



Councillor Complaints Procedure

Arrangements for dealing with standards allegations under the Localism Act 2011

1 Introduction

It is vital that the public has confidence in the high standards of local government, and that there is transparency about the conduct of councillors and the mechanisms for dealing with alleged breaches of the Codes of Conduct. Equally, it is vital that councillors themselves have confidence in these mechanisms, and that investigations into such complaints abide by the principles of natural justice.

The system of regulation of standards of councillor conduct in England is governed by the Localism Act 2011. Under Section 28(6) and (7) of the Localism Act 2011, the Council must have in place a code of conduct for councillors, which must be consistent with the "Seven Principles of Public Life", selflessness, honesty, integrity, objectivity, accountability, openness, and leadership.

Under the Code of Conduct, councillors are required to cooperate with any Code of Conduct investigation and respect the impartiality of officers.

The Council must also have in place "arrangements" (Section 28 of the Localism Act 2011, local authorities (other than parish and town councils) must have in place 'arrangements' under which allegations that an elected or co-opted councillor of the authority or of a town or parish council within the principal authority's (Rushcliffe's) area has failed to comply with the authority's Code of Conduct can be considered and how decisions will be made on such allegations. The principal authority must also appoint at least one Independent Person whose views are to be taken into account before making a decision on a complaint that is to be referred for investigation. The Independent Persons' views can also 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 Service Manager, Chief Executives Dept.

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

The law does not specify how complaints are to be handled but does require complaints to be made in writing [Online Forms - Rushcliffe Borough Council](#). If you wish to make a complaint, please complete the complaint form, and submit in writing or by email to –

The Monitoring Officer
Rushcliffe Borough Council
Rushcliffe Arena, Rugby Road
West Bridgford
Nottingham
NG2 7YG

Or email 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.

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. For example you must include the following:

- you/the person making the complaint name, address, and other contact details;
- who you are, for example, a member of the public, fellow councillor, or officer;
- who the complaint is about and the authority or authorities that the councillor belongs to;
- details of the alleged misconduct including, where possible, dates, witness details and other supporting information;
- the resolution / outcome sought (apology).

Please provide 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 **and unless advised you should assume your identity will be disclosed**. The authority does not normally investigate anonymous complaints unless there is a clear public interest in doing so.

4 **Acknowledging receipt of complaint**

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 **as this can help to decide whether the complaint can be dealt with informally without the need for a formal investigation**.

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.

If you require support with putting forward your complaint, please contact the monitoring officer.

What will happen to your complaint (Pre-assessment enquiries and reports)?

5. First stage Public Interest Test

The Monitoring Officer will review every complaint received against the initial tests as set out in the Public Interest Test. **If the complaint fails one or more of the tests it cannot be investigated as a breach of the Code, the complainant will be informed that no further action will be taken in respect of the complaint:**

- no further action will be taken on the allegation, for example, whilst the allegation may have disclosed a potential breach of the Code, no finding of fact has been made as it is not in the public interest to pursue the matter any further or there is not considered to be a breach of the code (subject member not acting in their capacity as Councillor).
- the matter should be dealt with through a process of informal resolution in the first instance or;
- the matter should be referred for a formal investigation.

There is no right of appeal in respect of this decision. Limited information about the complaint will however be reported to the Standards Committee.

If there is any doubt, the allegation may proceed to the second stage. For example, if it is unclear whether the councillor was acting 'in capacity' or not then the second stage of assessment criteria may be used to investigate this.

If the initial test is met, and after consultation with the Independent Person (if considered appropriate) (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 or that investigation is not in the public interest. 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.

If the subject member has been notified that a complaint has been made about them, the subject member will be given an opportunity to submit their comments (no more than 10 working days from the date of the notification to him/her).

Where the Monitoring Officer requires additional information in order to come to a decision, he/she may request such information as considered necessary from the complainant, subject member, clerk, or other relevant person/body. 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. **In dealing**

with a matter by alternative resolution at the initial assessment stage, the Monitoring Officer makes no finding of fact as there has been no formal investigation or decision on whether the code has been breached.

In certain cases, the Monitoring Officer may decide that no further action is required. For example, if the subject member has made a reasonable apology or has attended the training.

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, the complaint will usually be **paused pending action by the other body**.

5. Second-stage criteria: Formal investigation

If the Monitoring Officer decides that a complaint merits formal investigation, or that it is in the public interest, 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 (this may not always be considered necessary) 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 Monitoring Officer will inform:

- the subject member;
- the complainant;
- the relevant Independent Person and
- the relevant town or parish council if the subject member is a town or parish councillor

of the referral of the complaint for formal investigation.

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.

Disclosure of information

Information received during the course of an investigation must be treated as confidential by those receiving it.

Timescales for an investigation

There are many factors that can affect the time it takes to complete an investigation. Most investigations are carried out, and a report on the investigation completed, within a maximum of six months of the original complaint being referred for an investigation. This will not always be possible and where it is not the parties will be notified.

Refusal by the subject member or other relevant party to cooperate, for example by not making themselves available for an interview without good reason are unlikely to be a justified reason for delay and will be reflected in the report. If the subject member refuses to cooperate that of itself is a potential breach of the Model Code and may be something that maybe taken into account.

Draft reports

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 if considered appropriate, taken account of any comments which you may make on the draft report, the Investigating Officer will form a view and send his/her final report to the Monitoring Officer.

The report should explain of all the essential elements of the complaint. The report should cover:

- agreed facts;
- any disputed facts together with the investigators view, if appropriate, as to which version is more likely;
- whether those facts amount to a breach of the code or not; and
- the investigators reasons for reaching his/her conclusion.

6. Completion of an investigation

On completion of an investigation, the monitoring officer may decide, **having consulted the independent person**:

- to take no further action;
- to seek to resolve the matter informally; or
- to refer the matter to a hearing if it is part of the authority's procedures to refer the matter to a separate hearing by a panel or standards committee

The Monitoring Officer will send the final report to:

- the subject member;
- the complainant;
- the relevant Independent Person;
- the relevant parish or town council of which the subject member is a councillor.

The report must make one of the following findings on the balance of probabilities:

- that there have been one or more failures to comply with the Code of Conduct;
- that there has not been a failure to comply with the Code.

7. 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.

8. 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.

a. 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.

b. The hearings process

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 **may** report the Investigating Officer's report to the Hearings Panel which **may** 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. **If the Monitoring Officer is satisfied that the investigation has allowed all sides to have their say the panel may simply review the report without further reference to the parties.**

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. The Chairman of the Hearings Panel may explain and give guidance as to the manner in which the hearing will be conducted **based on discussions at a panel re-hearing**. 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 **and may request** 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. **Witness evidence will only be permitted in exceptional circumstances as the evidence of all material witnesses will be referred to on the investigation report. The hearing will normally take place within three months of the circulation of the completed investigation report.**

The hearings panel shall be made up of members of the Council’s Standards Committee and its chair shall be the chair of the Standards Committee.

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.

9. 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 –

- a. Publish its findings in respect of the member’s conduct;
- b. Report its findings to Council (or to the relevant Parish Council) for information;

- c. 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;
- d. Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- e. Instruct the Monitoring Officer to (or recommend that the Parish Council) arrange training for the member;
- f. 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);
- g. 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
- h. 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.
- i. **issue (or recommend to the parish council to issue) a formal censure**

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.

10. 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.

Note that where the subject member is a parish or town councillor, the matter is referred back to their council to say that a breach of the Code has been found and with a recommended sanction. The town or parish council must then meet to consider whether to impose that sanction or to replace it with another relevant sanction. They cannot overturn the finding that there has been a breach of the Code and if they wish to impose a different sanction, they should seek advice from the clerk and/or the monitoring officer. The panel should also ask the parish or town council to report back

to the monitoring officer within three months to confirm that they have met to discuss the sanction, and if necessary, to write again once the sanction has been fulfilled.

11. 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 group 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.

12. 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.

13. 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.

14. 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