

## **Complaints under the New Code – Procedure**

### **Making a Complaint**

1. Complaints must be submitted to Cheshire East Council's Monitoring Officer 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.
2. The Monitoring Officer will acknowledge receipt within 5 working days
3. The Subject Member will be advised that there has been a complaint and will be provided with a copy of the complaint form, 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 issues raised in the complaint.

### **Initial Assessment / Gateway Procedure**

4. The Monitoring Officer will refer the complaint to the Audit and Governance Initial Assessment Panel within 21 days of receipt for an initial assessment.
5. After consulting the Independent Person, the Panel will determine whether to
  - **Take no action**
  - **Refer the matter to the relevant Group Leader for informal action** ( NB for complaints against Cheshire East Councillors only and not generally an appropriate option if the complaint is from a member of the public)
  - **Refer the matter for Local Resolution**
  - **Refer the matter for formal investigation by an external investigator**
  - **Refer the matter to the Police or other relevant Regulatory Agency**
6. The Initial Assessment Panel's Decision on what action to take on a complaint is final. There is no right to have the decision reviewed.
7. The Complainant, Subject Member and Parish Clerk, as appropriate, will be informed of the outcome of the decision.
8. Meetings of the Panel will not be open to the public.

## **Local Resolution**

9. The Complainant and Subject Member will be advised that the Initial Assessment Panel has concluded that the complaint is suitable for Local Resolution without the need for a formal investigation and full hearing and will be invited to submit written representations outlining the nature of the dispute using a standard template to ensure consistency.
10. Both the Complainant and Subject Member will be able to bring a Supporter and up to three witnesses each to accompany them before an ad hoc panel of three elected members together with the Independent Person. The Supporter will not represent the Subject Member but will be able to confer with him or her.
11. The Panel will consider the written representations and hear any relevant evidence before reaching a determination and considering whether any sanction is appropriate.
12. The Panel may refer the matter for a formal investigation should it become apparent that the issues are more complex or serious than was originally anticipated.
13. Local Resolution Panels will normally meet in public and will be convened within 28 days of the decision of the Initial Assessment Panel subject to availability of the relevant parties.
14. Both the Complainant and Subject Member will receive copies of each others written statements and details of any witness to be called 5 working days before the Panel meets. Copies will be made available to three Panel members and Independent Person at the same time.
15. The Panel will announce its decision at the end of the hearing and a formal Decision Notice will be prepared and sent to all relevant parties within 5 working days. The Decision Notice will be published on the Council's website and reported to the next meeting of the Audit and Governance Committee.
16. There is no right of Appeal from the decision of the Local Resolution Panel which is intended to resolve less serious complaints speedily and cost effectively.

## **External Investigation**

17. The matter will be referred for an independent investigation by a suitably experienced investigative officer. In most cases the investigation is expected to be completed within 8 weeks of the referral.
18. The report of the independent investigator should incorporate the following:-

- **Executive Summary** - An outline of the allegation, who made it, the relevant provisions of the Code and whether there has been a breach.
  - **Member's official details** - A brief outline of when the Member was elected, term of office, details of committees served on and any relevant training.
  - **Complainants details and any relevant background**
  - **Summary of facts and evidence gathered**- A summary of the facts and evidence gathered highlighting facts which are in dispute and setting out the investigating officer's conclusions based on the balance of probabilities.
  - **Reasoning as to whether there has been a failure to comply with the Code and investigator's findings** – Dealing with each allegation in turn an outline of whether the investigating officer considers there has been a breach and any aggravating or mitigating facts.
  - **Schedule** - a list of witnesses interviewed and copies of relevant documents.
19. A copy of the draft report will be circulated to the Subject Member and Complainant to check for factual accuracy.
  20. The Investigating Officer will take into account any comments received before sending the final report to the Monitoring Officer.

#### **External Investigation – No Evidence of Failure to Comply**

21. Where the report concludes that there is no evidence of failure to comply with the Code of Conduct, the Monitoring Officer will review the report in consultation with the Independent Person.
22. If satisfied with the conclusions, the Complainant, Subject Member and the Town or Parish Clerk ( if appropriate) will be notified within 15 working days that no further action will be taken and will be given a copy of the final report.
23. If after consultation with the Independent Person the Monitoring Officer is not satisfied that the investigation has been concluded properly she may ask the Independent Investigator to reconsider the report and / or refer the matter to the Standards Hearing sub committee for a formal hearing of the issues.

## **External Investigation – Evidence of Failure to Comply**

24. Where the report concludes that there has been a failure to comply with the provisions of the Code of Conduct the matter will be referred to the Standards Hearing sub committee who will conduct a hearing to determine if the Subject Member has failed to comply with the provisions of the Code and if so what sanction is appropriate.
25. The Hearing sub committee will consider the matter afresh having regard to the Investigators findings and all relevant evidence presented by the Complainant and Subject Member.
26. The Independent Person will be present at the hearing and will be consulted and his/ her views taken into account before any decision is reached.
27. The Hearing sub committee will announce its decision at the end of the hearing and a formal Decision Notice will be prepared and sent to all relevant parties within 5 working days. The Decision Notice will be published on the Council's website and reported to the next meeting of the Audit and Governance Committee.
28. Meetings of the Hearing sub committee will be subject to the normal rules for publication of agendas and access to information.
29. There will be a right of appeal of the decision of the Hearing sub committee.

## **Right of Appeal**

30. Any appeal by the Subject Member must be lodged within 14 days of the decision of the Hearing sub committee. A meeting of the Standards Appeals Panel will then be convened within 21 days.
31. The Appeals Panel will comprise 3 Members from the Audit and Governance pool of 15 Members sitting with an Independent Person. Neither the Members nor the Independent Person will have previously been involved in the particular case.
32. The appeal will be by way of a complete re hearing of the issues and will not be confined to new evidence or only on specified grounds. The Appeals Panel may dismiss or uphold the appeal and reconsider the range of sanctions available to the Hearing sub-committee.
33. The decision of the Appeals Panel is final.

### **Independent Person**

- 34. The Council has appointed 4 Independent Persons
- 35. The Subject Member has the opportunity to consult the Independent Person at any stage in the investigation process and prior to the final determination.

### **Membership of Panels / sub committees**

- 36. If a Member has sat on a Local Resolution Panel which refers a matter for external investigation then he or she may not subsequently sit on any Hearing sub committee.

### **Vexatious Complaints**

- 37. The Council will maintain a list of vexatious or repeated complaints and will report any concerns regarding abuse of the process to the Audit and Governance Committee.

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