

## **Draft procedure**

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### **1. Introduction**

In this document the term “Councillor” means an elected Councillor or a co-opted Member of Cheshire East Council or of a town or parish council within its area. This procedure covers complaints that a Councillor has failed to comply with their code of conduct. The Councillor complained against is referred to in this procedure as the “subject member”.

These arrangements set out:

1. how you can make a complaint about the conduct of a Councillor.
2. how the Council will deal with complaints about Councillors.

### *Codes of conduct*

Cheshire East Council has adopted a Code of Conduct for Councillors, which is available for inspection on the Council’s website or on request from the Monitoring Officer:  
[monitoringofficercec@cheshireeast.gov.uk](mailto:monitoringofficercec@cheshireeast.gov.uk)

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.

### **2. Scope of the Procedure**

2.1 The Monitoring Officer can only deal with complaints that a Councillor has failed to comply with their Code of Conduct. If you wish to make a complaint about:-

- dissatisfaction with a decision or action of the Council or one of its committees
- a service provided by the Council
- the actions of someone employed by the Council

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- the Council's procedures or policies

you can do so using the Council's corporate complaints process or, in the case of a town or parish council, by contacting that council's clerk.

2.2 If your complaint is about a Councillor, then you can use this process. However, you should be aware that assessment criteria are applied to all complaints to ensure that the process focuses on complaints where there is a wider public interest in addressing the conduct complained about. You should consider the assessment criteria set out below before making your complaint in order to understand how your complaint will be dealt with.

2.3 The following points should also be noted before making a complaint under this procedure:

- (i) complaints can only be accepted if they relate to a Councillor's behaviour whilst they are acting, or giving the impression that they are acting, in their official capacity. Complaints which appear to be against a Councillor acting in their private capacity will be rejected;
- (ii) determinations under this procedure can only relate to a Councillor's conduct and cannot comment upon or interfere with any decisions they have been involved in.
- (iii) complaints against a town or parish council as a whole will be rejected and need to be referred direct to the council in question for consideration under their own procedures.
- (iv) The Council has no jurisdiction in respect of complaints against Clerks or other officers to town or parish councils as they are employees of their respective authorities and any such complaints will be rejected.

2.4 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. Please note that the Monitoring Officer has no power to suspend or disqualify a Councillor, withdraw a Councillor's allowance or change a decision that a Councillor has made or has been involved in making. The remedies which may be applied through this process are set out below.

2.5 There may be instances when a number of complaints will be received about the same Councillor from different Complainants that relate to the same incident. When a complaint is substantially the same it will be processed as a single complaint taking into consideration all of the complaints received up to the time the complaint is processed. A single decision notice will be issued and will reflect the fact there has been more than one Complainant associated with the matter, though all may not be named. If further complaints relating to the same matter are received after the complaint is being processed these will not be added to the complaint but the Complainants will be advised that a complaint about this matter is already being considered.

2.6 This guidance may be amended from time to time by the Audit and Governance Committee on the recommendation of the Monitoring Officer.

### 3. How to make a complaint

3.1 All complaints must be made in writing, using the form on our website [\\*link\\*](#) and submitted to the Monitoring Officer along with any supporting information –

- a) Electronically to [monitoringofficercec@cheshireeast.gov.uk](mailto:monitoringofficercec@cheshireeast.gov.uk), or

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b) By post to The Monitoring Officer, Cheshire East Council, c/o Municipal Buildings, Earle Street, Crewe CW1 2BJ

3.2 Hard copies of the form can be made available on request. We will assist you if you have a disability that prevents you from making a complaint or makes it difficult for you to put your complaint in writing. We can also help if English is not your first language.

3.3 It is very important that you set your complaint out fully and clearly and provide all the information at the outset. You should also provide any documents or other material that you wish to be considered, wherever possible. You should tell us exactly what each person you are complaining about said or did that has caused you to complain. If you are sending supporting documentation please cross reference it against the summary of your complaint. You should be as detailed as possible and substantiate your complaint where you can, to demonstrate why you believe that the Councillor(s) complained about has breached the Code of Conduct.

#### **4. Anonymous complaints**

4.1 Anonymous complaints will not normally be investigated, unless there is a clear public interest in doing so and the Monitoring Officer considers that a fair investigation can be carried out.

4.2 Requests from Complainants for the Monitoring Officer to withhold their identity, so that they remain anonymous to the subject member, are not ordinarily granted. The Monitoring Officer has to balance the right of the subject member to properly understand the complaint against them and respond to it, with the rights of the person making the complaint. More often than not, this means that the subject member will need to be told who is making the complaint.

4.3 A Complainant can ask for their identity to remain confidential by completing the appropriate section of the complaint form. Requests will only be granted if there is a good reason. The following criteria will be used when requests are considered:

- (i) whether the Complainant reasonably believes that they, or somebody closely connected to them, will be at risk of harm or harassment if their identity is disclosed;
- (ii) that the Complainant is reasonably concerned about the consequences to their employment, or that of somebody closely connected to them, if their identity is disclosed;
- (iii) that the Complainant, or somebody closely connected to them, suffers from a serious medical condition and there is evidence of medical risks associated with their identity being disclosed;
- (iv) whether the specifics of the complaint will disclose who has made the complaint even without confirming the Complainant's identity;
- (v) the degree to which the subject member may be prejudiced by withholding the Complainant's identity; and
- (vi) the public interest: In some cases the public interest in proceeding with the complaint may outweigh the Complainant's wish to have their identity withheld.

4.4 The Monitoring Officer will only grant your request if s/he considers that a fair investigation can still be carried out. You will be informed of the decision and the reasons for it. If it is not considered appropriate to grant confidentiality the Complainant will be offered the opportunity to withdraw the complaint, but this is subject to the determination made by the Monitoring Officer regarding the public interest in proceeding.

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## 5. Assessment procedure – step by step

**\*Insert diagram / flow chart of main steps & responsibilities\***

### 5.1 Complaint submitted:

5.2 Complainant submits a completed complaint form with any supporting information to the Monitoring Officer. The Monitoring Officer will acknowledge receipt, and confirm whether any request for anonymity has been granted, within 5 working days. Please see section 3 of this procedure for details on how to obtain a form, and how to submit it.

### 5.3 Initial assessment:

5.4 The Monitoring Officer will carry out an initial assessment to determine whether the complaint is within this procedure and, if so, whether it should be progressed. This will normally be done within 10 working days of receipt of the complaint.

5.5 The Monitoring Officer will firstly check that the complaint satisfies the following tests:

- a. The complaint is against one or more named Councillors of Cheshire East Council or a town or parish council within the borough;
- b. The subject member was in office at the time of the alleged conduct;
- c. The subject member was acting in their official capacity as a member at the time of the alleged conduct;
- d. The Complainant has provided enough information to enable the Monitoring Officer to form a view as to whether or not a breach of the code has or might have occurred.

5.6 If a complaint does not satisfy the above tests, no further action will be taken. The Complainant and subject member will be notified within 5 working days.

5.7 Complaints that satisfy the initial tests at paragraph 5.5 above, will be considered in more detail and will usually be rejected if, in the opinion of the Monitoring Officer, any of the following applies:

- a. the complaint is the same or substantially the same as a complaint previously dealt with, whether submitted by the Complainant or some other person;
- b. it is over 6 months since the alleged behaviour occurred and it would be unfair, unreasonable or otherwise not in the public interest to pursue unless there are, in the Monitoring Officer's opinion, exceptional circumstances which would warrant the complaint being progressed;
- c. the complaint is considered, on an objective basis, to be trivial and there are no public interest reasons to pursue it;
- d. the complaint discloses such a minor technical breach of the Code of Conduct that it is not in the public interest to pursue;
- e. the complaint is or appears to be malicious, politically motivated, tit-for-tat or otherwise submitted with an improper motive and the complaint is not considered to disclose sufficiently serious potential breaches of the Code of Conduct to merit further consideration;
- f. the Subject Member has remedied or made reasonable endeavours to remedy the issues to which the complaint relates (for example, an early in person apology), and the complaint does

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not disclose sufficiently serious potential breaches of the Code of Conduct to merit further consideration;

- g. the complaint is about a person who is no longer a member of a relevant authority;
  - h. the complaint is from a councillor about another councillor of their council and the Monitoring Officer considers the allegations to be such that the issues between the councillors ought to be capable of resolution between them, whether with or without the assistance of their Clerk or some other person; and
  - i. it would otherwise be inappropriate to expend the Council's resources on determining the complaint having regard to the circumstances of the complaint, any previous related complaints and the public interest. A complaint will be rejected if the Monitoring Officer considers the likely costs of progressing a matter are disproportionate to the seriousness of the issue and the possible range of outcomes.
- 5.8 If the complaint indicates that a criminal offence may have been committed (or some other regulatory infraction) the matter will be reported to the appropriate regulatory body. It may be the case that the complaint cannot be further considered under this process until an associated external investigation has been completed.
- 5.9 If your complaint also relates to or raises concerns about a council service (or an officer of the council), it may first need to be dealt with under the relevant corporate complaints/disciplinary process that applies. This is so that the outcome and any proposed action resulting from any such process can be taken into account when assessing the code of conduct complaint.
- 5.10 When there is insufficient information to make a determination as to whether the conduct complained of may demonstrate a potential breach of the Code of Conduct the Monitoring Officer may offer the Complainant a further 7 days to provide further information to support the complaint. If further information is not provided within 7 days of being requested, the complaint will be rejected.
- 5.11 Following initial assessment, the Monitoring Officer may decide to:-
- Take no further action
  - Consult with the Independent Person on next steps to be taken in the determination of the complaint.

#### **5.12 Notification of initial assessment decision**

- 5.13 Once a decision following initial assessment has been made, letters of notification will then be sent to the Complainant and the subject member within 5 working days confirming the decision made and the reasons for it. If the decision is to take no further action, the subject member will be provided with a precis of the complaint and, subject to the provisions on anonymity, the identity of the complainant. The Monitoring Officer may offer advice to the complainant, subject member or both.
- 5.14 If the decision is to consult with the Independent Person on next steps to be taken in the determination of the complaint, then unless s/he has already done so, the Monitoring Officer will supply the subject member with a copy of the complaint (and accompanying materials) and will be invited to respond to it in writing. Data protection rules may require some information to be removed from the complaint before it is submitted to the subject member. The complainant will

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be notified if this is necessary. The subject member will be invited to respond to the complaint within 7 days of the date of the notification letter.

#### 5.15 **Consultation with the Independent Person**

- 5.16 Once a complaint has passed the initial assessment stage of the procedure, the Monitoring Officer will consult with the Independent Person as to the next steps to be taken. This consultation may, at the Monitoring Officer's discretion, take place by way of a meeting, telephone call, or exchange of emails. The approach taken will reflect the nature of the matter under consideration, the level of complexity and supporting paperwork, and potential seriousness of the allegations.
- 5.17 This provides an opportunity for the Monitoring Officer and Independent Person to consider the complaint and the subject member's response to it. The purpose is for the Monitoring Officer, in consultation with the Independent Person, to decide whether it appears that a breach of the code may have occurred and to determine what action, if any to take on the matter.
- 5.18 The Monitoring Officer is not determining, at this stage, whether or not there has been a breach of the Code. The Monitoring Officer is determining whether the circumstances are such that:-
- a) No further action should be taken
  - b) The matter is suitable for informal resolution
  - c) The matter should be formally investigated
- 5.19 In addition to revisiting the initial assessment criteria (where appropriate), and to determine the appropriate next course of action, the Monitoring Officer and Independent Person will consider:-
- a) Whether there is sufficient information available to decide what action should be taken
  - b) The seriousness of the matters alleged
  - c) The likely effectiveness of the remedies available
  - d) The public interest
- 5.20 Once the Monitoring Officer has reached a decision, letters of notification will then be sent to the Complainant and the subject member confirming the decision made and the reasons for it.
- 5.21 If the decision is to take no further action, the Monitoring Officer may offer advice to the complainant, subject member or both. The Monitoring Officer may also notify the relevant Group Leader, Whip or town or parish clerk of the complaint and the decision taken.
- 5.22 If the decision is that the matter is appropriate for informal resolution, the Monitoring Officer will make recommendations accordingly. Informal resolution options include:-
- a) An explanation and/or apology from the subject member
  - b) Mediation
  - c) Training
  - d) Referral of the matter to the Group Leader, Whip and/or Parish Clerk to be resolved where the complaint is between two members and political group intervention/agreement is appropriate.
  - e) Some other practical "conflict management" agreement between the complainant and subject member

- 5.23 The Monitoring Officer may take into account the response to and effectiveness of recommendations made for informal resolution in deciding whether or not the matter should nevertheless be formally investigated and pursued further under this process.
- 5.24 If the decision is that the matter should be formally investigated, then the following provisions of this procedure apply.
- 5.25 **Formal investigation**
- 5.26 If the Monitoring Officer decides that the complaint merits formal investigation, an Investigating Officer will be appointed. This may be another senior officer the council, another council or an external investigator. The Monitoring Officer will determine the terms of reference for any investigation in consultation with the Independent Person.
- 5.27 The Terms of Reference of the investigation will not be published at this stage, but rather at the stage a draft report is sent to the complainant and subject councillor. The balance of the public interest has usually shifted towards disclosure at this point, and the Terms of Reference would be likely to be disclosed in response to a Freedom of Information request.
- 5.28 **The investigation process**
- 5.29 The investigator is independent from the complainant and the subject councillor. The investigator will assess the complaint, speak to the individuals and any witness they consider relevant, and then produce a report to the Monitoring Officer.
- 5.30 The investigation must be proportionate in resources and costs to the complaint made.
- 5.31 Where there are multiple complaints or complainants the investigator may select a representative sample or to select the individual to take evidence.
- 5.32 The process will usually be:
- a) Interview of Complainant and any relevant supporting witness, either remotely or in person
  - b) Interview of Member(s) and any relevant supporting witness
  - c) Further interview with Complainant to consider the Members response
  - d) Further interview with the member to consider any new matter or evidence arising
  - e) Unless there is an exceptional circumstance, no further evidence or additional witness or will be permitted after this stage
  - f) Draft report completed
  - g) Draft report shared with Monitoring Officer to ensure it has met the requirements of the Terms of Reference for the investigation
  - h) The Complainant and Member are asked to comment on any issues of factual accuracy contained within the draft report
  - i) The draft report is finalised and served on Monitoring Officer, Complainant and Member
  - j) The Monitoring Officer in consultation with the Independent Person will decide if it is in the public interest to continue.

- k) The Complainant and Member will normally be given two opportunities to take part in the process. If there is any failure to participate the report will be completed without that person assistance.

Unless there are exceptional circumstances.

### **5.33 The Committee Process**

5.34 The process will usually be:

- a) The investigators report and a covering committee report from the Monitoring Officer will be provided to the Committee.
- b) The covering report will contain a summary of the issues and recommendation of the report, the costs and time taken and any issues in respect of participation.
- c) The committee report and investigators report will be considered by the Monitoring Officer, who will confirm the procedure for the committee
- d) The Monitoring Officer will appoint a Democratic Services Officer to administer the Committee and a legal officer to advise the Committee
- e) 21 days from notification of the matter proceeding to Committee, the Subject Member to file a written summary of their response to the report stating areas of agreement disagreement or admission and reassigning any legal issue. If no response is received in 21 days, the Subject Member will not be able to rely on that evidence
- f) 14 days thereafter the independent investigator to consider the submission and provide a response. In the event the investigator considers it necessary to contact either the Subject Member or third party to clarify any aspect they will notify the Monitoring Officer with reasons
- g) 14 days or as soon as reasonably practicable thereafter the Committee shall meet and decide if there is any breach of the code.

5.35 In the event the subject member does not attend and no sufficient reason is given the matter will proceed. If in the Monitoring Officer's view, a sufficient reason is given such as illness supported by a certificate, the Committee will agree a further date.

5.36 Unless exceptional circumstance the Committee will decide the matter on the second occasion.

5.37 Notification will be deemed to have occurred 3 days after posting or email sent.

### **5.38 Procedure at Committee**

5.39 If there are any legal issues identified by the subject member in their response, they will be considered at the start of the meeting.

5.40 The Committee will determine whether any party can call witnesses, and if so, the procedure governing witness involvement.

5.41 The Committee will then hear from the investigation officer who will present the report and give any response to the submissions from the subject member. Although there is no strict time limit this usually this will be no more than 1 hour. Opportunity for Committee to ask questions

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- 5.42 The subject member will respond and will be entitled to expand upon the issues raised in their response to the investigators report. Usually this will be no more than 1 hour. Opportunity for Committee to ask questions
- 5.43 The Committee may then decide if they require further information from either investigator or subject member, consult with the Independent Person, ask any further questions or adjourn to make a decision.
- 5.44 After the Committee has adjourned to make a decision it may exculpate the subject member or decide that they consider the subject member has breached the code
- 5.45 If it is decided the subject member has breached the code they will then (if a borough councillor) hear from the subject member if they have anything further to say, and then decide any appropriate penalty
- 5.46 The decision is based on a balance of probabilities, based on the information before the Committee

## **6. Confidentiality and Publication of decision notices / hearing outcomes**

- 6.1 The assessment of complaints will be conducted in private by the Monitoring Officer or his/her representative.
- 6.2 Data protection and freedom of information requirements will be complied with which will mean that complaint information will not normally be disclosed to the press or public.
- 6.3 On completion of the assessment or determination of a complaint a decision notice will be issued as detailed above. If a complaint is upheld, it will be published on Cheshire East Council's website, and it will be available for public inspection at Cheshire East Council's offices for 6 years from the date of issue.

## **7. Withdrawal of complaints**

- 7.1 Requests to withdraw complaints will normally be granted but in considering such a request from the Complainant the Monitoring Officer will consider the following factors:
- a) Whether the public interest in taking action on the complaint outweighs the Complainant's desire to withdraw it;
  - b) Whether the complaint is such that action can or should be taken on it without the Complainant's participation; and
  - c) Whether there appears to be an identified underlying reason for the request to withdraw the complaint; such as information to suggest that the Complainant may have been improperly pressured into withdrawing the complaint.
- 7.2 Even if a request to withdraw a complaint is granted, the Monitoring Officer may still refer it for assessment under these procedures or refer it to the appropriate professionals or body if, in the opinion of the Monitoring Officer, such action is reasonable and proportionate. This may be

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appropriate, for example, if the complaint discloses potentially significant probity issues, possible criminal offences or safeguarding issues.

## **8. Rights of appeal**

8.1 [There is no right of appeal for either the subject member or complainant in relation to a decision of the Monitoring Officer or Committee. Concerns about the process adopted in respect of a specific matter may be referred to the Local Government Ombudsman.] *subject to a further paper to Committee on possible appeal / review arrangements.*