

DARLINGTON BOROUGH COUNCIL

Arrangements for dealing with complaints against Members

1 Background

These "Arrangements" set out how you may make a complaint that an elected or co-opted member of this Authority [*or of a parish council within the Borough*] has failed to comply with the Council's Code of Conduct, and sets out how the Authority will deal with allegations of a failure to comply with the adopted Code of Conduct.

The Localism Act 2011 requires "arrangements" to be put in place under which allegations that a member or co-opted member of the Authority [*or of a parish council*], 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.

Such arrangements must provide for the appointment 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 a member [*or a member or co-opted member of a parish council*] against whom an allegation has been made.

2 The Code of Conduct

This Council has adopted a Code of Conduct for members, this is available from the Council's website www.Darlington.gov.uk and on request from Reception at the Town Hall.

[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

Luke Swinhoe,
Assistant Director, Law and Governance
Monitoring Officer
Darlington Borough Council, Town Hall, Darlington, DL1 5QT
Email luke.swinhoe@darlington.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 we need to be able to deal with your complaint, please complete and send us the model complaint form, which can be downloaded from the Authority's website, next to the Code of Conduct, and is available on request from Reception at the Town Hall.

Please do 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, in which case we will not disclose your name and address to the member against whom you make the complaint, without your 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 your complaint within 5 working days of receiving it, and will keep you informed of the progress of your complaint.

4 Will your complaint be investigated?

The Monitoring Officer will review every complaint received and, after consultation with the Independent Person, take a decision as to whether it merits formal investigation. This decision will normally be taken within 20 working days of receipt of your complaint. Where the Monitoring Officer has taken a decision, he/she will inform you of his/her decision and the reasons for that decision.

Where he/she 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 may also inform the Parish Council or your complaint and seek the views of the Parish Council before deciding whether the complaint merits formal investigation.]*

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 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.

If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to refer the matter to 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 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 he needs to see and who 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 he/she is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the member concerned [*and to the Parish Council, where your complaint relates to a Parish Councillor*], notifying you that 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.

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 a hearing before the Member Standards Hearing 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. 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. The Monitoring Officer will take into account your views regarding the adequacy of any suggested resolution.

7.2 Hearing by the Member Standards Hearing Committee

In cases where the Monitoring Officer refers a complaint for a hearing. This will be dealt with by the Member Standards Hearing Committee. This is a public hearing before a panel of three Borough Council Members (and in the case of a complaint against a parish councillor, 2 Borough Council members and a parish council 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 give pre hearing directions to help the hearing stage move forward smoothly.

At the hearing, the Investigating Officer will present his/her report, 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 Committee. The member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Committee as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

The Member Standards Hearing Committee, can with the benefit of any advice from the Independent Person and or Monitoring Officer, conclude that the member did not fail to comply with the Code of Conduct, and so dismiss the complaint. If the Committee concludes that the member did fail to comply with the Code of Conduct, the Chair will inform the member of this finding and the Committee will then consider what action, if any, the Committee should take as a result of the member's failure to comply with the Code of Conduct. In doing this, the Committee will give the member an opportunity to make representations to the Committee and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter

The Authority has agreed a procedure for the hearings, which is attached as Appendix one to these arrangements.

8 What action can the Member Standards Hearing Committee take where a member has failed to comply with the Code of Conduct?

The Committee may -

- 8.1 Publish its findings that a member has broken the code of conduct in respect of the member's conduct;
- 8.2 Report its findings to the Authority [or to the Parish Council] for information;
- 8.3 Advise the member's Group Leader of the finding;
- 8.4 Instruct the Monitoring Officer to [or recommend that the Parish Council] arrange training for the member;

- 8.5 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

NOTE :The Committee has no power to suspend or disqualify the member or to withdraw members' or special responsibility allowances.

9 What happens at the end of the hearing?

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

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Committee, and send a copy to you, to the member [and to the Parish Council], make that decision notice available for public inspection and report the decision to the next convenient meeting of the Authority.

10 Who are the Member Standards Hearing Committee?

The Committee is comprised of local authority and parish council members. In any hearing members will be drawn from at least 2 different political parties. A parish council member will sit in cases where the member complained about is a parish councillor.

The Independent Person is invited to attend all meetings of the Committee and his/her views are sought and taken into consideration before the Committee takes any decision on whether the 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.

11 Who is the Independent Person?

The Independent Person is a not a politician or a member of this authority, but has been appointed following advertisement from a vote from a majority of all the members of the Authority.

While the Independent Person is not formally a member of the Member Standards Hearing Committee and do not make the decision, they do play an important and independent role in the process. The Independent Person can question and make submissions during the hearing, which the Committee will have regard to.

12 Revision of these arrangements

The Authority may by resolution agree to amend these arrangements, and has delegated to the Committee the right to depart from these arrangements where the Committee 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 Committee

If you feel that the Authority has failed to deal with your complaint properly, you should seek independent advice. You may consider making a complaint to the Local Government Ombudsman.

Appendix One Procedure for Hearings

Procedure for Hearings

1. Chair welcomes the Member and his/her representative, legal adviser or friend, the Complainant and his/her representative, the Investigating Officer and the Independent Person; and brief explanation of the purpose of the proceedings.
2. Chair Introduce Members of Committee – explain who is a Borough Councillor and Parish Councillor (if sitting).
3. Chair Introduces the Legal Adviser to the Committee and the Administrative Support Officer or his/her representative, briefly explaining their roles.
4. Chair introduce the Independent Person briefly explaining their role
5. Chair asks the Member and his/her representative, legal adviser or friend and the Investigating Officer (IO) to introduce themselves.
6. Chair explain the Procedure:-
 - (a) Hearing inquisitorial , and informal but
 - (b) Will try and follow a structure to the hearing
 - (c) Proposed procedure:-

Preliminary issues

- (i) Determination as to whether to exclude the press and public
- (ii) Resolution of any procedural issues or dispute
- (iii) Identification and narrowing of any disputes of fact:

The investigating Officers report & evidence

- (iv) IO presents report
- (v) Member/Representative to ask questions (of IO) via the Chair
- (vi) Committee to ask questions
- (vii) Independent Person to ask questions
- (viii) IO calls any evidence (and witnesses)
- (ix) Member/Representative asks questions (of Member /Witnesses) via Chair
- (x) Committee to ask questions
- (xi) Independent Person to ask questions

Members case

- (xii) Member/Representative presents their evidence (and witnesses)
- (xiii) IO asks questions (of Member /Witnesses) via Chair
- (xiv) Committee to ask questions
- (xv) Independent Person to ask questions

Closing submissions

- (xvi) IO invited to make representations on findings of facts and code of conduct

- (xvii) Independent Person invited to make representations on findings of fact and code of conduct
- (xviii) Member/representative invited to make representations on findings of fact and code of conduct
- (xix) Committee adjourns.
- (xx) On return, Chair to announce Committee's findings of fact and whether facts lead to conclusion that there has been a failure to comply with the Code of Conduct. Chair to announce Committee decision as to whether Member is considered to have breached Code

Determination of sanction

- (xxi) IO submissions on what action Committee should take
- (xxii) Independent Person submissions on what action Committee should take
- (xxiii) Member/Representative submissions on what action Committee should take
- (xxiv) Committee adjourns
- (xxv) On return, Chair to announce Committee decision as to what action, if any, it considers should be taken and what, if any, other recommendations it considers it should make to the Member's authority.
- (xxvi) Refer to Legal Adviser for information on notification of the decision

7. Parties to be exhorted to follow procedure described.
8. The aim will be to make decisions concerning findings of fact, breach and sanction on same day, but if this is not possible advise the parties when these are expected to be made.
9. If informing Member/Representative verbally of the decision, reasons will be given for the decision.
10. Confirm that decision will also be notified to them in writing in the form of a notice of the Committee's findings (and report) and when; indicate whether or not the findings will be published and, if so, when.