

CESHIRE EAST COUNCIL: ARRANGEMENTS FOR DEALING WITH STANDARDS ALLEGATIONS ABOUT COUNCILLORS AND CO-OPTED MEMBERS

1 How to make a complaint

These arrangements set out:

- (1) how you can make a complaint that an elected or co-opted member of this council or of a town or parish council within its area has failed to comply with his or her council's code of conduct; and
- (2) how the Council will deal with allegations.

In this document the term "member" means an elected or co-opted member of Cheshire East Council or of a town or parish council within its area.

Cheshire East Council must have arrangements for dealing with allegations that a member or co-opted member of the council or of a town or parish council within the council's area, or of a committee or sub-committee of the council, has failed to comply with that council's code of conduct. The arrangements must include how those allegations will be investigated and how decisions about them will be made.

The Council must appoint at least one Independent Person and seek their views before it takes a decision on an allegation which it has decided to investigate. The Independent Person's views can also be sought by the council on any other issue, or by a member or a member against whom an allegation has been made.

2 The Code of Conduct

The Council has adopted its code of conduct for members, which is available for inspection on the council's website and on request from the Monitoring Officer at Cheshire East Borough Council.

Each town or parish council must also 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 it.

3 Making a complaint

Complaints must be submitted to Cheshire East Borough Council's Monitoring Officer using 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 Monitoring Officer will not consider a complaint unless a complaint form has been received. If you have a disability which prevents you from filling in the form please contact the Monitoring Officer's PA on 01270 686003 and you will be given help to fill it in.

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 council
- 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
- which paragraphs of the code you believe they have breached

It is important that you provide all the information you want taken into account about your complaint. For example:

- Wherever possible, you should be specific 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 as accurate a timeframe as you can.
- 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.

It would help in dealing with your complaint to know what your desired outcome might be. If you feel able to provide this information please do so. See paragraph 8 which sets out all the sanctions available to the council.

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 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 of the complaint form. You must have good reasons for asking us to withhold your details. It is only in exceptional circumstances that we will withhold your details from the member complaint about (who we refer to as the subject member), as this may prejudice the right of that 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 will proceed with an investigation or other action and may have to disclose your name even if you have expressly asked us not to.

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

- You have reasonable grounds for believing that you will be at risk of physical harm if your identity is disclosed;
- You are an officer who works closely with the subject member(s) and you are afraid of the consequences to your employment or of losing your job if your identity is disclosed;
- You suffer from a serious health condition and there are medical risks associated with your identity being disclosed. Medical evidence may be requested in support of this criterion;
- Whether the complaint can be investigated without revealing your identity.

4. Will your complaint be investigated?

The Monitoring Officer has the power, in consultation with the Independent Person and the Chairperson of the Audit and Governance Committee or in his/her absence the Vice Chairperson, to approve a departure from the following arrangements when he/she thinks it is sensible to do so to make sure the case is dealt with fairly and effectively. If a hearing is likely to be held, the Monitoring Officer will consult the Independent Person and the Chairperson 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 copy of your complaint will then be sent to the member concerned inviting their written comments within 5 working days from the date of the letter unless we have agreed to your request for anonymity in which case your identity will be withheld. Where your identity is disclosed, the subject member will be asked not to talk to you about the complaint.

If your complaint also concerns a council service, it may first need to be dealt with under the corporate complaints procedure before it is considered as a code of conduct case. 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.

4.1 Initial assessment

The Monitoring Officer will review every complaint received against the assessment criteria. These are:

- It is a complaint against one or more named members of Cheshire East Borough Council or a town or parish council within Cheshire East borough;
- The named member was 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 under which the member was operating at the time of the alleged misconduct.

If the complaint fails one or more of these tests it will not be investigated.

If the above tests are met the Monitoring Officer will consider the following criteria when deciding whether or not to investigate:

1. Adequate information – The Monitoring Officer will want to be satisfied that he/she has sufficient information to decide whether the complaint should be referred for investigation or other action;
2. Official capacity – was the member acting in an official capacity
3. Timescale – The Monitoring Officer will take into account when the events took place and will not normally investigate if the events occurred more than 6 months prior to the complaint being submitted;
4. Seriousness of the complaint – The Monitoring Officer will not normally refer a complaint for investigation or other action if it is considered trivial, malicious, politically motivated or tit for tat;
5. Public interest – if the complaint relates to an ex-member of Cheshire East Council or one of its town or parish councils, who is now a member of another council the Monitoring Officer may ask that council to consider it.

If the member has resigned, is seriously ill or has died the Monitoring Officer will only refer the case for investigation or other action if he/she considers that it is in the public interest to do so.

After consultation with the Independent Person, the Monitoring Officer will take a decision about whether your complaint merits formal investigation. This decision will normally be taken within 20 working days from the date you are sent your notification letter, or 5 working days later if the subject member has responded to the complaint. Where the Monitoring Officer has taken a decision, he/she will inform you of that decision and the reasons for it.

Where the Monitoring Officer needs more information in order to come to a decision, he/she may come back to you or the subject member for that information; which may extend the assessment period by up to 15 working days. We will write to you if this occurs. Where your complaint relates to a town or parish councillor, the Monitoring Officer may also inform the clerk of that town or parish council of your complaint and may seek the views of the town or parish council before deciding what action to take.

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 it is not in the public interest to investigate the complaint.
- (b) That the Monitoring Officer will seek to resolve the complaint informally without the need for an investigation (e.g. by an apology, mediation or training of the subject member).
- (c) That the complaint is referred to the leader of the political party the member belongs to for informal action (N.B. this is for complaints against Cheshire East Borough Councillors only and is not generally an appropriate opinion 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 try to resolve the complaint informally, without the need for a formal investigation for example, through mediation. Informal resolution may involve the subject member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action suggested by the Monitoring Officer. Where the member or the Monitoring Officer makes 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.

5 How is the investigation conducted?

If the Monitoring Officer decides that his or her attempts to resolve your complaint informally have failed or that it merits formal investigation, he/she will appoint an Investigating Officer. This may be another senior officer of the council, an officer of another council or an 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 details of the complaint to the member if this might prejudice the investigation. In exceptional circumstances only, the Monitoring Officer, may decide to delay notifying the member initially.

At the end of his/her investigation, usually within 8 weeks of being asked, 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, which you disagree with or that you consider requires more consideration.

Having received and taken account of any comments which you or the member concerned 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 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 town or parish councillor and the clerk has been informed about the complaint by Cheshire East council, the Monitoring Officer will also write to the clerk of that council.

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, either try and informally resolve the case or seek a local hearing before the Hearing Sub-Committee.

7.1 Informal Resolution

The Monitoring Officer might think that the case can reasonably be resolved without the need for a hearing. In that case, he/she will consult with the Independent Person and with you to seek to agree what you consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Any resolution may include the member accepting that his/her conduct was unacceptable and offering an apology, and/or agreeing to other remedial action. 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 Monitoring Officer will aim to deal with complaints quickly. Where they do not raise serious issues the Monitoring Officer will try and resolve them informally 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 case. This informal resolution process will not include a public hearing.

7.2 Local Hearing

The Monitoring Officer will arrange for the investigation report to be considered by the Hearing Sub-Committee. That sub-committee will then conduct a 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 concerned to give his/her response to the report. This is done to establish what is likely to be agreed and what is likely to be in dispute at the hearing. The Chairperson of the Hearing Sub-Committee may also issue directions about the way 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 it is in the public interest to do so.

Prior to a hearing, any documentation sent out during the process must be treated by all recipients as confidential information until 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 council agendas and access to information.

At the hearing, the Investigating Officer will present his/her report, call witnesses 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 about 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 will consider whether or not to proceed and make a decision about the case anyway, or whether to adjourn the hearing to another time or date. If the subject member has indicated that the hearing should carry on without him/her this will normally happen.

If the subject member has a representative but they do not turn up, then the sub-committee can decide to go ahead or adjourn the hearing.

The Hearing Sub-Committee will decide, with the benefit of any advice from the Independent Person, whether it agrees with the Investigating Officer that there has been a breach of the code of conduct. If it concludes that the subject member did not breach the code of conduct it will dismiss the complaint. However if the sub-committee still has some concerns it will issue a finding of no breach but might then make general recommendations to this council, or any town or parish council or its members.

Where the Hearing Sub-Committee concludes that the member did fail to comply with the code of conduct, the Chairperson 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 representations about that and will consult the Independent Person, but will then decide what action, if any, to take.

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 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 ungrouped 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;
- Recommend to the Council or town or parish council to remove the member from all outside appointments to which he/she has been appointed or nominated by the Council or by the town or parish council;
- 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 if relevant to the subject matter of the complaint;
- Exclude, or recommend that the Council, 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, Cabinet, 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 a member's allowances.

The Chairperson 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 sensible to do so to deal with the case fairly and effectively.

9 What happens at the end of the hearing?

At the end of the hearing, having consulted with and considered the views of the Independent Person, the Chairperson of the Hearing Sub-Committee will announce the decision of the sub-committee on the day.

As soon as possible but in any event within 10 working days the Monitoring Officer will prepare a formal decision notice in consultation with the Chairperson and will send a copy to you, to the member concerned, and to the town or parish council, if relevant. He/she will also make that decision notice available for public inspection by publishing the minutes of the meeting and will report the outcome to the Audit and Governance Committee.

Informative Notes:

Who is the Monitoring Officer?

The Monitoring Officer is a senior officer of the council who is responsible for keeping the register of members' interests and dealing with complaints about member misconduct.

What is a Hearing Sub-Committee?

The Hearing Sub-Committee is a sub-committee drawn from the Council's Audit and Governance Committee. The Council has decided that it will be made up of 3 elected members and be drawn from a panel of 15 members of the Council; ten members of Audit and Governance Committee plus 5 Councillors.

The Chairperson of the Hearing Sub-Committee is appointed by and from the three members who will sit at the particular hearing.

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 Council;*
- 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 council’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.*

The Independent Person is invited to attend all hearings of the Hearing Sub-Committee and his/her views are sought and taken into consideration before the Hearing-Sub-Committee takes any decision about whether the member’s conduct has failed to comply with the code of conduct and about any action to be taken following a finding of failure to comply with that code.

Is there an Appeals process?

There is no right of appeal for you or for the member concerned against a decision of the Monitoring Officer or of the Hearing Sub-Committee. If you feel that the Council has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.