



BRACKNELL FOREST COUNCIL

Arrangements for dealing with councillor code of conduct complaints

November 2016

1. Context

- 1.1 These 'Arrangements' set out how a complaint may be made that an elected or co-opted member of this Council has failed to comply with the Council's Code of Conduct, and sets out how the Council will deal with allegations of a failure to comply with that Code of Conduct.
- 1.2 Under sections 28(6) and (7) of the Localism Act 2011, the Council must have in place 'arrangements' under which allegations that a member or co-opted Member of the Council, or of a committee or sub-committee of the Council, has failed to comply with its Code of Conduct can be investigated and decisions made on such allegations.
- 1.3 Such arrangements must provide for the Council to appoint at least one Independent Person, whose views must be sought by the Council before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the Council at any other stage, or by a member against whom an allegation as been made.

2. The Code of Conduct

- 2.1 The Council has adopted a Code of Conduct for Members, which is available for inspection on its web site

3. Making a complaint

- 3.1 Complaints alleging that a member has breached the Code of Conduct must be in writing stating the paragraph of the Code that it is alleged the member has not complied with and explaining the circumstances of the non-compliance. The complainant must complete the Council's complaint form which is available on the Council's web site at www.bracknell-forest.gov.uk
- 3.2 Where a complaint is received orally or by email the complainant will be advised to complete the complaint form. If necessary, assistance will be provided or arrangements made to enable the complainant to complete the complaint form.
- 3.3 The complainant must provide us with their name and a contact address or email address, so that we can acknowledge receipt of the complaint and keep them informed of its progress. If they wish 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 it to the member against whom the complaint has been made without their prior consent. However there may be exceptions, such as those outlined in paragraph 3.7 below. A request from a complainant for confidentiality should be supported by reasons. The Council may investigate complaints received anonymously or where the complainant cannot otherwise be identified, where there is a clear public interest in doing so.
- 3.4 The Democratic Services Team will log the complaint and write to the complainant **within five working days** acknowledging receipt of the complaint.
- 3.5 Officers in the Democratic Services Team will check a complaint. If a complaint specifies that it relates to a failure to comply with the Code of

Conduct by a member, or it appears that it might relate to a member and a failure to comply with the Code of Conduct, then it will be passed to the Council's Monitoring Officer for further action **within two working days** of its acknowledgement, together with any relevant correspondence with the complainant.

- 3.6 The Monitoring Officer is a senior officer of the Council who has statutory responsibility for maintaining the Register of Members' Interests and who is responsible for administering the system in respect of complaints of member misconduct. The Deputy Monitoring Officer may take the role of the Monitoring Officer if the Monitoring Officer is unable to act.
- 3.7 The Monitoring Officer will normally disclose to the subject member, and where applicable, the Party whip, the details of the complaint, except where such disclosure would be against the public interest or would prejudice any future investigation, or where the complainant has requested confidentiality. If any one of these exceptions applies the Monitoring Officer may only notify the Member of the fact that an allegation has been made and the reasons why details cannot be disclosed. A complainant who has requested confidentiality will be informed if the Monitoring Officer considers that it is necessary to divulge their details to the member so that an investigation can be progressed.

4. Will the complaint be investigated?

- 4.1 The Monitoring Officer will review every complaint received and, after consultation with the Independent Person, take one of three decisions:
- i. Take no action
 - ii. Seek to resolve the complaint informally
 - iii. Refer the Complaint for investigation

This decision will normally be taken **within 14 days** of receipt of the complaint. The Monitoring Officer will inform the complainant, the Member, and where applicable, the Party whip, of his decision and the reasons for that decision.

- 4.2 It is likely that no action will be taken where;
- there is no prima facie evidence that the Code has been breached;
 - taking into account the nature of the allegation, using public funds to examine the matter further would be disproportionate;
 - the complaint appears to be vexatious, politically motivated, tit-for-tat or made by a persistent complainant;
 - the conduct complained about has already been the subject of investigation or enquiry by another public body;
 - the same, or substantially the same issue (arising from the same act or omission) has been the subject of a previous Code of Conduct allegation, and there is nothing further to be gained;
 - there is not enough information to take the matter further;
 - the complaint was made anonymously;
 - the complainant has requested that their identity as complainant be withheld from the member, and the matter cannot reasonably be taken further in these circumstances;

- the member has already apologised for the action that was the subject of the complaint, and that is sufficient to dispose of the complaint;
 - the complaint is essentially against the action of the Council as a whole and cannot properly be directed against an individual member(s).
 - the complaint relates to conduct in a Members private life and not in their official capacity.
- 4.3 Where the Monitoring Officer requires additional information in order to come to a decision they may seek such information from the complainant, and may request information from the member against whom the complaint is directed.
- 4.4 As indicated in paragraph 4.1 above, in appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the Council. Before seeking such a resolution the Monitoring Officer shall have regard to previous infringements of the Code of Conduct by the Member and may in those circumstances refer the matter to the Code of Conduct Panel for the imposition of an appropriate sanction.
- 4.5 If the complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the police and other regulatory agencies.

5. How is the investigation conducted?

- 5.1 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 Council, an officer of another Council or an external investigator. The Monitoring Officer will write to the relevant parties and, where applicable, the Party whip:
- a) informing them that the matter has been referred for investigation;
 - b) if appropriate, advising them who is to be responsible for conducting the investigation;
 - c) advising them how the investigation will be carried out and within what timescale; and
 - d) giving any Member who is the subject of the investigation the opportunity to comment on the complaint made.
- 5.2 The Investigating Officer will decide whether they need to meet or speak to the complainant to understand the nature of the complaint and so that the complainant can explain their understanding of events and suggest what documents the Investigating Officer needs to see, and who the Investigating Officer needs to interview.
- 5.3 The Investigating Officer will normally write to the member against whom the complaint has been made and provide them with a copy of the complaint, and ask the member to provide their explanation of events, and to identify what documents the Investigating Officer needs to see and who he needs to interview. In exceptional cases, where it is appropriate to keep the identity of the complainant confidential or disclosure of details of the complaint to the member might prejudice the investigation, the Monitoring Officer can delete

personal details from the papers given to the member, or delay notifying the member until the investigation has progressed sufficiently.

- 5.4 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 to the member concerned, to give them both an opportunity to identify any matter in that draft report with which they disagree or which they consider requires more consideration.
- 5.5 Having received and taken account of any comments which may be made 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?

- 6.1 The Monitoring Officer will review the Investigating Officer's report and, if he is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to the complainant, the member concerned, and where applicable, the Party whip notifying them that he/she is satisfied that no further action is required, and give both parties a copy of the Investigating Officer's final report. The findings will be reported to the Council for information, without question or debate, unless the member asks that they be not reported. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he may ask the Investigating Officer to reconsider his/her report.

7. What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?

- 7.1 The Monitoring Officer will review the Investigating Officer's report and will then either send the matter for a hearing before a Code of Conduct Panel or, after consulting the Independent Person, seek a resolution.

Resolution

- 7.2 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 with the complainant and seek to agree what is considered to be a fair resolution which also helps to ensure higher standards of conduct in the future. Such resolution may include the member accepting that their conduct was unacceptable and offering an apology, and/or other remedial action by the Council. If the member complies with the suggested resolution, the Monitoring Officer will report the matter to the Governance and Audit Committee for information, but will take no further action. However, if the Monitoring Officer concludes that a resolution cannot be reached at this stage he will refer the matter for a Code of Conduct Panel hearing.

Hearing

- 7.3 If the Monitoring Officer considers that resolution is not appropriate, or the complainant is not satisfied by the proposed resolution, or the member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigating Officer's report to a Code of Conduct Panel which will conduct a hearing

before deciding whether the member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the member.

8. What is the Code of Conduct Panel?

- 8.1 The Code of Conduct Panel will comprise four members of the Governance and Audit Committee one of whom will be an Independent Member. (Substitution provisions relating to G&A Committee will apply)
- 8.2 The Independent Person will be present at any hearing to advise the Panel
- 8.3 The Monitoring Officer will conduct a 'pre-hearing process', requiring the 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, and the Chair of the Code of Conduct Panel may issue directions as to the manner in which the hearing will be conducted.
- 8.4 A member who is the subject of a hearing may be represented by Counsel, by a Solicitor or, with the consent of the Code of Conduct Panel, by any other representative.
- 8.5 If a member who is the subject of a report to the Code of Conduct Panel fails to attend a hearing of which that member has been given notice, the Code of Conduct Panel may:
 - (a) unless it is satisfied that there is sufficient reason for such failure, consider the allegation and make a determination in the absence of that member; or
 - (b) adjourn the hearing to another date.
- 8.6 The Panel may not proceed in the absence of the Independent Member without the prior consent of the Governance & Audit Committee Chairman and the Monitoring Officer

9. What action can the Code of Conduct Panel take where a member has failed to comply with the Code of Conduct

9.1 The sanctions which may be imposed upon a Councillor found to be in breach of the Code are;

- The Panel recommending that the Council issue a formal Censure towards the Councillor/Co-opted member e.g. through a Motion at a Council meeting
- The Panel publishing its decision by issuing a press release
- The Panel reporting findings to Council for inclusion on Council agenda
- The Panel recommending to the Councillor'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
- The Panel recommending to the Leader of the Council that the Councillor be removed from the Executive, or removed from particular portfolio responsibilities
- The Panel recommending that the Councillor be removed from any or all outside appointments to which he/she has been appointed or nominated by the Leader of the Council
- The Panel Instructing the Monitoring Officer to arrange appropriate training
- The Panel requiring the Councillor/Co-opted Member to issue a written apology to the complainant in an open letter
- The Panel referring the matter to the party whip in order that the Political group may consider what action to take under its own procedures

9.2 The Code of Conduct Panel has no power to suspend or disqualify the member or to withdraw the member's allowance.

10. What happens at the end of the hearing?

10.1 At the end of the hearing, the Chair will state the decision of the Code of Conduct Panel as to whether the member failed to comply with the Code of Conduct and as to any actions which the Code of Conduct Panel resolves to take.

10.2 As soon as reasonably practicable thereafter, the Monitoring Officer will prepare a formal decision notice, in consultation with the Chair of the Code of Conduct Panel, and send a copy to the complainant, the member, and where applicable, the Party whip. The Monitoring Officer will make that decision notice available for public inspection and report the decision to the next convenient meeting of the Governance and Audit Committee.

11. Withdrawal of complaint

11.1 The complainant can request, but there is no right, to withdraw a complaint and it is for the Monitoring Officer in any particular case to consider and decide whether or not to agree to a withdrawal. When making a decision the Monitoring Officer will give due consideration to such matters as:

- a) Whether there are identifiable underlying reasons for the withdrawal request;
- b) Whether the public interest in taking action on a complaint outweighs the reasons behind the complainant's withdrawal request; and

c) Whether the complaint can be adequately investigated without the complainant's participation.

11.2 The Party whip will, where applicable, be notified by the Monitoring Officer prior to a decision being taken to agree to a withdrawal of the complaint.

12. Revision of these arrangements

12.1 The Council may by resolution agree to amend these arrangements, and the Chair of the Code of Conduct Panel may depart from these arrangements where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

13. Appeals

13.1 There is no right of appeal for the complainant or for the member against a decision of the Monitoring Officer or the Code of Conduct Panel.

13.2 If either party feels that the Council has failed to deal with the complaint properly, they may make a complaint to the Local Government Ombudsman