

STANDARDS COMMITTEE

DATE: 6 MARCH 2019

TITLE OF REPORT REVIEW OF CODE OF CONDUCT COMPLAINTS
FORM AND GUIDANCE

Report of: Monitoring Officer

Cabinet Member: Councillor David Neighbour, Leader

1 PURPOSE OF REPORT

To review the Code of Conduct Complaints form and guidance.

2 OFFICER RECOMMENDATION

That the Committee considers the form and guidance and offers suggestions for its update/improvement.

3 BACKGROUND

3.1 The Code of Complaint Form and Guidance has been available on the Hart website since the new Standards regime was introduced in 2012. It has been amended intermittently to reflect operational changes but has not been fully reviewed as to its format and guidance.

4 CONCLUSION

4.1 Members are asked to reflect on the format and guidance of the form and offer their suggested changes and improvements for its use.

4.2 Members have been asked to convey suggested updates to the Monitoring Officer prior to the meeting to aid collation and discussion at the meeting.

Contact: Daryl Phillips, x 4143, daryl.phillips@hart.gov.uk

APPENDIX

Appendix 1 - Code of Conduct Complaint Form

Appendix 2 - Arrangements for Dealing with Allegations



CODE OF CONDUCT COMPLAINT FORM

Your complaint must be about a named councillor(s) and the conduct that you are complaining about must, if proven, be a breach of the Code of Conduct. **Please note that anonymous complaints will not be investigated.**

This complaint form should not be used to make a complaint about an alleged failure of a Councillor to declare a Disclosable Pecuniary Interest (DPI). A failure to declare a DPI is not a breach of the Code of Conduct. Where such allegations are made a complaint should be made direct to the Police.

I. Please give us with your name and contact details

Title:	
First name:	
Last name:	
Address:	
Daytime telephone:	
Evening telephone:	
Mobile telephone:	
Email address:	

In the interests of fairness and natural justice, we believe councillors who are complained about have a right to know who has made the complaint. We will therefore, tell the following people that you have made this complaint:

- the councillor(s) you are complaining about
- the parish or town clerk (if applicable)

We will tell them only your name and give them a copy of your complaint.

All the complaint details, including your name (but not your address, telephone number or email details), will be made public once a decision is reached on your complaint. We will publish the decision on the Council's web site at <https://www.hart.gov.uk/Councillor-help-advice>

2 Please give us with the name of the councillor(s) you believe have breached the Code of Conduct and the name of the Council that they represent:

Title	First name	Last name	Council name

3 Please explain in this section (or on separate sheets) what the councillor has done that you believe breaches the Code of Conduct. If you are complaining about more than one councillor you should clearly explain what each individual person has done that you believe breaches the Code of Conduct.

It is important that you provide all the information you wish to have taken into account. For example:

- *You should be specific, wherever possible, about exactly what you are alleging the councillor said or did. For instance, instead of writing that the councillor insulted you, you should state what it was they actually said.*
- *You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.*
- *You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible. If you are relying upon witnesses you must make sure that they have agreed to be named in your complaint and they should be asked to submit a statement to accompany your complaint. It is your responsibility to do this.*
- *You must provide all relevant background information. Your complaint will not be investigated further if it is not supported at the outset by detailed and verifiable supporting evidence.*

Please note that your complaint will initially be assessed only on the supporting information that you submit with your complaint. We will not normally enter into further dialogue with you unless we feel that we need you to clarify any aspect of your complaint.

Please provide us with the details of your complaint. Continue on a separate sheet if there is not enough space on this form.

4 What outcome are you hoping to achieve?

Please explain what outcome you would wish to see - refer to the Guidance Notes attached to see possible outcomes

5 Complaints must be submitted in writing. This includes fax and electronic submissions.

If you need any help in completing this form, please let the Monitoring Officer know as soon as possible.

Signed
(Signature not required if submitted electronically)

Date

Submit to:

Daryl Phillips
The Monitoring Officer
Hart District Council
Civic Offices
Harlington Way
Fleet
GU51 4AE

Or email to enquiries@hart.gov.uk

Guidance Notes

ARE YOU USING THE CORRECT FORM?

Failure to Declare Disclosable Pecuniary Interest:

This complaint form should not be used to make a complaint about an alleged failure of a Councillor to declare a Disclosable Pecuniary Interest (DPI). A failure to declare a DPI is not a breach of the Code of Conduct. Where such allegations are made a complaint should be made direct to the Police.

The points listed below will help you decide whether this is the correct form to use when making your complaint.

- Your complaint must be about conduct that occurred while the councillor(s) complained about were in office. Conduct of an individual before they were elected, co-opted or appointed to the authority, or after they have resigned or otherwise ceased to be a councillor, will not be considered
- The Code of Conduct came into effect on 29 November 2012, although some parish and town councils adopted their respective Code of Conduct earlier.
- Your complaint must be about one or more named councillors of the following authorities:

Hart District Council

<http://www.hart.gov.uk>

Blackwater & Hawley Town

Council <http://www.blackwaterandhawleytowncouncil.gov.uk>

Bramshill

Church Crookham

<http://communities.hants.gov.uk/churchcrookham-index.htm>

Crandall

<http://www.crandall-pc.gov.uk/>

Crookham Village

www.crookhamvillage-pc.org.uk

Dogmersfield

<http://www.dogmersfieldparish.co.uk/>

Elvetham Heath

<http://communities.hants.gov.uk/elvetham-index.htm>

Eversley

www.eversleyparishcouncil.co.uk

Ewshot

www.ewshotpc.com

Fleet Town Council

<http://communities.hants.gov.uk/fleet-index.htm>

Greywell

<http://communities.hants.gov.uk/greywell-index>

Hartley Wintney

www.hartleywintney.org.uk

Heckfield

<http://www.heckfield.hampshire.org.uk/>

Hook

www.hook.gov.uk

Long Sutton

<http://www.longsutton.org/>

Mattingley

<http://www.mattingleypc.hampshire.org.uk/>

Odiham

<http://www.odiam.org.uk/>

Rotherwick

South Warnborough

<http://www.southwarnborough.net>

Winchfield

<http://communities.hants.gov.uk/winchfield-index>

Yateley Town Council

www.yateley-tc.gov.uk

- Your complaint must be about a named councillor(s) and the conduct that you are complaining about must, if proven, be a breach of the Code of Conduct.
- Complaints about dissatisfaction with a decision or action of the authority or one of its committees, a service provided by the authority or the authority's procedures do not fall within the jurisdiction of this complaints system. Complaints about the actions of people employed by the authority also do not fall within the jurisdiction of the complaints system.
- Your complaint must be in writing. If a disability prevents you from making your complaint in writing you may contact the Monitoring Officer for assistance.

INITIAL ACTION UPON RECEIPT OF A COMPLAINT

On receiving the complaint Hart District Council's it will not be investigated if:

- (i) insufficient information has been submitted at the outset to demonstrate that there has been a prima facie breach of the Code; or
- (ii) the complaint is based essentially on hearsay evidence and is not supported at the outset by detailed and verifiable supporting evidence; or

- (iii) the complaint does not relate to behaviour in the member's official capacity as a councillor; or
- (iv) the matter complained about is so trivial that it would not be in the public interest to pursue it further; or
- (v) the person complained about is no longer a member of the relevant local authority; or
- (vi) the matter being complained about happened more than 12 months before the complaint was received; or
- (vii) the matter or issue being complained about came to the complainant's notice more than 6 months before the complaint was received.

Where the complaint is made by a parish/town Council or a parish/town councillor against a councillor of the same authority, unless a matter of overriding public interest is identified, the complaint will be referred to the respective parish/town council to be dealt with as an internal matter of dispute within the parish/town council. It will not then be investigated further as a formal complaint.

DECISION OPTIONS AT INITIAL ASSESSMENT

The initial options are to:

- take no action
- try to resolve the matter informally
- arrange a hearing before a panel of councillors drawn from Hart District Council's Standards Committee
- in more complex cases, ask for a formal investigation into whether there has been a breach of the code

NO ACTION will be taken where any of the following apply:

- a) there is no prima facie evidence that the Code has been breached;
- b) taking into account the nature of the allegation using public funds to examine the matter further would be disproportionate;
- c) the complaint appears to be vexatious, politically motivated, tit-for-tat or made by a persistent complainant;
- d) the conduct complained about has already been the subject of investigation or enquiry by another public body;
- e) the same, or substantially the same, issue has been the subject of a previous Code of Conduct allegation;
- f) there is not enough information to take the matter further;
- g) the complaint was made anonymously;
- h) the councillor has already apologised for the action that was the subject of the complaint;
- i) the complaint is essentially against the action of the Council as a whole and cannot properly be directed against an individual councillor(s).

OPTIONS OPEN TO THE HART DISTRICT COUNCIL'S STANDARDS COMMITTEE:

If it is found that the Councillor had not complied with the Code of Conduct the following action can be taken:

A. No action – reasons will be given;

Or

B. The Councillor should be censured; and one or more of the following:

- a) The findings be reported to Council [*or to the Parish/Town Council*] for information;
- b) Recommendation be made to the councillor's Group Leader that he/she be removed from any or all Committees or Sub-Committees of the Council;
- c) Recommendation be made to the Leader of the Council that the councillor be removed from Cabinet, or removed from particular Portfolio responsibilities;
- d) Recommendation be made to the Monitoring Officer [*or recommend that the Parish/Town Council*] that training be arranged for the councillor;
- e) Recommendation be made to Council [*or recommend to the Parish/Town Council*] that the councillor be removed from all outside appointments to which he/she has been appointed or nominated by the authority [*or by the Parish/Town Council*];
- f) Recommendation be made to Council [*or recommend to the Parish/Town Council*] that it withdraws facilities provided to the councillor by the Council, such as a computer, website and/or email and Internet access; or
- g) Recommendation be made to Council [*or recommend that the Parish/Town Council*] that it 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.

MARCH 2014

LOCALISM ACT 2011 SECTION 28 – CODE OF CONDUCT

ARRANGEMENTS FOR DEALING WITH ALLEGATIONS

I. MAKING COMPLAINTS

Any complaint that a member has failed to comply with the Code of Conduct should be addressed to:

The Monitoring Officer
Hart District Council
Harlington Way
Fleet
Hants GU15 4AE

A form for making complaints is available. Its use is encouraged, but is not essential providing the complaint includes all the necessary information.

The Council will not however, investigate any complaint about the failure of a councillor to declare a Disclosable Pecuniary Interest (DPI). The failure to declare a DPI could amount to a criminal offence. When such allegations are made the complainant should make the complaint direct to the Police.

2. INITIAL ACTION BY THE MONITORING OFFICER

On receiving the complaint the Monitoring Officer may dismiss it without further action where:

- A. The Monitoring Officer, in consultation with an Independent Person appointed under Section 28 of the Localism Act 2011 (IP) and the Chairman of Standards Committee considers that:
- i. insufficient information has been submitted at the outset to demonstrate that there has been a prima facie breach of the Code;
or
 - ii. the complaint is based essentially on hearsay evidence and is not supported at the outset by detailed and verifiable supporting evidence;
or
 - iii. the complaint does not relate to behaviour in the member's official capacity as a councillor
or
 - iv. the matter complained about is so trivial that it would not be in the public interest to pursue it further;
- or
- B. The person complained about is no longer a member of the relevant local authority; or

- C. The matter being complained about happened more than 12 months before the complaint was received; or
- D. The matter or issue being complained about came to the complainant's notice more than 6 months before the complaint was received.

The Monitoring Officer will inform the complainant and the member accordingly.

Where the Complaint is made by a District Councillor or an Officer employed by the District Council, the complaint will be dealt with as an internal grievance as set out in the District Council's Constitution, and will not be dealt with further under this process.

Where the complaint is made by a Parish/Town Council or a parish/town councillor against a councillor of the same authority, unless a matter of overriding public interest is identified, the Monitoring Officer shall use his discretion and may refer the complaint to the respective parish/town council to be dealt with as an internal matter of dispute within the parish/town council. It will not then be investigated further by the Monitoring Officer as a formal complaint.

If the Monitoring Officer does not dismiss the complaint on any of the above grounds, he/she will acknowledge it and inform the complainant of the procedure to be followed. The Monitoring Officer may ask the complainant for further information or clarification.

The Monitoring Officer will (except in exceptional circumstances where he/she considers that it is in the public interest not to do so) send the member complained about a copy of the complaint, and invite the member to submit initial written comments within 10 working days.

The Monitoring Officer will also ask the member any specific questions the Monitoring Officer considers will assist the initial assessment of the complaint.

3. INITIAL ASSESSMENT OF THE COMPLAINT

Initial assessment will, if practicable, take place within 20 working days of receipt of the member's written comments under section 2 above.

The decision on the initial assessment will be made by the Monitoring Officer, in consultation with an IP and the Chairman of Standards Committee.

Before the Monitoring Officer considers the complaint, the Monitoring Officer will send the IP and the Chairman of Standards Committee

- a. A copy of the complaint
- b. A copy of the member's comments in response to the complaint
- c. Any other information in the Monitoring Officer's possession that he/she considers relevant.

The Monitoring Officer's decision on the initial assessment, with reasons, will be given in writing to the member, the complainant, and the Clerk to the Parish/Town Council (if the complaint was about a Parish/Town councillor) within 20 working days.

There will be no right of appeal.

The decision will be published on the District Council's web page.

4. DECISION OPTIONS AT INITIAL ASSESSMENT

The Monitoring Officer, in consultation with the IP and the Chairman of Standards Committee, may decide to take one of the following options:

- a. To take no action (Appendix A); or
- b. To attempt to resolve the matter informally between the complainant and member, either in writing, by face-to-face meeting, or by any other method the Monitoring Officer considers appropriate. In this case there will be no formal decision as to whether or not there was a breach of the Code of Conduct. If an attempt to resolve the matter in this way is not achieved, options A, C and D will remain open; or
- c. To arrange a hearing before a Panel of 3 members drawn from the Standards Committee and the IP, at which the member and complainant can state their case and, if appropriate, call witnesses. Where the complaint relates to a Parish councillor a Parish Member on Standards Committee must be present at the Hearing Panel. Procedures are set out at Appendix B. The hearing will form a recommendation as to whether the member breached the Code of Conduct and the Monitoring Officer may act upon any such recommendation; or
- d. If the complaint is potentially complex, to arrange for a formal investigation to be undertaken, including interview of appropriate witnesses, and to seek the view of the investigator as to whether there has been a breach of the Code of Conduct. If the investigator considers there has been a breach of the Code, a hearing will be arranged as in (C). If the investigator considers that there has not been a breach of the Code, the Monitoring Officer will issue a formal finding to that effect.

APPENDIX A

NO ACTION will be taken where any of the following apply:

- a. the Monitoring Officer, in consultation with the IP and the Chairman of Standards Committee, considers that there is no prima facie evidence that the Code has been breached;
- b. taking into account the nature of the allegation, the Monitoring Officer, in consultation with the IP and the Chairman of Standards Committee, considers that using public funds to examine the matter further would be disproportionate;
- c. the Monitoring Officer, in consultation with the IP and the Chairman of Standards Committee, considers that the complaint appears to be vexatious, politically motivated, tit-for-tat or made by a persistent complainant;
- d. the conduct complained about has already been the subject of investigation or enquiry by another public body;
- e. the same, or substantially the same, issue has been the subject of a previous Code of Conduct allegation, and the Monitoring Officer, in consultation with the IP and the Chairman of Standards Committee, considers that there is nothing further to be gained;
- f. the Monitoring Officer, in consultation with the IP and Chairman of Standards Committee considers that there is not enough information to take the matter further;
- g. the complaint was made anonymously;
- h. the complainant has requested that their identity as complainant be withheld from the member, and the Monitoring Officer, in consultation with the IP and Chairman of Standards Committee considers that the matter cannot reasonably be taken further in these circumstances;
- i. the member has already apologised for the action that was the subject of the complaint, and the Monitoring Officer, in consultation with the IP and the Chairman of Standards Committee, considers that this is sufficient to dispose of the complaint;
- j. the Monitoring Officer, in consultation with the IP and Chairman of Standards Committee considers that the complaint is essentially against the action of the Council as a whole and cannot properly be directed against an individual member(s).

PROCEDURE FOR HEARINGS

GENERAL:

Hearings will where possible be held within 2 months of the initial assessment decision where there is no prior investigation and within 2 months of receipt by the Monitoring Officer of the investigator's report where there has been a prior investigation.

The hearing will be before a Panel of 3 members drawn from the Standards Committee. One of the members will be elected Chairman.

An Independent Person [IP] appointed under Section 28 of the Localism Act 2011 may also be present. His/her views will be requested and taken into account by the Panel, but by law he/she cannot vote.

The Monitoring Officer or deputy Monitoring Officer will be present as advisor to the Panel. There will normally be no requirement to have a separate legal representative present unless the matter is peculiarly complex. It will be for the Monitoring Officer to determine if a legal representative is either appropriate or necessary.

14 days notice will be given and both the member and complainant will be invited to appear. They may present their own case or they may be represented.

They may bring witnesses (of a number the Panel considers is reasonable), in which case written statements from the witnesses must be lodged with the Monitoring Officer at least 10 working days before the hearing. "Character witnesses" who cannot provide evidence on the matter complained about will not be permitted. The cost of any attendance/representation must be borne by the parties concerned.

All written evidence will be circulated to the Panel, the IP, the member and the complainant at least 5 working days before the hearing.

Written statements will not be read out at the hearing as it will be assumed all those present are already familiar with their contents.

The Monitoring Officer can speak at any time to advise the Panel on technical matters or ask questions of any party.

PROCEEDINGS:

1. The complainant can address the Panel and call witnesses (if any).
2. The member can ask the complainant and witnesses questions.
3. The Panel and IP can ask the complainant and witnesses questions.
4. The member can address the Panel and call witnesses (if any)
5. The complainant can ask the member and witnesses questions.
6. The Panel and IP can ask the member and witnesses questions.
7. The complainant can make a closing statement.
8. The member can make a closing statement.

The Panel, the Monitoring Officer, the IP, any legal advisor if present, and Clerk, will leave the room to another separate room in order to deliberate and formulate their recommendations at hearings.

The Panel's recommendations will be announced orally as soon as possible.

A written report of the hearing and recommendations, with reasons, will be prepared, usually within 10 working days. A copy will be sent to all those present at the hearing and to the Clerk of the Parish/Town Council if the complaint was about a Parish/Town Councillor.

The written report will be published on the District Council's web page at http://www.hart.gov.uk/index/your_council/councillors_members_of_the_council_elected_representatives/complaints_against_councillors.htm

OPTIONS OPEN TO THE PANEL:

To conclude whether:

- I The member did comply with the Code of Conduct;
or whether
- 2 The member failed to comply with the Code of Conduct, and that:
 - I. No action need be taken – reasons to be given;
or
 - II. The member should be censured; and one or more of the following:
 - a. The findings of the Hearing be reported to Full Council [*or to the Parish/Town Council*] for information;
 - b. Recommendation be made to the member's Group Leader (or in the case of ungrouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
 - c. Recommendation be made to the Leader of the Council that the member be removed from Cabinet, or removed from particular Portfolio responsibilities;
 - d. Recommendation be made to the Monitoring Officer [*or recommend that the Parish/Town Council*] that training be arranged for the member;
 - e. Recommendation be made to Council [*or recommend to the Parish/Town Council*] that the member be removed from all outside appointments to which he/she has been appointed or nominated by the authority [*or by the Parish/Town Council*];
 - f. Recommendation be made to Council [*or recommend to the Parish/Town Council*] that it withdraws facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
 - g. Recommendation be made to Council [*or recommend that the Parish/Town Council*] that it 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.

The Panel may also make any recommendations it considers appropriate to the Council concerned on procedural amendments that might assist members generally to follow the Code of Conduct and promoting standards.