

ARRANGEMENTS FOR DEALING WITH MEMBER COMPLAINTS



1. Context

These “Arrangements” set out how a Complainant may make a complaint that an elected or co-opted Member of Rother District Council or of a Parish or Town Council within the District has failed to comply with the authority’s Code of Conduct, and sets out how the authority will deal with allegations of a failure to comply with the authority’s Code of Conduct.

Under Section 28(6) and (7) of the Localism Act 2011, (“The Act”) the District Council must have in place “arrangements” under which allegations that a Member or co-opted Member of the authority or of a Parish or Town Council within the District, or of a Committee or Sub-Committee of the authority, has failed to comply with that authority’s Code of Conduct can be investigated and decisions made on such allegations.

The District Council has appointed two Independent Persons, the view of one of which must be sought by the authority before it makes a decision on an allegation which it has decided shall be investigated. Their views may be sought by the authority at any other stage, or by a Subject Member, or a Member or co-opted Member of a Parish or Town Council within the District, against whom an allegation has been made that they have breached the Code of Conduct.

2. The Code of Conduct

The District Council has adopted a Code of Conduct for Members, which is attached as Appendix 1 (NOT REPRODUCED IN THIS REPORT – FOUND ELSEWHERE ON THIS AGENDA) to these arrangements and is available for inspection on the District Council’s website and on request from the Community Help Points at Bexhill, Battle and Rye.

Each Parish or Town Council within the District is also required to adopt a Code of Conduct and, if they have a website, to publish it there. If the Complainant wishes to inspect a Parish or Town Council’s Code of Conduct, the Complainant should inspect the website operated by the Parish/Town Council or request the Parish/Town Clerk to allow the Complainant to inspect the Parish or Town Council’s Code of Conduct document.

3. Making a complaint

If a Complainant wishes to make a complaint, they must complete the Members’ Code of Conduct Complaint Form which is available on request from the Council’s Community Help Points or can be found on our website at:

<http://www.rother.gov.uk/article/369/Members-Code-of-Conduct>

and send to:

The Monitoring Officer
Rother District Council
Town Hall
Bexhill-on-Sea
East Sussex
TN39 3JX

or: standards@rother.gov.uk

The Monitoring Officer has statutory responsibility for maintaining the Register of Members' Interests and is responsible for administering the system in respect of complaints of Member misconduct for both District and Parish and Town Councillors. Copies of Members' Register of Interests are available on the District Council's website and the Parish and Town Council websites where they have one.

In order to ensure that we have all the information which we need to be able to process their complaint, the Complainant must complete and send us the Complaint Form, which can be downloaded from the District Council's website, next to the Code of Conduct, and is available on request from the Council's Community Help Points.

The Complainant must provide their name and a contact address or email address, so that we can acknowledge receipt of their complaint and keep them informed of its progress. If the Complainant wishes to keep their name and address confidential, they must indicate this in the space provided on the complaint form, in which case we will not disclose their name and address to the person against whom they are making the complaint (the "Subject Member"), without their prior consent. The authority does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

The Monitoring Officer will acknowledge receipt of a complaint within five working days of receiving it, and will keep the Complainant informed of the progress of the complaint. The Monitoring Officer will also let the Subject Member know that a complaint has been received against them and the nature of the complaint.

4. Will the complaint be investigated?

The Monitoring Officer will review every complaint received and, after consultation with one of the Independent Persons, make a decision as to whether it merits formal investigation. This decision will normally be made within 10 working days of receipt of a complaint. The Monitoring Officer will decide a complaint does not merit investigation if:

- It is about someone who is no longer a Member of the Council, or
- There has been a delay of more than six months since the matter complained of occurred (unless the Monitoring Officer is of the view that exceptional circumstances exist to allow an extension of time), or

- The complaint appears to be minor, politically motivated, vexatious and malicious or it is not otherwise appropriate to warrant further action.
- This list is not intended to be exhaustive and the Monitoring Officer may decide that a complaint does not merit formal investigation for any other reason which appears to them to be appropriate.

The Monitoring Officer retains the discretion to refer the decision as to whether a complaint merits an investigation to the Audit and Standards Committee if it appears appropriate to do so.

When the Monitoring Officer or the Audit and Standards Committee has made a decision, the Monitoring Officer will inform the Complainant of the decision and the reasons for it.

Where the Monitoring Officer requires additional information in order to come to a decision, they may revert to the Complainant for such information. The Monitoring Officer may also request information from the Member against whom the complaint is directed. Where a complaint relates to a Parish or Town Councillor or co-opted member, the Monitoring Officer may also inform the Parish or Town Council of that complaint and seek the views of the Parish or Town Council before deciding whether the complaint merits formal investigation.

Where it appears appropriate to do, the Monitoring Officer may seek to resolve a complaint informally, without the need for a formal investigation. Such informal resolutions may involve the Subject Member admitting that their conduct was unacceptable and offering an apology, or other remedial action being taken by the authority to resolve the complaint. Where the Subject Member or the authority make a reasonable offer of local resolution, but the Complainant is not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

If the complaint identifies criminal or regulatory misconduct by the Subject Member, or any other person, the Monitoring Officer may, without further reference to the Complainant, call in the Police or other regulatory agencies.

5. How is the investigation conducted?

The District Council has adopted a procedure for the investigation of complaints that the Code of Conduct has been breached, which is attached as Appendix 2 to these Arrangements.

If the Monitoring Officer decides that a complaint merits formal investigation, they will appoint an Investigating Officer, who may be another senior officer of the authority, an officer of another authority or an external investigator. It is the responsibility of the Monitoring Officer to oversee the work of the Investigating Officer and to ensure that the investigation is carried out fairly and efficiently. The Investigating Officer will decide whether it is necessary to meet or speak to the Complainant in order to understand the nature of the complaint. They may do so in order that the Complainant can explain their understanding of events and make representations as to what documents the Investigating Officer may wish to see, and who the Investigating Officer may wish to interview.

The Investigating Officer will contact the Subject Member against whom a complaint has been made and provide them with a copy of the complaint. They will ask the Subject Member to provide their explanation of events and to identify the documents which are available to the Subject Member which the Investigating Officer may wish to see and who they may wish to interview. In exceptional cases, where it is appropriate to keep the Complainant's identity confidential or disclosure of details of the complaint to the Subject Member might prejudice the investigation, the Monitoring Officer may delete the Complainant's name and address from the papers given to the Subject Member, or delay notifying the Subject Member until the investigation has progressed to a point where it is appropriate to do so.

At the end of their investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to the Complainant and the Subject Member concerned, to give both an opportunity to identify and make representations on any matter in the draft report which they disagree with or which they believe requires more consideration.

Having received and considered any comments which the Complainant and Subject Member may make on the draft report, the Investigating Officer will send their final report to the Monitoring Officer.

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 and, if they are satisfied that the Investigating Officer's report identifies and addresses all relevant issues relating to the complaint, the Monitoring Officer will write to the Complainant and the Subject Member concerned (and to the Parish or Town Council, where the complaint relates to a Parish or Town Councillor), notifying them that they are satisfied that no further action is required and give them both a copy of the Investigating Officer's final report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly they may ask the Investigating Officer to reconsider their report or make other arrangements to review the investigation.

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 seek local resolution or refer the matter to the District Council's Hearing Panel.

7.1 Local Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, they will consult with the Independent Person and the Complainant and seek to agree fair resolution and which also ensures high standards of conduct for the future. Such resolution may include the Subject Member accepting that their conduct was in breach of the Code of Conduct and, for example, offering an apology, and/or agreeing to other remedial action – such as training, mentoring or mediation. If the Subject Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Audit and Standards Committee (and,

where appropriate, to the Parish or Town Council for information), but will take no further action. However, if the Complainant tells the Monitoring Officer that they do not consider any suggested resolution would be adequate, the Monitoring Officer may decide to refer the matter for a local hearing.

7.2 Local Hearing

If the Monitoring Officer considers that local resolution is not appropriate, or the Complainant is not satisfied by the result of the attempt at Local Resolution and the Monitoring Officer agrees with the Complainant's representations, or the Subject Member concerned is not prepared to undertake the proposed remedial action, then the Monitoring Officer will refer the Investigating Officer's report to the Hearings Panel – which will conduct a local hearing before deciding whether the Subject Member has failed to comply with the Code of Conduct and, if so, whether and what action to take (if any) in respect of the non-compliance of the Subject Member.

The District Council has agreed a procedure for local hearings, which is attached as Appendix 3 to these arrangements.

In summary, the Monitoring Officer will conduct a “pre-hearing process”, requiring the Subject Member to give their response to the Investigating Officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing. In conjunction with the Monitoring Officer the Chairman of the Hearings Panel may issue directions as to the manner in which the hearing will be conducted.

Where a hearing is considered necessary, the Investigating Officer will present their report, call such witnesses as they may consider necessary and make representations to support their conclusion that the Subject Member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask the Complainant, and their witnesses, to attend and give evidence to the Hearings Panel. The Subject Member will then have an opportunity to give their evidence, to call witnesses and to make representations to the Hearings Panel as to why they believe that they have not failed to comply with the Code of Conduct.

Having heard evidence the members of the Hearing Panel may consider their view in public or retire to do so privately. During such deliberations the voting members of the Hearing Panel will consult with and seek the view of the Independent Person (and, where the Subject Member is a member of a Parish or Town council, with the Parish/Town Council representative on the Hearing Panel).

If the Hearing Panel concludes that the Subject Member did not fail to comply with the Code of Conduct, they will dismiss the complaint. Alternatively, if the Hearing Panel concludes that the Subject Member breached the Code of Conduct, the Chairman will inform the Subject Member of this finding and the Hearing Panel will then consider what, if any, action, the Hearings Panel should take as a result of the Subject Member's failure to comply with the Code of Conduct. In doing so the

Chairman will give the Investigating Officer and Subject Member an opportunity to make representations to the Hearing Panel. When considering what, if any, further action will be taken, the voting members of the Hearing Panel will consult with and take the view of the Independent Person into account (and, where the Subject Member is a member of a Parish or Town Council, with the Parish/Town Council representative on the Hearing Panel).

8. Membership of the Hearing Panel

The Hearing Panel is a Sub-Committee of the Council's Audit and Standards Committee. It will generally consist of three District Councillors. The full Audit and Standards Committee also includes two Independent Persons (for Standards matters). Under the terms of the Act, there is a mandatory requirement for the Monitoring Officer to consult one of the Independent Persons when considering whether a complaint will be investigated – as detailed at paragraph 4. Additionally, the Independent Person who sits on the Hearing Panel does not have a right to vote on decisions made at the Hearing, their views will be sought and taken into account both when the Hearing Panel makes a decision on whether the Subject Member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct. The full Audit and Standards Committee also includes two Parish/Town Council representatives (for Standards matters). Where the Hearing Panel is dealing with a complaint against a Parish or Town Councillor one of the Parish/Town Council members of the Standards Committee will also be present. Although the Parish/Town Council representative does not have a right to vote on decisions made by the Hearing Panel, their views will be sought in a similar way to those of the Independent Person.

9. Who are the Independent Persons?

The Act requires the Council to appoint at least one Independent Person to assist the Monitoring Officer, as a consultee, during the pre-investigation, investigation, pre-hearing and hearing process. The role of the Independent Person is to represent the public interest. The District Council has appointed two such Independent Persons in order that the business of the Standards Committee can be dealt with efficiently and to reduce the likelihood of a conflict of interest causing delay. Such Independent Persons applied for the post following public advertisement of the vacancy, and have been appointed by a positive vote from a majority of all the Members of the District Council. The current term of office of an Independent Person is four years.

The definition in the Act of an Independent Person is anyone who is not currently:

- (i) a Member, co-opted Member or officer of the authority,
- (ii) a Member, co-opted Member or officer of a Parish or Town Council of which the authority is the principal authority, or
- (iii) a relative, or close friend, of a person within sub-paragraph (i) or (ii) above.

10. What action can the Hearing Panel take where it has found that the Subject Member has failed to comply with the Code of Conduct?

The District Council has delegated to the Hearing Panel its powers to take action in respect of complaints against individual Members as may be necessary to promote and maintain high standards of conduct. Accordingly the Hearing Panel may:

- 10.1 Publish its findings in respect of the Subject Member's conduct.
- 10.2 Write a formal letter to the Subject Member found to have breached the Code.
- 10.3 Report its findings to the District Council or to the Parish or Town Council for information.
- 10.4 Seek formal censure by motion.
- 10.5 Recommend to the Subject Member's Group Leader (or in the case of Subject Members who do not belong to a political group recommend to Council or to Committees) that they be removed from any or all Committees or Sub-Committees of the Council.
- 10.6 Recommend to the Leader of the Council that the Subject Member be removed from the Cabinet, or removed from particular Portfolio responsibilities.
- 10.7 Instruct the Monitoring Officer to, or recommend that the Parish or Town Council arrange mentoring, training, mediation or other appropriate remedy, for the Subject Member.

The Hearing Panel has no power to suspend or disqualify the Subject Member from office or to withdraw their Basic or any Special Responsibility Allowances.

11. What happens at the end of the Hearing?

Having heard all the evidence, the Chairman will state the decision of the Hearing Panel as to whether the Subject Member has been found to have failed to comply with the Code of Conduct. If such a finding has been made, and having heard representations from the Investigating Officer and the Subject Member, the Chairman will state the actions which the Hearing Panel resolves to take.

As soon as reasonably practicable thereafter, the Monitoring Officer will prepare a formal Decision Notice, to be signed by the Chairman of the Hearing Panel. The Monitoring Officer will send a copy to the Complainant, Subject Member and, where applicable, to the Parish or Town Council. The Monitoring Officer will also make the Decision Notice available for public inspection and report the decision to the next meeting of the District Council Standards Committee.

12. Appeals

There is no right of appeal for the Complainant or for the Subject Member against a decision of the Monitoring Officer or of the Hearings Panel.

If you feel that the council has failed to deal with any aspect of the complaint properly, you may make a complaint to the Local Government Ombudsman.