

5. Member Code of Conduct Complaints Procedure

Introduction

The Localism Act 2011 requires local authorities to establish arrangements to deal with allegations of breaches by councillors of the Members' Code of Conduct.

This procedure is to be adopted when dealing with complaints against elected councillors and voting co-opted members when they are acting in that capacity. The procedure applies when a complaint is received that an Isle of Wight Council member, an Island town/parish council member or a voting co-opted member has, or may have, failed to comply with the relevant Members' Code of Conduct at the time of the alleged breach.

The Isle of Wight Council's Members' Code of Conduct (see Part 5 Section 4). Parish and Town Councils can determine their own codes of conduct – to inspect them, view their [contact details](#).

COMPLAINTS PROCEDURE

In this procedure, the person making a complaint is referred to as “the complainant” and the person against whom a complaint is made is referred to as “the subject member”.

A complaint is confidential and remains so until the complaint is resolved.

A complainant may request that a complaint be withdrawn at any stage and all such requests will be determined by the Monitoring Officer, which may include consultation with a Designated Independent Person¹⁸.

Complaints can be made about a subject member breaking any part of their council's Members' Code of Conduct when they are acting (or giving the impression they are acting) as a representative of their council or undertaking council business.

This includes:

- Treating others with respect
- Bullying
- Intimidating a complainant or witness
- Compromising the impartiality of officers
- Bringing their council/office as councillor or executive member into disrepute
- Disclosing information given in confidence/confidential information unless:
 - They have consent; or
 - Are required to do so by law; or
 - Disclosure to obtain professional advice; or
 - Disclosure is reasonable, in the public interest, in good faith and in compliance with reasonable requirements of the council
- Using their position improperly to obtain advantage or disadvantage for anyone
- Using council resources for political purposes
- Preventing anyone accessing information they have a legal right to

¹⁸ A Designated Independent Person is someone who is independent of the council or any political group and who has experience of dealing with ethical issues. They are appointed for the Monitoring Officer or councillors to consult with on complaints.

- Failing to register financial or other interests
- Failing to disclose a pecuniary interest at a meeting
- Failing to register any gifts or hospitality worth over £50 received in their role as a councillor

If none of the above applies, it will probably not qualify as a valid complaint.

Making a complaint

A complaint should be made in writing by filling in a [complaint form](#) within 10 working days of the alleged breach of the Members' Code of Conduct. Any documents that support a complaint should accompany the form.

A complaint will normally be acknowledged within 10 working days of receipt and the complainant advised if the complaint will be passed for initial assessment by the Monitoring Officer or rejected.

Complaints may be rejected:

- where a member is not named
- where the complainant is not named¹⁹
- if they relate to a person who is no longer a member or which refer to alleged incidents before the person became a member
- that are not in writing
- that relate to a person who is not an elected or a voting co-opted member of the Isle of Wight Council or an Island town/parish council
- that relate to incidents or actions that are not covered by the Members' Code of Conduct
- where they are about the actions (or inactions) of the Isle of Wight Council as a whole (these complaints should be dealt with through the [Council Complaints Page](#))
- where they relate to a member's personal or private life
- contain insufficient information
- about people employed by local authorities
- if they refer to alleged incidents which happened so long ago that there would be little benefit in taking action now
- if they contain trivial allegations, or which appear to be malicious, politically motivated or tit-for-tat;
- that relate to alleged behaviour that has already been the subject of an investigation or some form of action

Where the Monitoring Officer decides to reject a complaint, they will write to the complainant explaining why their complaint cannot be dealt with under this procedure. In these circumstances, there will be no right of appeal.

Informal resolution

If the complaint is accepted, the Monitoring Officer will write to the complainant and explain that the matter is to be dealt with under this procedure. The subject member will be sent a copy of the

¹⁹ Complaints that contain a request for the complainant's identity to be withheld may be accepted, although the complainant's identity will only be withheld in exceptional circumstances. If the Monitoring Officer does not consider it appropriate to withhold the complainant's identity, the complainant will be given the opportunity to withdraw their complaint before it proceeds to the next stage.

complaint and will also be sent contact details of a Designated Independent Person. In this correspondence, the Monitoring Officer will:

- (a) seek confirmation from the complainant as to what form of informal resolution they would find acceptable; and
- (b) provide the subject member with a reasonable timescale (usually 20 working days) within which to attempt to informally resolve the complaint

Types of informal resolution might include:

- (a) An explanation by the subject member of the circumstances surrounding the complaint
- (b) An apology from the subject member
- (c) Agreement from the subject member to attend relevant training or to take part in a mentoring process
- (d) Offering to engage in a process of mediation or conciliation between the subject member and the complainant
- (e) Correcting an entry in a register
- (f) Any other action capable of resolving the complaint

Where the subject member has appropriately addressed the matters raised there will be no further action taken in respect of the complaint and the Monitoring Officer will notify both the complainant and the subject member of this decision.

If the complaint makes allegations that a criminal offence may have been committed, then the matter will not be dealt with under this procedure, but instead will be referred to the police.

INVESTIGATION PROCEDURE

Where it has not been possible to informally resolve matters, the complaint will be referred by the Monitoring Officer to an officer, an officer of another authority or such other expert as the monitoring officer considers appropriate for investigation. The Monitoring Officer will notify both the complainant and the subject member of this decision.

When notifying the persons mentioned above, the Monitoring Officer will request that they respond within 10 working days:

- Listing any documents which they would wish to be taken into account in any investigation of the allegation, providing copies of these documents, and confirming where the original documents may be inspected.
- Providing the name, address and telephone number (or other appropriate contact details) of any person or organisation whom the person would wish to be interviewed in the course of any investigation of the allegation.
- Providing any information which they would wish to be sought from any person or organisation in the course of any investigation of the allegation.

The officer responsible for the investigation will take into account both the content of the original complaint and any information received from the persons notified above. They will make any further necessary enquiries, following which they will determine whether or not there appears to have been any breach of the Members' Code of Conduct.

Upon conclusion, the Investigating Officer will provide the Monitoring Officer with a report setting out their findings and whether or not, in the officer's view, there have been any breaches of the Members' Code of Conduct.

The investigation will normally be carried out and the report provided to the Monitoring Officer within 30 working days of the investigation being commissioned.

Outcome of investigation

The Investigating Officer's report will set out:

- The details of the allegation
- The relevant provisions of statute, the Members' Code of Conduct and any relevant local protocols
- The subject member's response to notification of the allegation (if any)
- The views of a Designated Independent Person
- The relevant information, advice and explanations obtained in the course of the investigation
- Any documents relevant to the matter
- A list of those persons they have interviewed and those organisations from whom they have sought information
- A note of any person or organisation who has failed to co-operate with the investigation and the manner in which they have failed to cooperate
- A statement of their draft findings of fact
- Their conclusions as to whether or not the subject member has failed to comply with the Members' Code of Conduct

If the Investigating Officer's conclusion is that there has been no breach of the Members' Code of Conduct, the complainant and the subject member will be notified. In these circumstances, there will be no right of appeal.

If the Investigating Officer's conclusion is that there has been a breach of the Members' Code of Conduct, consideration will be given by the Monitoring Officer, in liaison with a Designated Independent Person (where appropriate), whether or not an informal resolution between the parties would be appropriate.

Where an informal resolution is considered appropriate, this will be discussed with the complainant and the subject member. Should an informal resolution be agreed, the complaint will not proceed any further.

Should either the complainant or the subject member not agree the proposed informal resolution, or an informal resolution is not considered appropriate, the matter will be referred to the Appeals Sub-Committee for final decision.

HEARING PROCEDURE

Where the matter is referred to the Appeals Sub-Committee for decision, the complainant, the subject member, a Designated Independent Person and, where appropriate, the relevant political group leader and/or the clerk of the parish or town council concerned, will be advised of the position and consulted on the date of the Sub-Committee hearing.

Democratic Services will arrange a convenient time and date for the Sub-Committee to meet and determine the matter. It is anticipated that a hearing will be dealt with on a single day.

At least 20 working days before the hearing, the complainant, the subject member and a Designated Independent Person will be notified of the date, time and place of meeting, provided with the agenda for the meeting and a copy of the investigation report. They will be invited to attend and identify any witnesses already interviewed that they wish to speak.

At the same time (and where appropriate), the relevant political group leader and/or the clerk of the parish or town council concerned will be notified of the date, time and place of meeting, provided with the agenda for the meeting and a copy of the investigation report.

The documentation sent out must be treated by all recipients as confidential information until such time (if any) as the report is made available to the press and public or the Sub-Committee resolves that the press and public should not be excluded from the meeting at which the allegations are heard.

The date of the meeting and the agenda will be published on the council's website.

Determination of the matter by the Appeals Sub-Committee will normally be made within 65 working days of referral of the matter to the Sub-Committee.

Appeals Sub-Committee hearings

The Appeals Sub-Committee is made up of three members of the Isle of Wight Council. In addition, where the subject member is a parish/town councillor, another parish or town councillor will be co-opted as a non-voting member of the Sub-Committee.

The Appeals Sub-Committee will determine whether or not it agrees with the Investigating Officer's conclusions, whether there has been a breach of the Member's Code of Conduct and, if so, what (if any) sanctions should be applied. In so doing, they may seek the views of a Designated Independent Person.

Where a witness has been interviewed and their information is included in the Investigating Officer's report, should they not attend, the Sub-Committee will give such weight to their comments as it considers appropriate.

The Appeals Sub-Committee's decision as to whether or not there have been any breaches of the Members' Code of Conduct shall be final. This also applies to any sanctions imposed or recommended by the Sub-Committee for any such breaches of the Code.

If at any point during the hearing process, the subject member resigns, loses their seat, is seriously ill or has died, the Appeals Sub-Committee will only hear the matter if it considers it is in the public interest to do so.

Representation

The subject member may be represented or accompanied during the hearing by another person as long as the Sub-Committee or its chairman has given prior consent.

The subject member may make representations (orally or in writing) or present evidence in accordance with this procedure either personally or through their representative. The Sub-Committee will not normally permit the subject member and their representative to both make representations, although the subject member may present evidence themselves whether or not represented.

Outline of the Procedure for the Hearing

The Appeals Sub-Committee may govern its own procedure as long as it acts fairly. It may request advice from the Monitoring Officer (or Deputy) at any time. However, in general the following procedure should be adopted:

- (a) Hearings should normally be held in private unless the Sub-Committee has resolved not to exclude the press and public from all or any part of the hearing in accordance with the council's Access to Information Rules.
- (b) Any submissions by either party about the conduct of the case, including disputes about witnesses, potential new information, new supporting documents etc, should be raised at the commencement of the hearing.
- (c) The sub-committee will adopt as far as reasonably practicable an inquisitorial approach to the hearing rather than permit an adversarial or hostile approach to develop.
- (d) Witnesses are not to be present in the hearing until they have been called to give their evidence.
- (e) If the subject member is not present, then the Sub-Committee shall consider whether or not to proceed. If the Sub-Committee is not satisfied that there is sufficient reason for the subject member's absence, it 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. If the Sub-Committee is satisfied there is sufficient reason, it shall adjourn the hearing to another date unless the subject member has indicated that the hearing should proceed in their absence.

Order of witnesses

- (a) The Investigating Officer presents the evidence on which they rely and calls any witnesses;
- (b) The Investigating Officer makes submissions about whether the facts constitute a breach of the Member's Code of Conduct;
- (c) The Investigating Officer makes submissions as to the seriousness of the breach and the appropriate sanction in the event that the Sub-Committee decides that a breach has occurred;
- (d) The subject member and members of the Sub-Committee may ask questions through the chairman of the Investigating Officer and/or their witnesses;
- (e) The subject member may present evidence on which they rely and call any witnesses referred to in the investigating officer's report;
- (f) The subject member may make submissions about whether the facts constitute a breach of the Member's Code of Conduct;
- (g) The subject member may make a statement in mitigation in regard to the seriousness of the breach and the appropriate sanction in the event that the Sub-Committee decides that a breach has occurred;
- (h) The Investigating Officer and members of the Appeals Sub-Committee may ask questions through the chairman of the subject member and/or their witnesses;
- (i) The Appeals Sub-Committee retires to decide the facts and whether, on the balance of probabilities, there has been a breach of the Members' Code of Conduct. At this point, the Sub-Committee is likely to ask all present to leave the room whilst they consider the matter.
- (j) Once the Sub-Committee has concluded its findings as to whether the facts amount to a breach, all return to the room and the decision is read out.

Outcome

If the Appeals Sub-Committee decides there has been a breach of the Members' Code of Conduct, then it can determine whether and, if so, which of the following sanctions should apply:

- (a) Publish findings in respect of the subject member's conduct;
- (b) Report findings to the relevant council for information;
- (c) Recommend to the relevant council that the subject member be issued with a formal censure or be reprimanded;
- (d) Recommend to the subject member's political group leader (or in the case of un-grouped members, recommend to the relevant council) that they be removed from any or all committees or sub-committees of the council;
- (e) Where Executive arrangements exist, recommend to the Executive Leader that the subject member be removed from Cabinet, or removed from particular portfolio responsibilities;
- (f) Arrange or recommend training for the subject member;
- (g) Remove or recommend the removal of the subject member from all outside appointments to which they have been appointed or nominated by their council;
- (h) Withdraw or recommend withdrawal of facilities provided to the subject member by their council, such as a computer, website and/or email and internet access;
- (i) Exclude or recommend the exclusion of the subject member from their council's offices or other premises, with the exception of meeting rooms as necessary for attending Full Council, committee and sub-committee meetings.

The Appeals Sub-Committee has no power to suspend or disqualify a member or to withdraw a member's basic or special responsibility allowance.

If the matter relates to a parish/town councillor, then if a breach has been determined, the matter is referred to that parish/town council with recommendations as to what action they may wish to take. The clerk to the parish/town council will be expected to confirm to the Monitoring Officer as soon as reasonably practicable what action the parish/town council proposes to take in response to the recommendation.

The Sub-Committee will issue a formal written decision together with supporting reasons as soon as practicable after the end of the hearing and in any event within 10 working days.