views of IP and that decision will be announced on the day.
16. Following any final decision by the MO or the Hearing Sub Committee (at whatever stage) the MO shall inform the complainant and the subject member of the decision and the reasons for it within 10 working days.
17. Wherever there has been a decision that the subject member has breached the Code of Conduct that decision and the reasons for it shall, by way of published minutes, be put on the Council's website in a prominent position. Wherever there is a decision that the subject member has not breached the Code of Conduct that decision shall be put on the Council's website, in a prominent position if the subject member wishes it to be.

18. Any decision of the MO or Hearing Sub-Committee shall be final and binding.
19. The MO will present a report to the Audit and Governance Committee twice a year giving;
  - (a) the number of complaints received and brief details.
  - (b) how they are progressing.
  - (c) what decisions have been made.
  - (d) what action has, where appropriate, been taken.
19. ~~The MO has delegated power, in consultation with the IP and the Chair of the Audit and Governance Committee or, in his/her absence, the Vice Chair of Audit and Governance Committee, 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 beginning of the procedure)~~
20. In all cases where the MO is unable to perform his/her role his/her deputy will do so.
21. The documentation relating to a case will be retained for 6 years, irrespective of whether the finding is no breach or one of breach, in line with the document retention procedure for committee papers. For the avoidance of doubt, minutes of the Hearings Sub-Committee will be retained in the same way as the minutes of other council decision-making bodies.