

## Grievance Against a Councillor Procedure

Councillors are expected to afford colleagues, opponents, and officers the same courtesy and consideration they show to others in their everyday lives. Whilst it is recognised that political debate can, at times, become heated, the right to freedom of expression should not be used as an excuse for poor conduct generally.

This procedure is to be used to raise a grievance where either an officer or a councillor has reason to believe that they have been treated unfairly by a Councillor. Unfairness for example, includes not having been given a proper and reasonable right of reply or right of correction to defend oneself against unreasonable public criticism.<sup>1</sup>

This procedure should not however be used to make

- Vexatious, malicious, frivolous, or trivial complaints<sup>2</sup>
- Members' complaints about officers<sup>3</sup>
- Other Code of Conduct matters<sup>4</sup>.

### The Informal Approach

Many problems can be resolved informally, for example through a quiet chat. It does not have to be in writing at this stage. An informal approach is often appropriate in cases where the allegations are less serious, or the problem is based on miscommunication or a misunderstanding. For officers any concerns should be raised with their Executive Director and for councillors it should be raised with their Group Leader (or for Independent councillors, the Leader of the Council). Solving the problem this way should be a two-way process so that the aggrieved is able to explain the problem and say what they would like done about it. In return they can listen to advice on how best deal with the matter.

Notwithstanding the opportunity for an informal approach the aggrieved has the right to pursue a formal complaint at any time. The Council also accepts that in line with this procedure, officers have the right to raise a grievance without fear that it will

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<sup>1</sup> Nothing in this procedure seeks to prevent the expression, challenge, criticism and disagreement with views, ideas, opinions and policies but it must be done in a civil manner. Individuals must not however, be subject to unreasonable or excessive personal attack. In assessing any grievance account will be taken of the background behaviour of the member complained about which may include a build-up of incidents or pattern of behaviour over a longer period.

<sup>2</sup> The Grievance process should not be used to pursue political or private differences or to make 'tit for tat' complaints. It should also not be used for complaints which are intended to cause annoyance, frustration, or worry (vexatious), intending or intended to do harm (malicious), or complaints that have little or no substance (frivolous) in terms of value or importance (i.e. trivial complaints).

<sup>3</sup> These should be dealt with using the Council's internal complaints process. Raising such issues in the context of a meeting with others present, especially if they are from outside bodies or are members of the public, is not acceptable particularly as Officers do not have the right of reply. Neither is it acceptable to do so in the media, in personal publications or using blogs, tweets, Facebook or other social media.

<sup>4</sup> This grievance procedure is directed at more "workplace" related grievances. Code of Conduct complaints are more external facing and can be made by following this link: <https://www.hart.gov.uk/help-advice-1>

impact on their career development, future promotion or any other aspect of their employment.

### **Formally Raising a Grievance**

The aggrieved officer or councillor may raise the grievance formally if:

- they feel raising it informally has not worked
- it's a serious issue
- they do not want to resolve it informally.

It should be made in writing<sup>5</sup> to the Chief Executive within 15 working days from the date of

- a) the event, which is the subject of the complaint, or
- b) when the event came to the knowledge of the aggrieved.

It should

- outline what the problem is; and
- be copied to the Member against whom the complaint is made.

### **Stage 1 – Facilitated Resolution**

1. The Chief Executive and the Group Leader of the member who is the subject of the complaint (or for Independent Members, the Leader of the Council) (“the Facilitation Team”) will decide, first, if the complaint has substance<sup>6</sup>. If they:
  - a) agree the complaint has substance, the complaint will move to Step 2; or
  - b) agree the complaint has no substance, the complaint will be closed, with reasons given; or
  - c) cannot agree on the question of substance it will be referred to the Chairman of the Council for adjudication. The decision of the Chairman of the Council will be final.
2. The Facilitation Team will meet with the aggrieved officer/councillor and the councillor complained about to see if on an informal basis the complaint can be resolved. No formal note of the meeting will be made but a note on the outcome will be sent to all participants on a private and confidential basis.

### **Possible outcome for Steps 1 to 2**

If an agreement is reached between all parties involved, then no further action is required. If no agreement is reached the aggrieved may ask to have the grievance heard at an Appeal Panel.

### **Time For the Resolution Of The Stage 1 Process**

All the Steps should be completed as quickly as possible. Whilst exact timing will depend on the availability of individuals to attend the meetings it is expected that all parties will cooperate and to make themselves available to attend any meeting to ensure that the matter is dealt with speedily (i.e., within 10 working days of the complaint having been found to have substance). If a party fails to attend a meeting or prolongs securing a date for a meeting, without giving an acceptable reason,

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<sup>5</sup> In writing means either by hard copy letter or by email from a Hart email account.

<sup>6</sup> The complaint must have something in it and be of meaningful quality.

consideration will be given as to whether the complaint should be dismissed or whether it should continue straight to an Appeal Panel Hearing.

### **Stage 2 – Appeal Panel Hearing (“The Hearing”)**

The aggrieved should, within 10 working days of the completion of Stage 1 (Facilitated Resolution), give the Chief Executive written notice to ask to have the complaint heard by an Appeal Panel (“the Panel”).

#### **Panel Membership and Chairmanship**

Drawn from the Appeals Committee, the Panel will consist of cross-party membership and comprise three Members, and an Independent Person appointed by the Council under Section 28 of the Localism Act. The Independent Person will be invited to Chair the Hearing (the Panel Chairman).

#### **Hearing Arrangement**

The Hearing will normally and be arranged to take place within 15 working days of receipt of the request from the aggrieved to have the complaint heard by the Panel.

#### **Confidentiality**

Whilst the outcome of any Hearing will be made public, the Hearing, proceedings, and any paperwork which it receives, will remain confidential to all the respective parties to the Hearing. Only those persons who need to know should be given access to relevant information and they in turn, should treat that information as confidential.

#### **Hearing Participation**

The parties will be asked to attend the Hearing and they each may be accompanied by a companion<sup>7</sup>. In the absence of a party, it will be a matter for the discretion of the Panel as to whether it continues or is rescheduled<sup>87</sup>.

It is not anticipated that any party will bring legal representation. The Hearing is not a form of legal proceedings and grievances should not normally raise points of law.

The aim of the Hearing is:

- reconciliation
- to put right things that may have gone wrong.

The Chief Executive will attend to advise the Panel.

#### **Hearing Principles**

Both parties may present their own case, or they may be represented by a companion. The companion can:

- present and/or sum up the respective party’s case and say things to support their case
- Make notes and speak to their respective party during the hearing.

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<sup>7</sup> It is anticipated that the companion will not be a legal representative. For a Member the companion may be a fellow Member of the Council or a colleague from a recognised local party association. For an Officer the companion may be a work colleague (i.e. someone employed by the Council) or a Trade Union representative.

<sup>8</sup> If a party cannot be available at the time proposed for the hearing the hearing may be postponed at the sole discretion of the Panel and an alternative time set not more than five working days after the date originally proposed. Only one deferent per party is allowed.

Both parties can if they choose, submit a written explanation of their respective case. This must be sent to the Chief Executive not less than 5 working days before the Hearing. The submission will be circulated and by the Chief Executive to the Panel and the other party subject to the Hearing. No further submissions will be accepted after that.

Neither party (nor any of their respective companions if present) will be allowed to cross-examine or directly question the other party– all comments must be put through the Panel. No party will be allowed to do anything that prevents the other party from explaining their side of things.

### **Hearing Proceedings**

The Panel Chairman will decide the procedure for the hearing and will reinforce the message that there should be no formal presentation of evidence. It will take the form of a round-the-table discussion managed by the Panel Chairman. It is intended to be an informal process and allows for all parties to respond to any questions that the Panel might have, and to let everyone make their case known.

The Panel Chairman will ensure that while Panel questioning may be thorough, all questioning must be fitting for the relative informality of the Hearing. No questioning shall be leading, argumentative (e.g., badgering), or aggressive. A party may decline to answer a question if they consider the question to be inappropriate.

After the respective cases have been explained and the questioning completed, the Panel Chairman will bring the Hearing to a close. The aggrieved and the Councillor (and any companions if present) will then leave the room. The Panel and the Chief Executive will remain to deliberate and frame the Panel's decision.

### **The Decision**

The Panel's decision will be final. The Panel will give a decision as soon as possible after the hearing. An informal decision may be communicated immediately but a formal written note confirming the Panel's final decision will be sent to the aggrieved and the Member within 5 working days of the hearing.

### **Decision To Uphold a Grievance**

If the grievance against a Councillor is upheld, the Councillor shall send a suitably worded written note of apology to the aggrieved within 5 working days of receiving the Panel's decision. The apology shall be drafted in consultation with the Chairman of the Panel<sup>9</sup>. The Councillor must also make a public apology at the first available meeting of Full Council following the Hearing decision.

The Panel may also in serious cases consider recommending to Council (or recommend to the Leader of the Council in respect of a Cabinet member) that consideration should be given to relieving the Councillor of special duties such as portfolio holder, chairman of a committee or panel, Member of working party, etc.

The Chief Executive should also remind the Councillor that, notwithstanding the action taken under the Grievance Procedure, individuals may have a right to pursue the matter through the relevant legal channels.

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<sup>9</sup> A suitable apology should recognise fault or failing, and should express regret, demonstrate responsibility and give the reasons why the apology is needed.