

SOUTH RIBBLE BOROUGH COUNCIL**INVESTIGATION AND HEARING PROCEDURE****ARRANGEMENTS FOR DEALING WITH COMPLAINTS ABOUT THE CODE OF CONDUCT FOR MEMBERS****1. Introduction**

1. This procedure applies when a complaint is received that a Member, Co-opted Member or Parish Member has or may have failed to comply with the Code of Conduct for Members.
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 Member.”
3. No Member 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.

2. Making a complaint

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

David Whelan
Interim Monitoring Officer
South Ribble Borough Council
Civic Centre
Leyland
PR25 1DH

OR

dwhelan@southribble.gov.uk

1. The Monitoring Officer will acknowledge receipt of the complaint within 5 working days of receiving it.
2. Details of the complaint will initially be given (either verbally or in writing) to the Subject Member (and in the case of a complaint about a Parish Councillor to the Clerk of the Parish Council as well).
3. The Subject Member may either reply verbally to the monitoring officer or within 5 working days of receipt, make written representations which he must take into account when deciding how the complaint will be dealt with. Representations received after this time will not be taken into account unless the monitoring officer deems it necessary to do so.

3. Initial Assessment

1. The Monitoring Officer will review the complaint and make an initial assessment as to whether it merits consideration.
2. If the Monitoring Officer believes the information received merits consideration he will after consultation with the Independent Person take a decision as to whether it should be investigated, or another course of action. This decision will normally be taken within 20 working days of receipt of a complaint.

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

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

The Monitoring Officer may request whatever additional information he feels is necessary to come to a decision on whether the complaint merits formal investigation.

4. Confidentiality

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

As a matter of fairness and natural justice, the Subject Member should usually be told who has complained about them and receive details of the complaint.

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 Member

5. Maintenance of Confidentiality by Members

Any Member involved in a complaint – whether as Complainant, Subject Member or Witness – is strongly recommended not to speak to the Press about the complaint (or to discuss it on social media) whilst that complaint is still being dealt with by the Monitoring Officer and/or Standards Committee

6. Informal Resolution

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 Member accepting that his/her conduct was unacceptable and offering an apology, or taking other steps.

Where the Subject Member 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.

The Monitoring Officer will endeavour to seek resolution of complaints without formal investigation wherever practicable.

7. Investigation

If the Monitoring Officer decides that a complaint merits formal investigation then he may appoint an Investigating Officer.

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 Member, for comments. The Investigating Officer will take such comments into account, before issuing their final report to the Monitoring Officer.

If at any time the Monitoring Officer feels that it is inappropriate for him to take a decision or act further in respect of a complaint he has discretion to refer the matter to the Standards Committee.

8. 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 and will close the matter.

The Monitoring Officer will write to the Complainant and the Subject Member (and to the Clerk of the Parish Council, where the complaint relates to a Parish Councillor), with a copy of the Confirmation Decision and the Investigating Officer's final report. A copy will also be provided to the Independent Person.

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.

9. 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 Standards Committee or, after consulting the Independent Person and the Complainant, seek Local Resolution.

If the Subject Member accepts the suggested resolution, the Monitoring Officer will report the outcome to the Standards Committee and the Parish Council (if appropriate) for information, but will take no further action. If the Complainant or the Subject Member 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 Member.

Where, in the opinion of the Monitoring Officer, Local Resolution is not appropriate or the Complainant and/or Subject Member refuse to co-operate, then the Monitoring Officer will report the Investigating Officer's report to the Standards Committee 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.

10. Hearings Panel

The Standards Committee has authority to appoint a Hearings Panel to consider complaints that warrant formal hearing. The Hearings Panel will consist of either the full Standards committee or a sub-committee of that committee. . In addition the Standards Committee is able to appoint Parish Councillors as non-voting co-opted members of the Panel. Composition of the Hearing Panel will be considered on a case by case basis. If a sub-committee of the committee is to be utilised then the Monitoring officer will have the authority to determine the membership of that sub-committee.

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 Standards 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. 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 Members of Council at a meeting of the Full Council.

A person is not eligible for appointment if they:

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

11.2 Are or have been within the past 5 years, a Member, co-opted Member or officer of a parish council within the Borough, or

11.3 Are a relative, or close friend, of a person within paragraph 10.1 or 10.2 above. For this purpose, "relative" means –

11.3.1 Spouse or civil partner;

11.3.2 Living with the other person as husband and wife or as if they were civil partners;

11.3.3 Grandparent of the other person;

11.3.4 A lineal descendent of a grandparent of the other person;

11.3.5 A parent, sibling or child of a person within paragraphs 11.3.1 or 11.3.2;

11.3.6 A spouse or civil partner of a person within paragraphs 11.3.3, 11.3.4 or 11.3.5; or

11.3.7 Living with a person within paragraphs 11.3.3, 11.3.4 or 11.3.5 as husband and wife or as if they were civil partners.

12. Hearing Procedure

12.1 The Monitoring Officer shall ensure that a Committee Report is prepared to ensure the Hearings Panel has sufficient information before it to make a fully informed decision. He will also ensure that information provided to the Hearings Panel is done so in a proper manner.

12.2 The Subject member may be represented or accompanied at the meeting by a solicitor or barrister, or with the permission of the Standards Committee another person. It is the responsibility of the subject member to arrange any representation.

12.3 If any party to the hearing wishes to raise issues in respect of factual inaccuracies in relation to the Investigating Officer's report or any evidence attached to it then they must do so in writing to the Monitoring Officer (with copies to all other parties) no later than 7 days prior to the commencement of the hearing.

12.4 The Hearings Panel may take advice from the Monitoring Officer and its legal advisers at any time during the Hearing or during its deliberations.

12.5 The Independent Member will normally be present through the hearing and may be invited into deliberations if it is thought appropriate. The Independent Person MUST be consulted before the Standards Committee makes any finding that a member has failed to comply with the Code of Conduct and before the Standards Committee imposes any sanction for a breach of the code. The Independent Person may ask questions of anyone present at the hearing.

12.6 Parish Representatives (in particular where the complaint involves a Parish Councillor) may be invited to attend hearings and where appropriate be invited into deliberations. They may also, with permission of the Chair ask questions of anyone present at the hearing and/or provide an opinion if so requested to do so but will not be able to vote when the Standards Committee determines any complaint.

12.7 If the Subject Member is not present at the start of the hearing:

- The Chairman should ask the Monitoring Officer whether the Subject Member has indicated his/her intention not to attend the Hearing
- The Hearing Panel should then consider any reasons which the Subject Member has provided for not attending the Hearing and should decide whether it is satisfied that there is sufficient reason for such failure to attend
- If the Hearings Panel is satisfied with such reasons, it should adjourn the Hearing to another date
- If the Hearings Panel is not satisfied with such reasons, or if the Subject Member has not given any such reasons, the Hearings Panel should decide whether to consider the matter and make a determination in the absence of the Subject Member, or to adjourn the Hearing to another date.

12.8 The Hearings Panel should consider whether or not there are any significant disagreements between the parties (i.e. the Subject Member and the Investigating Officer) about the facts contained in the Investigating Officer's report.

12.9 If there is disagreement, the Investigating Officer should present any 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 Member, Independent Person and the Hearings Panel members may ask relevant questions of the Investigating Officer or any witness.

12.10. The Subject Member should then present any evidence that is relevant to the facts in dispute. With the permission of the Hearings Panel, witnesses may be called to give relevant evidence. The Investigating Officer, and the Hearings Panel members and the Independent Person may ask relevant questions of the Subject Member or any witnesses.

12.11. If the Subject Member disagrees with any relevant fact in the report without having given prior notice, he or she must give good reasons for not mentioning it prior to the Hearing. After considering the Subject Member's explanation, the Hearings Panel may:

1. continue with the Hearing, relying on the information in the report;
2. may allow the Subject Member to make representations about the issue and invite the Investigating Officer to respond;
3. Call any witnesses as necessary, or may adjourn the Hearing to another date.

12.12. The Investigating Officer may then make representations as to why he/she believes that a breach of the Code of Conduct has occurred. The Subject Member, Independent Person and the Hearings Panel may ask relevant questions of the Investigating Officer in this regard.

12.13. The Subject Member may then make representations as to why he/she believes that the Code of Conduct has not been breached. The Investigating Officer, Independent Person and the Standards Committee members may then ask relevant questions of the Subject Member and his/her representative.

12.14. The Investigating Officer and the Subject Member will both have the chance to sum up their position prior to Hearings Panel carrying out its private deliberations. Within the summing up the Investigating Officer will state what sanctions (if any) in their opinion ought to be imposed. The Subject member may respond to the proposals. The Subject Member will have the right to speak last.

12.15. The Hearings Panel should conduct its deliberations in private to establish its findings of fact, and to reach its conclusion as to whether there has been a failure to comply with the Code of Conduct. The Monitoring Officer and the Hearings Panel's legal adviser shall remain with the Committee whilst it carries out its deliberations. The Independent Person may be asked to join the Hearings Panel in deliberations.

12.16. At any stage in the deliberations, the Hearings Panel may return to ask further questions of the Investigating Officer, the Subject Member or any witness who has given evidence or seek further information. The other party should be given an opportunity to comment upon the questions asked and/or the responses made.

12.17. At the conclusion of the Hearings Panel's deliberations, the Chairman should advise the Subject Member and the Investigating Officer of their findings. If the Hearings Panel concludes that the Subject Member has failed to comply with the Code of Conduct, the Chairman will inform the Subject Member and Investigating Officer what action, if any, it takes.

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

Where a Hearings Panel find that a member has failed to comply with the Code of Conduct, the Council has delegated Standards Committee and subsequent 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 Hearings Panel may –

13.1 Publish its findings in respect of the Member's conduct;

13.2 Report its findings to Council (or to the Parish Council) for information;

13.3 Censure;

13.4 Recommend to the Member's Group Leader (or in the case of ungrouped Members, recommend to Council) that he/she be removed from any or all Committees or Sub-Committees of the Council;

13.5 Recommend to the Leader of the Council that the Member be removed from the Executive, or removed from their Portfolio responsibilities;

- 13.6 Instruct the Monitoring Officer to (or recommend that the Parish Council) arrange training for the Member;
- 13.7 Recommend to Council or Parish Council that the Member be removed from all outside body appointments to which they have been appointed or nominated by the Council (or by the Parish Council);
- 13.8 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
- 13.9 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.
- 13.10 Any sanction imposed by the Hearings Panel shall commence immediately unless the Hearings Panel directs that a sanction shall commence on another date within six months from the imposition of the sanction.
- 13.11 In deciding to impose a sanction the Hearings Panel shall consider all relevant circumstances and seek the views of the Independent Person.
- 13.12 The Chairman should normally announce the decision of the Hearings Panel at the hearing. Written confirmation of the findings of the Hearings Panel should be given as soon as is reasonably practicable to the Subject Member, Independent Person, Standards Committee of any other authority concerned, any parish council concerned, and any person who made an allegation that gave rise to the investigation.
- 13.13 The Hearings Panel and/or Standards Committee may consider making any recommendations to the authority concerned with a view to promote and maintain higher standards of conduct among its members.

14. Revision of these arrangement

The Monitoring Officer in consultation with the Chair of Standards Committee may amend these arrangements at any time. For the sake of clarity the Chair of Standards Committee (or the Chair of a particular Hearings Panel) may vary from these arrangements where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

15. 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.