

Arrangements for dealing with allegations of breaches of the Code of Conduct for Councillors

Introduction

1. This procedure applies when a complaint is received that a Councillor, Co-opted member or Parish or Town Councillor has or may have failed to comply with the Code of Conduct for Councillors.
2. The person making the complaint will be referred to as “the Complainant” and the person against whom the complaint is made will be referred to as the “Subject Councillor.”
3. No Councillor or Officer will participate in any stage of the arrangements if he or she has, or may have, any personal conflict of interest in the matter.

Making a complaint

A complaint must be made in writing by post or email to: –

The Monitoring Officer,

Pendle Borough Council,

Town Hall

Market Street,

Nelson,

BB9 7LG

OR

philip.mousdale@pendle.gov.uk

The Monitoring Officer will acknowledge receipt of the complaint within 5 working days of receiving it and, at the same time, write to the Subject Councillor (and in the case of a complaint about a Parish or Town Councillor to the Clerk of the Parish Council as well) with details of the allegations (subject to any representations from the Complainant on confidentiality, which are accepted as valid by the Monitoring Officer). The Subject Councillor may, within 5 working days of receipt, make written representations to the Monitoring Officer which he must take into account when deciding how the complaint will be dealt with. Representations received after this time may be taken into account, at the discretion of the Monitoring Officer, but will in any event not be considered after the Monitoring Officer has issued his Initial Complaint Assessment.

Complaint Initial Assessment

The Monitoring Officer will review the complaint and, after consultation with the Independent Person, take a decision (a Complaint Initial Assessment) as to whether it merits investigation, or another course of action. This decision will normally be taken within 20 working days of receipt of a complaint.

If the complaint fails one or more of the following tests, it will be rejected:

- The complaint is against one or more named Councillors or co-opted Councillors of the Council or a parish council within its district;

- The subject Councillor was in office at the time of the alleged conduct and the Code of Conduct was in force at the time;
- The complaint, if proven, would be a breach of the Code of Conduct under which the subject Councillor was operating at the time of the alleged misconduct.

If appropriate, the Monitoring Officer will then go on to apply the following criteria in deciding whether a complaint should be accepted for investigation, dealt with informally, or rejected:

- Whether a substantially similar allegation has previously been made by the Complainant to Standards for England, or the Standards Committee, or the complaint has been the subject of an investigation by another regulatory authority;
- Whether the complaint is about something that happened so long ago that those involved are unlikely to remember it clearly enough to provide credible evidence, or where the lapse of time means there would be little benefit or point in taking action now;
- Whether the allegation is anonymous;
- Whether the allegation discloses a potential breach of the Code of Conduct, but the complaint is not serious enough to merit any action and:-
 - (i) the resources needed to investigate and determine the complaint are wholly disproportionate to the allegations;
 - (ii) whether, in all the circumstances, there is no overriding public benefit in carrying out an investigation;
- Whether the complaint appears to be malicious, vexatious, politically motivated or tit-for-tat;
- Whether the complaint suggests that there is a wider problem throughout the authority;
- Whether it is apparent that the subject of the allegation is relatively inexperienced as a Councillor, or has admitted making an error and the matter would not warrant a more serious sanction;
- Whether training or conciliation would be the appropriate response;

Additional Information

The Monitoring Officer may require additional information to come to a decision and may request information from the Subject Councillor. Where the complaint relates to a Parish or Town Councillor, the Monitoring Officer may also inform the Clerk of the Parish Council of the complaint and seek the views of the Clerk of the Parish or Town Council before deciding whether the complaint merits formal investigation or other action. In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for an investigation. Such informal resolution may involve the Subject Councillor accepting that his/her conduct was unacceptable and offering an apology, or taking other steps. Where the Subject Councillor or the authority (in appropriate cases) make a reasonable offer of local resolution, but it is rejected by the Complainant, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

If the complaint identifies criminal conduct or breach of other regulations by any person, the Monitoring Officer is authorised to report this to the Police or other prosecuting or regulatory authorities.

Confidentiality

If a Complainant has asked for their identity to be withheld, this request will be considered by the Monitoring Officer at the Complaint Initial Assessment stage.

As a matter of fairness and natural justice, the Subject Councillor should usually be told who has complained about them and receive details of the complaint. However, in exceptional circumstances, the Monitoring Officer may withhold the Complainant's identity if on request from the Complainant, or otherwise, they are satisfied that the Complainant has reasonable grounds for believing that they or any witness relevant to the complainant may be at risk of physical harm, or his or her employment may be jeopardised if their identity is disclosed, or where there are medical risks (supported by medical evidence) associated with the Complainant's identity being disclosed.

If the Monitoring Officer decides to refuse a request by a Complainant for confidentiality, they will offer the Complainant the option to withdraw the complaint, rather than proceed with his or her identity being disclosed. The Monitoring Officer will balance whether the public interest in taking action on a complaint will outweigh the Complainant's wish to have his or her identity withheld from the Subject Councillor

Investigation

The Monitoring Officer will appoint an Investigating Officer where a complaint merits formal investigation. The Investigating Officer may be a Council officer, an officer of another Council, or an external investigator.

The Investigating Officer will follow guidance issued by the Monitoring Officer on the investigation of complaints. The guidance will follow the principles of proportionality and the cost-effective use of Council resources and shall be interpreted in line with these principles.

The Investigating Officer will ensure that the Subject Councillor receives a copy of the complaint – subject to a Monitoring Officer decision on Confidentiality.

At the end of their investigation, the Investigating Officer will produce a draft report and will send copies of that draft report to the Complainant and to the Subject Councillor, for comments. The Investigating Officer will take such comments into account, before issuing their final report to the Monitoring Officer.

Investigating Officer finding of insufficient evidence of 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 is satisfactory, will make a Confirmation Decision to confirm the finding of no failure to comply with the Code of Conduct.

The Monitoring Officer will write to the Complainant and the Subject Councillor (and to the Clerk of the Parish or Town Council, where the complaint relates to a Parish or Town Councillor), with a copy of the Confirmation Decision and the Investigating Officer's final report.

If the Monitoring Officer is not satisfied that the investigation has been conducted satisfactorily, he may ask the Investigating Officer to reconsider their report and conclusion.

Investigating Officer finding of sufficient evidence of 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 or, after consulting the Independent Person, seek Local Resolution.

Local Resolution

If the Monitoring Officer considers that the matter can reasonably be resolved without the need for a hearing, they will consult with the Independent Person and the Complainant and seek to agree a fair resolution. Such resolution may include the Councillor accepting that their conduct was unacceptable and offering an apology, and/or other remedial action. If the Councillor accepts the suggested resolution, the Monitoring Officer will report the outcome to the Parish or Town Council (if appropriate) for information, but will take no further action. If the Complainant or the Subject Councillor refuses Local Resolution in principle or to engage with the agreed outcome, the Monitoring Officer will refer the matter for a Local Hearing without further reference to the Complainant or the Subject Councillor.

Local Hearing

Where, in the opinion of the Monitoring Officer, Local Resolution is not appropriate or the Complainant and/or Subject Councillor refuse to co-operate, 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 Councillor has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Councillor.

The Council has agreed a procedure for local hearings, which is attached in the Schedule to these arrangements.

Constitution of the Hearings Panel

The Hearings Panel is a Sub-Committee of the Council. The Council has decided that it will be a politically balanced committee comprising 2 Conservative, 2 Labour and 2 Liberal Democrat members.

The Independent Person is invited to attend all meetings of the Hearings Panel and their views must be sought and taken into consideration before the Hearings Panel takes any decision on whether the Councillor'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 Independent Person

The Independent Person must be a person who has applied for the post following advertisement of a vacancy for the post, and appointed by a positive vote from a majority of all the Councillors of Council at a meeting of the Full Council.

A person is not eligible for appointment if they:

- Are, or have been within the past 5 years, a Councillor, co-opted Councillor or officer of the Council;

- Are or have been within the past 5 years, a Councillor, co-opted Councillor or officer of a parish council within the Borough, or
- Are a relative, or close friend, of a person within paragraph 14.1 or 14.2 above. For this purpose, “relative” means –
- Spouse or civil partner;
- Living with the other person as husband and wife or as if they were civil partners;
- Grandparent of the other person;
- A lineal descendent of a grandparent of the other person;
- A parent, sibling or child of a person within paragraphs 14.3.1 or 14.3.2;
- A spouse or civil partner of a person within paragraphs 14.3.3, 14.3.4 or 11.3.5; or
- Living with a person within paragraphs 14.3.3, 14.3.4 or 14.3.5 as husband and wife or as if they were civil partners.

Action the Hearings Panel may take where a Councillor has failed to comply with the Code of Conduct

Where the Hearings Panel finds that a Councillor has failed to comply with the Code of Conduct, the Council has delegated to the Hearings Panel such of its powers to take action in respect of individual Councillors as may be necessary to promote and maintain high standards of conduct. Accordingly the Hearings Panel may –

- Publish its findings in respect of the Councillor’s conduct;
- Report its findings to Council (or to the Parish Council) for information;
- Recommend to Council that the Councillor be censured;
- Recommend to the Councillor’s Group Leader (or in the case of un-grouped Councillors, recommend to Council) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- Recommend to the Leader of the Council that the Councillor be removed from the Executive, or removed from their Portfolio responsibilities;
- Instruct the Monitoring Officer to (or recommend that the Parish Council) arrange training for the Councillor;
- Recommend to Council (or recommend to the Parish Council that the Councillor be removed) from all outside body appointments to which they have been appointed or nominated by the Council (or by the Parish Council);
- Withdraw (or recommend to the Parish Council that it withdraws) facilities provided to the Councillor by the Council, such as a computer, website and/or email and Internet access; or

- Exclude (or recommend that the Parish Council exclude) the Councillor from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

Revision of these arrangements

The Council may by resolution or delegation to the Monitoring Officer agree to amend these arrangements.

Appeals

Subject to Judicial Review, or a decision of the Local Government Ombudsman, there is no right of appeal against a decision of the Monitoring Officer or of the Hearings Panel.

Schedule

Hearings Panel - Hearing Procedure

1. The Chairman may agree to vary this procedure in any particular instance where he/she is of the opinion that such variation is necessary in the interests of fairness.
2. The Subject Councillor may be legally represented, or with the permission of the Hearings Panel, by another person. It is the responsibility of the Subject Councillor to arrange any representation.
3. The e may take legal advice from its Legal Adviser at any time during the hearing or during its deliberations. The substance of any advice given to the Hearings Panel will be shared with the Subject Councillor and Investigating Officer (IO) if they are present at the hearing.
4. At the start of the hearing, the Chairman shall introduce each of the members of the Hearings Panel, the Subject Councillor (if present), the IO (if present), and the Legal Adviser, and shall then explain the procedure which the Hearings Panel will follow.
5. The Sub- Committee shall then deal with any disclosures of interests.
6. If the Subject Councillor is not present at the start of the hearing:
 - The Chairman will ask the Legal Adviser whether the Subject Councillor has indicated his/her intention not to attend the hearing
 - The Hearings Panel shall then consider any reasons which the Subject Councillor has provided for not attending the hearing
 - If it is not satisfied with such reasons, or if the Subject Councillor has not given any such reasons, the Hearings Panel shall decide whether to consider the matter and make a determination in the absence of the Subject Councillor, or to adjourn the hearing to another date.
7. After the preliminary procedures, the Hearings Panel will consider whether or not there are any significant disagreements about the facts contained in the I O's report.
8. If there is disagreement, the IO will present the evidence which is relevant to the facts in dispute. With the permission of the Hearings Panel, witnesses can be called to give relevant evidence. The Subject Councillor and the Hearings Panel members may ask questions of the IO or any witness.
9. The Subject Councillor or his/her representative will then present the evidence which is relevant to the facts in dispute. With the permission of the Hearings Panel, witnesses can be called to give relevant evidence. The IO and the Hearings Panel members may ask questions of the Subject Councillor or any witnesses.
10. If the Subject Councillor disagrees with any relevant fact in the report without having given prior notice, he or she must give good reasons for not mentioning it before the hearing. After considering the Subject Councillor's explanation, the Hearings Panel may continue with the hearing, relying on the information in the report, may allow the Subject Councillor to make representations about the issue and invite the IO to respond and call any witnesses as necessary, or may postpone the hearing to arrange for appropriate witnesses to be present.

11. The Hearings Panel will consider in private all the evidence which it has heard in order to establish its findings of fact, and to reach a conclusion as to whether there has been a failure to comply with the Code of Conduct.
12. At any stage in the consideration of the matter, the Hearings Panel may return to ask further questions of the IO or the Subject Councillor or seek further information. The other party will be given an opportunity to comment upon the questions asked or the responses made.
13. At the conclusion of the Hearings Panel's deliberations, the Chairman will announce its findings.
14. If the Hearings Panel concludes that the Subject Councillor has failed to comply with the Code of Conduct, the Chairman will invite representations from the IO and the Subject Councillor as to what action, if any, it should recommend. The Hearings Panel may ask questions of the Subject Councillor and the IO. The Subject Councillor will be invited to make any final relevant points.
15. The Hearings Panel shall then consider in private whether to recommend a sanction, and, if so, what sanction to recommend.
16. The Chairman will announce the decision of the Hearings Panel. Written notice of the findings of the Hearings Panel will be given as soon as is reasonably practicable to the Subject Councillor, the Standards Committee of any other authority concerned, any parish council concerned, and any person who made an allegation that gave rise to the investigation.