



## Councillor Complaints Procedure

### Arrangements for dealing with standards allegations under the Localism Act 2011

#### **1 Introduction**

These “Arrangements” set out how you may make a complaint that an elected or co-opted member of Rushcliffe Borough Council, or of a parish council within the Borough, has failed to comply with the authority’s Code of Conduct, and sets out how the Council 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 Council must have in place “arrangements” under which allegations that a member or co-opted member of the authority or of a parish council within its area has failed to comply with that authority’s Code of Conduct can be investigated and decisions made on such allegations.

Such arrangements must provide for the Council to appoint at least one Independent Person, whose views must be sought by the authority before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the authority at any other stage, or by the member against whom an allegation has been made.

#### **2 The Code of Conduct**

The Council has adopted a Code of Conduct for members, which is attached as Appendix 1 to these arrangements and available for inspection on the authority’s website or on request from the Head of Corporate Services.

Each parish council is also required to adopt a Code of Conduct. If you wish to inspect a Parish Council’s Code of Conduct, you should inspect any website operated by the parish council and request the parish clerk to allow you to inspect the parish council’s Code of Conduct.

#### **3 Making a complaint**

If you wish to make a complaint, please write or email to –

The Monitoring Officer  
Rushcliffe Borough Council Civic  
Centre  
Pavilion Road  
West Bridgford Nottingham  
NG2 5FE

Or email [monitoringofficer@rushcliffe.gov.uk](mailto:monitoringofficer@rushcliffe.gov.uk)

The Monitoring Officer is a senior officer of the authority 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.

In order to ensure that we have all the information which we need to be able to process your complaint, please complete and send us the complaint form, which can be found on the Borough Council's website, or obtained from the Monitoring Officer. If you decide not to use the complaint form, you must still provide the Monitoring Officer with all of the information requested within it, otherwise the Monitoring Officer will not be able to consider your complaint.

Please provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form together with the reason why you feel your identity should not be disclosed. However, only in exceptional cases will it be possible not to disclose your identity. 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 your complaint within 10 working days of receiving it, and will keep you informed of the progress of your complaint. The Monitoring Officer will also normally inform the member who is subject of the complaint and invite their initial response at this stage. A copy of the complaint is normally sent to the member.

Parish Councils as employers should have processes in place to ensure the fair and proper treatment of staff. Complaints about the conduct of a Parish Councillor towards a clerk should be made by the chair or by the Parish Council as a whole, rather than the clerk in all but exceptional circumstances.

#### **4 Will your complaint be investigated?**

The Monitoring Officer will review every complaint received against the initial tests as set out in the Public Interest Test. If the initial test is met and after consultation with the Independent Person (see paragraph 11 below), the Monitoring Officer will take a decision as to whether it merits formal investigation. The Monitoring Officer may form the view that the complaint is unlikely to reach a firm conclusion as there is no independent, corroborative evidence. This decision will normally be taken within 14 working days of receipt of your complaint. Where the Monitoring Officer has taken a decision, he/she will inform you of his decision and the reasons for that decision.

Where the Monitoring Officer requires additional information in order to come to a decision, he/she may come back to you for such information, and may request information from the member against whom your complaint is directed. Where your complaint relates to a Parish Councillor, the Monitoring Officer will normally also inform the Parish Council or your complaint.

Wherever possible, the Monitoring Officer will 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 authority. Where the member or the authority make a reasonable offer of local resolution, but you are not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation or if it should be reported to the Standards Committee.

If the Monitoring Officer is satisfied that the complaint will if proven constitute a breach of the code but that formal investigation is not in the public interest, s/he may decide against a formal investigation. The Monitoring Officer may report the complaint to the Standards committee for information. The subject member may be named if the Monitoring Office is satisfied that the complaint if proven would potentially be a breach of the code. Where the Monitoring Officer is satisfied that the complaint would not be proven, the Subject Member will not be identified by name.

If your 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?**

If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer, who may be another senior officer of the authority, an officer of another authority or an external investigator. The Investigating Officer will decide whether he/she needs to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents the Investigating Officer needs to see, and who the Investigating Officer needs to interview. The complaint may also be referred if the Monitoring Officer considers that s/he has a conflict of interest in dealing with the complaint.

The Investigating Officer would normally write to the member against whom you have complained and provide him/her with a copy of your complaint, and ask the member to provide his/her explanation of events, and to identify what documents s/he needs to see and who s/he needs to interview. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the member, or delay notifying the member until the investigation has progressed sufficiently.

At the end of his/her investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to you and to the member concerned, to give you both an opportunity to identify any matter in that draft report which you disagree with or which you consider requires more consideration.

Having received and taken account of any comments which you may make on the draft report, the Investigating Officer will send his/her 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 s/he is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the member concerned, and if appropriate to the Parish Council where the complaint relates to a Parish Councillor, notifying you that s/he is satisfied that no further action is required, and give you both a copy of the Investigating Officer's final report. 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. The Monitoring Officer will consult the Independent Person before making any decision following 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 will then either send the matter for local hearing before the Hearings Panel (a sub-committee of the Standards Committee) or, after consulting the Independent Person, seek local resolution.

### **7.1 Local Resolution**

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing to formally determine whether a breach had in fact been committed. In such a case, he/she will consult with the Independent Person and with you as complainant and seek to agree what you consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the authority. If the member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee, and the Parish Council where applicable, for information, but will take no further action. However, if you tell the Monitoring Officer that any suggested resolution would not be adequate, the Monitoring Officer may either refer the matter for a local hearing or report the matter to the Standards Committee for information where it is considered that a local hearing is not in the Public Interest. This may include identification of the Subject member.

### **7.2 Local Hearing**

If the Monitoring Officer considers that local resolution is not appropriate, or you are 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 the Hearings Panel which will conduct a local 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.

The Monitoring Officer will conduct a "pre-hearing process", requiring the member to give his/her 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 Chairman of the Hearings Panel may explain and give guidance as to the manner in which the hearing will be conducted. At the hearing, the Investigating Officer will present his/her report and may call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask you as the complainant to attend and give evidence to the Hearings Panel. The member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Hearings Panel as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

If the Hearings Panel, with the benefit of any advice from the Independent Person, concludes that the member did not fail to comply with the Code of

Conduct, it will dismiss the complaint. If the Hearings Panel concludes that the member did fail to comply with the Code of Conduct, the Chairman will inform the member of this finding and the Hearings Panel will then consider what action, if any, it should take as a result of the member's failure to comply with the Code of Conduct. In doing this, the Hearings Panel will give the member an opportunity to make representations to the Panel and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

#### Referral to Standards Committee

In certain more serious or sensitive cases, the Monitoring officer may refer the case to the full Standards Committee rather than the Hearings Panel. The criteria for determining whether to refer the case to the full Committee are set out in Appendix 2 and such a decision shall be at the sole discretion of the Monitoring Officer based on those criteria.

### **8 What actions can the Hearings Panel/the Standards Committee take where a member has failed to comply with the Code of Conduct?**

The Council has delegated to the Standards Committee and the Hearings Panel such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly the Committee/Panel may –

- 8.1 Publish its findings in respect of the member's conduct;
- 8.2 Report its findings to Council (or to the relevant Parish Council) for information;
- 8.3 Recommend to the member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 8.4 Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 8.5 Instruct the Monitoring Officer to (or recommend that the Parish Council) arrange training for the member;
- 8.6 Recommend to full Council (or recommend to the Parish Council) that the member be removed) from all outside appointments to which he/she has been appointed or nominated by the authority (or by the Parish Council);
- 8.7 Withdraw (or recommend to the Parish Council that it withdraws) facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
- 8.8 Exclude (or recommend that the Parish Council exclude) the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

There is no power to suspend or disqualify the member or to withdraw a member's basic or special responsibility allowance.

Where the recommended action in respect of items 8.3, 8.7 or 8.8 above relates to a Group Leader the final decision shall be referred to full Council.

## **9 What happens at the end of the hearing?**

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

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chairman of the Committee or Panel, and send a copy to you, to the member (and to the Parish Council where applicable), and make that decision notice available for public inspection on the Council's website.

## **10 What is the Hearings Panel?**

The Hearings Panel is a Sub-Committee of the Council's Standards Committee. The Council has decided that it will comprise at least three members of the Borough Council. The Panel will contain members from more than one political party depending on the political balance of the Council as a whole.

The Independent Person is invited to attend all meetings of the Standards Committee or Hearings Panel when a decision is being taken on whether the member's conduct constitutes a failure to comply with the Code of conduct or on any action to be taken following a finding of failure to comply with the Code of Conduct. His/her views will be sought and taken into consideration before any decision is taken on these matters.

The Standards Committee may also contain non-councillor or parish council members who may attend and participate in discussions at meetings of either the full Committee or the Hearings Panel, but they are not entitled to *vote* on any matter under discussion.

## **11 Who is the Independent Person?**

The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the members of Council. There are a number of statutory restrictions on eligibility for this role to ensure that the post-holder has no close associations with the Council and is therefore truly independent. They are not a member of the Standards Committee but they must be consulted by the Monitoring Officer prior to any decisions or findings on alleged breaches of the Code and *may* be consulted at other stages of the complaints process.

The Independent Person may also be consulted by a member who is the subject of a complaint under this procedure. Any such consultation shall be arranged through the Monitoring Officer and the subject member will be advised by the Monitoring Officer as to the procedure for doing so at the relevant time.

## **12 Revision of these arrangements**

The Council may by resolution agree to amend these arrangements, and has delegated to the Chairman of the Standards Committee and any Hearings Panel the right to depart from these arrangements where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

### **13 Appeals**

There is no right of appeal for you as complainant or for the member against a decision of the Monitoring Officer or of the Standards Committee or Hearings Panel.

If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.

Appendix One                      Rushcliffe Borough Council's Code of Conduct

Appendix Two                      Criteria for referral of cases to the full Standards Committee