

GATESHEAD COUNCIL

Arrangements for Dealing with Allegations of Breaches of the Code of Conduct for Members and Co-opted Members

1. Introduction

These arrangements set out how the Gateshead Council ('the Council') will deal with a complaint that an elected or co-opted Member of the Council has failed to comply with the Council's Code of Conduct.

Under Section 28 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 a Committee or Sub-committee of the Council, has failed to comply with the 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 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.

The Council has appointed one Independent Person.

2. Receipt of a complaint

A complaint against a Member or Co-opted Member should be sent by the Complainant in writing or by email to:

The Monitoring Officer
Gateshead Council
Civic Centre
Regent Street
Gateshead
NE8 1HH

Or email: mikebarker@gateshead.gov.uk

The Monitoring Officer has statutory responsibility for maintaining the register of members' interests and is responsible for administering the system in respect of complaints of member misconduct.

The Monitoring Officer will acknowledge receipt of the complaint to the Complainant and provide the subject member of the complaint, with a copy of the complaint within 5 working days of receiving it, and will keep all parties informed of the progress of the complaint. The Monitoring Officer will also seek comments from the subject member of the complaint to assist in the initial assessment of the complaint.

3. Request for confidentiality

If a Complainant wants to keep their name and address confidential, they are required to indicate this when they submit their complaint. The Council will not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

To ensure openness and transparency confidentiality will only be granted in exceptional circumstances and in many instances it would not be practical or possible to investigate a complaint without the identity of the complainant being revealed. If, however, confidentiality is granted and the complaint proceeds the Monitoring Officer will determine whether or when the subject member will be advised of the complaint and the identity of the Complainant. The procedure set out below will be adjusted as appropriate to accommodate the decision of the Monitoring Officer.

Where a request for confidentiality is refused by the Monitoring Officer, the Complainant will be advised of that refusal and will be given the option to withdraw the complaint within 7 working days. If the complaint is withdrawn the matter will be then closed and the subject member will not be informed of the complaint. If the Complainant refuses to withdraw the complaint or does not respond within the specified timescale, then the subject member will be sent a copy of the complaint and the complaint will proceed as set out below.

4. Will the complaint be investigated?

The Monitoring Officer will review every complaint received and decide whether the complaint will be investigated. The decision will be based on whether the allegation, if proved, would constitute a failure to observe the Code of Conduct and the application of the Council's adopted assessment criteria (attached at Annex 1). This decision will normally be taken within 28 days of receipt of the complaint. The parties will be advised of the Monitoring Officer's decision together with the reasons for that decision – subject to any decision on confidentiality arising as referred to above.

Where the Monitoring Officer requires additional information in order to come to a decision, he/she may go back to the Complainant for such information, and may request information from the subject member of the complaint.

If the complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer may refer the complaint to the Police or other regulatory agencies irrespective of a request for confidentiality by the Complainant.

5. Informal Resolution

The Monitoring Officer may consider that a complaint can be reasonably resolved informally. In such a case, the Monitoring Officer will consult with the subject member and the Complainant (along with the Independent Person if the Monitoring Officer thinks it is appropriate) to seek to agree a fair resolution of the complaint which also helps to ensure high standards of conduct for the future. If the subject member complies with the suggested resolution, the Monitoring Officer will report the matter to the Audit and Standards Committee ('the Committee') for information, but will take no further action.

6. How is the investigation conducted?

If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer. The Investigating Officer may be another officer of the Council or an external investigator.

The Investigating Officer will write to the subject member and will ask them to provide their explanation of events, and to identify what documents or other materials they believe the Investigating Officer needs to see and who to interview.

The Investigating Officer will decide whether he/she needs 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 or other materials the Investigating Officer needs to see, and who the Investigating Officer needs to interview.

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 the subject member and to the Complainant, to give both an opportunity to identify any matter in that draft report which they disagree with or which they consider requires more consideration. A copy of the draft report will also be sent to the Monitoring Officer.

Having received and taken account of any comments which the Complainant or subject member may make on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer.

7. What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?

An Audit and Standards (Investigations and Hearings) Sub-Committee ('the Sub-Committee') will be convened.

The Sub-Committee will review the Investigating Officer's report and, if they are satisfied that the Investigating Officer's report is sufficient and they agree that there is no evidence of a failure to comply with the Code of Conduct, they will instruct the Monitoring Officer to write to the subject member and to the Complainant, notifying both that they are satisfied that no further action is required, and give both a copy of the Investigating Officer's final report.

If the Sub-Committee do not agree with the conclusion that there is no evidence of a failure to comply with the Code of Conduct they will refer the matter for a hearing before the Sub-Committee.

In considering the report, the Sub-Committee will consult with the Council's Independent Person.

If the Sub-Committee is not satisfied that the investigation has been conducted properly, they may ask the Investigating Officer to reconsider his/her report. Upon the receipt of the report back from the Investigating Officer, the Committee will consider whether to accept the report or refer it to a hearing.

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

a) Local Resolution

Where the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct, there may still be an opportunity for local resolution,

avoiding the necessity of a hearing. An investigation report may cause a member to recognise that his/her conduct was at least capable of giving offence, and /or identify other appropriate remedial action, and the Complainant may be satisfied for instance, by recognition of fault or an apology. It would only be appropriate for the Monitoring Officer to agree a local resolution at this stage after consultation with the Council's Independent Person and the Chair of the Committee. In addition, this would be conditional on the Complainant being satisfied with the outcome. A summary report on any local resolution of a complaint would be reported to the Committee for information.

b) Referral for Hearing

If local resolution was not possible, the Monitoring Officer will then refer the matter for a hearing before the Sub-Committee.

9. The Hearing

Where the Sub-Committee has referred a matter for a hearing the procedure at Annex 2 will apply.

10. What action can the Audit and Standards Committee take where a member has failed to comply with the Code of Conduct?

Gateshead Council has delegated to the Committee such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Any action will be taken following a recommendation from the Sub-Committee.

Accordingly the Committee may –

- a) Issue a formal censure;
- b) Refer the determination findings to the Council for information;
- c) Make publication of the determination findings by such means as thought fit;
- d) Request the Council to remove the member from being the Chair or Vice Chair of any Committee or Sub-committee
- e) Request the Council remove them from any or all Committees or Sub-committees for a specified period;
- f) Request the Council to remove the Member for a specified time from all or specified outside appointments to which s/he has been appointed or nominated by the Council.
- g) Offer training to the member; or
- h) Exclude the member from the Council's offices or other premises or facilities, for a specified period and to the extent desirable and so as not to interfere with the democratic process, in particular the member's ability to carry out his or her role as an elected member.

11. What happens at the end of the Hearing?

At the end of the hearing, the Chair will state the decision of the Sub-Committee as to whether a member has failed to comply with the Code of Conduct and as to any actions which the Sub-Committee is recommending that the Committee should

take. A report will then be taken to the Committee setting out the results of the investigation, the findings of the Sub-Committee and recommended action.

As soon as reasonably practicable after the Committee decision, the Monitoring Officer in consultation with the Chair of the Committee, will prepare a formal decision notice, and send a copy to the Member and the Complainant, make that decision notice available for public inspection on the Council's website and, if so directed by the Audit and Standards Committee, report the decision to the next convenient meeting of the Council.

12. Review of decisions

Procedures for the review of decisions are set out in Annex 3.

13. What is the Audit and Standards Committee?

The Committee is made consists of seven councillors and three co-opted members. The Committee is a key component of the Council's corporate governance arrangements and is responsible (amongst other things) for the promotion and maintenance of high standards of conduct by its elected and co-opted members. The full terms of reference for the committee can be found in the Constitution.

14. What is the Audit and Standards (Investigations and Hearings) Sub-Committee?

The Sub-Committee will be convened to deal with the complaints and investigations duties set out in these arrangements. When appropriate, the Monitoring Office, in consultation with the Chair of the Committee, will select from the membership of the Committee, three elected members and one independent member to constitute the Sub-Committee.

15. Who is the Independent Person?

The Independent Person has applied for the post following advertisement of a vacancy for the role, and is appointed by the Council.

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

The Independent Person does not have voting rights on the Committee or Sub-Committee. Their role is an advisory one.

16. Revision of these arrangements

The Committee or Sub-Committee, on the advice of the Monitoring Officer, may depart from these arrangements where it is necessary to do so in order to secure the effective and fair consideration of any matter. The arrangements will also be subject to periodic review by the Council.

Assessment criteria for complaints against councillors

The following criteria will be taken into account in deciding what action, if any, to take:

- 1. Has the complainant submitted enough information to satisfy the Monitoring Officer (or the Audit and Standards Committee if appropriate) that the complaint should be referred for investigation or other action?**
If not:
The information provided is insufficient to make a decision. So unless, or until, further information is received, no further action will be taken on the complaint.
- 2. Is the complaint about someone who is no longer a member of the Council, but is a member of another authority? If so, should the complaint be referred to the monitoring officer of that other authority?**
If yes:
The complaint will be referred to the monitoring officer of that other authority to consider.
- 3. Has the complaint already been the subject of an investigation or other action relating to the Code of Conduct? Similarly, has the complaint been the subject of an investigation by other regulatory authorities?**
If yes:
There may be nothing more to be gained by further action being taken.
- 4. Is the complaint about something which happened so long ago that there would be little benefit in taking action now?**
If yes:
Further action may not be warranted.
- 5. Does the complaint appear too trivial to justify the cost or inconvenience of further action?**
If yes:
Further action will not be warranted.
- 6. Does the complaint appear to be simply malicious, politically motivated or tit-for-tat?**
If yes:
Further action will not normally be warranted.
- 7. Is the complaint anonymous?**
If yes:
No action will normally be taken unless there are compelling reasons to suggest otherwise, e.g. if it includes documentary or photographic evidence indicating an exceptionally serious or significant matter.

Procedure for Hearings

1. Introduction

This Annex details the procedure to be adopted for the hearing of complaints by the Sub-Committee where an investigation has been completed.

The person(s) making the complaint will be referred to in this procedure as the Complainant and the person against whom the complaint is made will be referred to as the Member.

The Investigating Officer means the Monitoring Officer or other person appointed by the Monitoring Officer to conduct a local investigation in relation to a matter referred to the Monitoring Officer for local investigation.

References to Monitoring Officer include any other person appointed by the Monitoring Officer to carry out the functions of the Monitoring Officer.

2. Legal Advice to the Governance Committee

Where the Monitoring Officer also takes the role of the Investigating Officer, he/she must arrange for a separate legal adviser for the Sub-Committee in respect of the allegation.

3. Notifying the Subject-Member and Complainant

The Monitoring Officer shall send a copy of the Investigating Officer's final report to the Subject-Member, the Complainant and the Independent Person.

The Monitoring Officer will ask for a written response from the Member within 14 days, stating whether or not s/he:

- disagrees with any of the findings of fact in the report, including the reasons for any disagreements;
- wants to be represented, at his/her own expense, at the hearing by a solicitor, barrister or any other person;
- wants to give evidence to the Sub-Committee, either verbally or in writing;
- wants to call relevant witnesses to give evidence to the Sub-Committee;
- wants any part of the hearing to be held in private; or
- wants any part of the report or other relevant documents to be withheld from the public.

The Monitoring Officer will also inform the Member that if, at the meeting of the Sub-Committee, s/he seeks to dispute any matter contained in the report, without having previously notified his/her intention to do so, the Sub-Committee may either adjourn the meeting to enable the Investigating Officer to provide a response, or refuse to allow the disputed matter to be raised.

The Monitoring Officer will also seek the views of the Independent Person on the report and on any action the Independent Person feels should be taken in respect of it. Upon receipt of the responses, the Monitoring Officer will discuss the responses with the Chair of the Sub-Committee and will complete a pre-hearing summary which will include:

- a) The name of the Member.
- b) The name of the complainant (unless there are good reasons to keep his/her identity confidential).
- c) The case reference number.
- d) The name of the Chair for the hearing.
- e) The name of the Investigating Officer.
- f) The name of the clerk of the hearing or other administrative officer.
- g) The date the pre-hearing summary was produced.
- h) The date, time and place of the hearing.
- i) A summary of the complaint.
- j) The relevant section or sections of the Code of Conduct.
- k) The findings of fact in the investigation report which are agreed and the findings of fact in the investigation report which are not agreed.
- l) Whether the Member or the Investigating Officer will attend or be represented.
- m) The names of any witnesses who will be asked to give evidence.
- n) An outline of the proposed procedure for the hearing.

The Member and the Investigating Officer are entitled to request that any witnesses they want should be called. However, the Chair of the Sub-Committee, following advice from the legal adviser, may limit the number of witnesses, if he/she believes the number requested is unreasonable or that some witnesses will simply be repeating the evidence of earlier witnesses, or else will not provide evidence that will assist the Committee to reach its decision.

Nothing in this procedure shall limit the Chair of the Sub-Committee from requesting the attendance of any additional witnesses whose evidence he/she considers would assist the Sub-Committee to reach its decision.

4. The Sub-Committee

The Sub-Committee shall decide, on the balance of probability, whether the grounds of the complaint are upheld. It shall do so by considering the report and, where appropriate, written or oral representations made by the Member, and any additional relevant information from the Investigating Officer or witnesses.

Each Sub-Committee member shall have one vote, and all matters/issues shall be decided by a simple majority of votes cast.

The meeting of the Sub-Committee will be open to the public and press unless confidential information or exempt information under Schedule 12A of the Local Government Act 1972 is likely to be disclosed.

5. Procedure at the Hearing

The initial order of business at the meeting shall be as follows:

- declarations of interest;
- consideration as to whether to adjourn or to proceed in the absence of the Member, if the Member is not present;
- introductions;
- any representation from the Investigating Officer and/or the Member as to reasons why the Sub-Committee should exclude the press and public and determination as to whether to exclude the press and public. Where the Sub-Committee decides that it will not exclude press and public, the Monitoring Officer shall at this point provide copies of the agenda and reports to any members of the press and public who are present.

The purpose of the hearing is to test the robustness of the report, by examining the reasoning contained within the report and the quality of the evidence relied upon. This calls for an inquisitorial approach by the Sub-Committee based on seeking information in order to identify potential flaws in the report and to clarify issues. The Audit and Standards Committee will control the procedure and evidence presented at the hearing, including the questioning of witnesses.

The Sub-Committee may at any time seek legal advice from its legal adviser. Such advice will on all occasions be given in the presence of the Investigating Officer and the Member.

The procedure at the hearing will be as follows, subject to the Chair of the Sub-Committee being able to make changes as he or she thinks fit in order to ensure a fair and efficient meeting.

a) Examination of report and written representations

The Sub-Committee will consider the report together with any written response from the Member to the report. The Sub-Committee may require the Investigating Officer to answer questions put to him/her by members regarding the contents of the report.

The Sub-Committee must also take account of the views expressed by the Independent Persons in their response to the Monitoring Officer.

b) Oral evidence

If there is any disagreement as to the facts of the case, the Investigating Officer will be invited to make any necessary representations to support the relevant findings of fact in the report, calling supporting witnesses as agreed by the Chair.

Questions may be asked by the Sub-Committee at any point. The Member, will not be permitted to directly question the Investigating Officer or the witnesses he/she calls.

If the Member wishes to challenge any oral evidence being presented, then these questions shall be directed through the Chair.

The Member will then be invited to make any necessary representations to support their version of the facts, calling supporting witnesses as agreed by the Chair.

Questions may be asked by the Sub-Committee at any point. The Investigating Officer will not be permitted to directly question the Member or the witnesses he/she calls. If they wish to challenge any oral evidence being presented, then these questions must be directed through the Chair.

Where the Member seeks to dispute any matter in the report which he/she had not given notice of intention to dispute in his/her written statement in response, the Investigating Officer shall draw this to the attention of the Sub-Committee. The Sub-Committee may then decide:

- not to admit such dispute but to proceed to a decision;
- to admit the dispute, but to invite the Investigating Officer to respond
- to adjourn the meeting to enable the Investigating Officer to investigate and report on the dispute

Where appropriate the Investigating Officer will make representations on behalf of the Complainant to the Sub-Committee.

The Sub-Committee may adjourn the hearing to require the Monitoring Officer to seek further information or undertake further investigation on any point specified by the Committee.

6. Decision by the Sub- Committee

The Sub-Committee will consider in private session which of the following findings to adopt:

- that there is no evidence of any failure to comply with the Code of Conduct;
- that the Member has failed to comply with the Code of Conduct, but that no action needs to be taken;
- that the Member has failed to comply with the Code of Conduct and that a sanction should be imposed.

The available sanctions are:-

- a) Issue a formal censure;
- b) Refer the determination findings to the Council for information;
- c) Make publication of the determination findings by such means as thought fit;
- d) Request the Council to remove the member from being the Chair or Vice Chair of any Committee or Sub-committee
- e) Request the Council to remove them from any or all Committees or Sub-committees for a specified period;
- f) Request the Council to remove the member for a specified time from all or specified outside appointments to which s/he has been appointed or nominated the Council ;.
- g) Offer training to the member; or

- h) Exclude the member from the Council's offices or other premises or facilities, for a specified period and to the extent desirable and so as not to interfere with the democratic process, in particular the member's ability to carry out his or her role as an elected member.

In deciding what sanction (if any) to recommend the Sub-Committee will consider all relevant circumstances including any views expressed by the Independent Person.

The Sub-Committee will then resume the public session and the Chair will announce the decision and the reasons for that decision.

If the matter is a complicated one, where the complaint has a number of aspects, the Sub-Committee can decide to consider the evidence and reach a finding on each aspect separately.

The Sub-Committee will then consider in open session whether there are any recommendations which it wishes to make arising from consideration of the allegation.

7. Notice of findings

The Monitoring Officer will make a short written decision available on the day of the hearing and a full written decision in draft will be prepared as soon as possible, which will form the basis of the recommendation report to the Committee.

Within two weeks of the end of the hearing, the Monitoring Officer will circulate a full written decision, to the Member and the Complainant and convene a Committee to receive the recommendation report.

8. Confidentiality and disclosure of information

Where the Chair of the Committee considers that the report and/or any of the written statements in response are likely to disclose any exempt information and in consequence that it is likely that the Committee will, during consideration of these matters, not be open to the public, he/she shall instruct the legal adviser to not provide copies of these papers to the press or public or permit their inspection by the press or public in advance of the meeting.

The Hearing will be held in public except for those parts of its proceedings which involve exempt information and during the deliberations of the Committee.