

NOVEMBER 2020

LOCALISM ACT 2011 SECTION 28 – CODE OF CONDUCT

ARRANGEMENTS FOR DEALING WITH ALLEGATIONS



The purpose of these arrangements is to set out how allegations that the Code of Conduct has been breached will be investigated. Any decision to investigate an allegation will be a proportionate response to the issues raised when weighed against any likely sanction. It will take into account the wider public interest and the costs of undertaking an investigation. Allegations will only be investigated where the allegation is reasonably considered to be a serious matter and accords with the public interest test as set out in Appendix A.

Consideration of the public interest, however, is only one of a number of criteria which must be met in deciding whether to investigate a complaint: crucially the complaint must also be supported at the outset by detailed and verifiable evidence of a breach of the Code.

1. MAKING COMPLAINTS

Any complaint that a serving Councillor (the Councillor) 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

Email to: enquiries@hart.gov.uk

All complaints must be made in writing. A form for making complaints is available at: <https://www.hart.gov.uk/Councillor-help-advice>

Complaints about the failure of a Councillor to declare a Disclosable Pecuniary Interest (DPI) will not be investigated. 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.

Anonymous complaints will also not be investigated

2. INITIAL ACTION BY THE MONITORING OFFICER

On receiving a 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) 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 Councillor's capacity as a member of the respective local authority
 - or
 - iv. the matter complained about is so trivial that it would not be in the public interest to pursue it further (see Appendix A);
 - or
- B. The person complained about is no longer a serving Councillor 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 Councillor 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 Councillor, or an Officer employed by the respective parish/town council, against a Councillor of the same authority, unless the Monitoring Officer considers that a matter of overriding public interest is identified, the Monitoring Officer shall use his/her 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. The parish/town council may thereafter deal with the complaint as an internal matter and come to the conclusions as set out in Appendix D.

If the Monitoring Officer does not dismiss the complaint on any of the above grounds, the complaint will be acknowledged, and the complainant informed 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 the Monitoring Officer considers that it is in the public interest not to do so) send the Councillor complained about a copy of the complaint and invite the Councillor to submit initial written comments within 10 working days.

The Monitoring Officer will also ask the Councillor 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 Councillor'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. 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 Councillor, 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 B); or
- b) To attempt to resolve the matter informally between the complainant and Councillor, 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 there was a breach of the Code of Conduct. If an attempt to resolve the matter in this way is not achieved, the options as set out in Appendix B remain open; or
- c) To arrange a hearing before a Panel of 3 members drawn from the Standards Committee at which the Councillor and complainant can state their case and, if appropriate, call witnesses. Procedures are set out at Appendix C. The hearing will form a recommendation as to whether the Councillor breached the Code of Conduct and the Monitoring Officer may act upon any such recommendation.

PUBLIC INTEREST CONSIDERATIONS

The purpose of the Codes of Conduct is to help Councillors achieve the standard of conduct which meets public expectations. The aim is to support proper decision making and the proper use of public resources. Undertaking investigations that do not support these wider benefits is not in the public interest.

The resources should not be used to investigate matters which are trivial, or which have little or no impact on the public. Any decision to investigate an allegation will be a proportionate response to the issues raised when weighed against any likely sanction. It will take into account the wider public interest and the costs of undertaking an investigation.

Complaints will be investigated where the allegations have substance¹ and are reasonably considered to be serious matters such as corruption, bullying and misuse of power in public office for example². Allegations are unlikely to be investigated where the matter complained about does not raise a significant matter of public interest.

There is no widely accepted definition of the public interest, but this has been described as “*something which is of serious concern and benefit to the public*”. The public interest therefore relates to something which has an impact on the public and it is not merely a matter that the public find to be of interest or a matter that impacts on an individual (although an individual may be more directly impacted by the matter than the wider public). The public in this context does not necessarily mean the whole of Hart District. It may refer to a distinct section of the public such as a small community or interest group.

1. Seriousness

The more serious the alleged breach, the more likely it is that it will be investigated.

When deciding the level of seriousness of the allegation, relevant considerations are: the extent to which the councillor was at responsible for or was to blame for the alleged breach; the circumstances of the complainant; and whether the alleged conduct caused harm to any person.

a) To what extent was the Councillor responsible for or to blame for the conduct complained of?

Questions of responsibility or blame are likely to be determined by the Councillor's level of involvement; the extent to which the alleged breach was premeditated and/or planned³; whether they have previously been investigated for a similar matter, or have been sanctioned for a previous breach; whether the conduct complained of is ongoing, repeated or has escalated; the Councillor's length of service; and level of experience/knowledge of the Councillor in relation to the issue in question.

¹ The complaint must have something in it and be of meaningful quality

² The application of the investigations not limited to these matters

³ There must also be some evidence of deliberate fault. If a councillor has made a genuine mistake despite taking reasonable care, then it is unlikely that it will be in the public interest to investigate a complaint simply because it so happened that a breach of the Code of Conduct may have occurred.

b) What are the relevant circumstances of any person affected by the alleged breach and has the alleged breach caused harm to any person?

In considering the seriousness of a breach, the circumstances of any person affected by the breach are relevant and must be taken into consideration⁴.

Particular regard will be taken of whether the alleged breach was motivated by any form of discrimination against a person's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity; or the Councillor showed hostility towards a person based on any of those characteristics. In deciding whether an investigation is required in the public interest, the views expressed by the complainant, about the impact the alleged breach has had on them will be considered.

2. Proportionality

Account must always be taken of the resource implications any investigation and any adjudication, especially where it could be regarded as excessive when weighed against any likely sanction. No decision on the public interest will be taken based on resource alone, but it is a relevant consideration when making an overall assessment.

These considerations will help in identifying the public interest, but they are not exhaustive and not all are relevant in each case. In any event, consideration of the public interest is only one criterion that must be met in deciding whether to investigate a complaint: crucially the complaint must also be supported by evidence of a breach of the Code, and that it has caused a personal injustice.

⁴ Allegations are unlikely to be investigated where the complainant has not suffered significant personal injustice as a direct result of the actions of the Councillor complained about.

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. the Monitoring Officer, in consultation with the IP and Chairman of Standards Committee considers that the allegation does not relate to a serious matter and raises no issue of wider public interest (see Appendix 1 for the Public Interest test).
- C. taking into account the nature of the allegation, the Monitoring Officer, in consultation with the IP and the Chairman of Standards Committee, considers that any investigation of the allegation and its associated use of resources would be excessive when weighed against any likely sanction.
- D. the Monitoring Officer, in consultation with the IP and the Chairman of Standards Committee, considers that the complaint appears to be Vexatious, malicious, frivolous, trivial, politically motivated, or tit-for-tat or made by a persistent complainant. The complaint must have substance;
- E. the conduct complained about has already been the subject of investigation or inquiry by another public body;
- F. 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;
- G. 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;
- H. the complaint was made anonymously;
- I. the complainant has requested that their identity be withheld from the Councillor, 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;
- J. The Councillor has 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;
- K. 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 Councillor(s).

- L. The Monitoring Officer, in consultation with the IP and Chairman of Standards Committee considers there is a reasonable alternative course of action that the complaint could take to achieve an appropriate outcome to the complaint.

PROCEDURE FOR HEARINGS

GENERAL:

The aim of the Hearing is:

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

Hearings will where possible be held within 2 months of the initial assessment decision.

The hearing will be before a Panel of 3 members (one of which must be a Parish Councillor) drawn from the Standards Committee. One of the Panel members will be elected Chairman.

An Independent Person [IP] appointed under Section 28 of the Localism Act 2011 may also be present. The IP's views may be requested and considered by the Panel, but the IP 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.

30 days' notice will be given, and both the Councillor and complainant will be invited to appear. They may present their own case, or they may be represented. However, no representative will be allowed to adopt a formal 'advocacy' role, as this can unnerve the other participants and undermine the principle of equal partners in the discussion.

Both parties 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 Councillor 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.

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 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 Member (and any companions if present) will then leave the room. The Panel and the Monitoring Officer will remain to deliberate and frame the Panel's decision.

THE DECISION

The Panel's decision will be final.

The Decision Options available to the Panel are set out in Appendix D. 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. A copy will also be sent 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 <https://www.hart.gov.uk/Councillor-help-advice>

DECISION OPTIONS OPEN TO A HEARING PANEL (SEE APPENDIX C) or a PARISH/TOWN COUNCIL DEALING WITH A COMPLAINT AS AN INTERNAL MATTER IN ACCORDANCE WITH THE SECTION 2 PROVISION

To conclude:

- 1 The Councillor did not breach the Code of Conduct;
or
- 2 The Council did breach the Code of Conduct, and that:
 - I. No action need be taken – reasons to be given;
or
 - II. The Councillor 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]* or information;
 - b. Recommendation be made to the Monitoring Officer *[or recommend to the Parish/Town Council]* that training be arranged for The Councillor;
 - c. Recommendation be made to Cabinet *[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]*;
 - d. Recommendation be made to Full 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
 - e. Recommendation be made to Full Council *[or recommend to 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.

The Hearing Panel, or any parish/town council, may make any recommendations it considers appropriate on any procedural amendments that might assist Councillors generally to follow the Code of Conduct and promoting standards.