

PART 5.1.2

COMPLAINTS PROCEDURE

Context

- 1.1 These “Arrangements” set out how a complaint can be made about an elected or co-opted councillor of the City Council or of a Parish tier Council within its area (“a Councillor”) who you believe has failed to comply with the Councillors’ Code of Conduct, and sets out how the City Council will deal with allegations of a failure to do so.
- 1.2 Under Section 28(6) and (7) of the Localism Act 2011, the City Council must have in place “arrangements” under which allegations that a Councillor or co-opted member of the City Council or of a Parish tier Council within the authority’s area, or of a Committee or Sub-Committee of the City or Parish tier Council, has failed to comply with Code of Conduct can be investigated and decisions made on such allegations. It is important to note that the Monitoring Officer does not have jurisdiction to intervene in decisions made or other complaints in relation to parish tier council business. This procedure relates solely to allegations against an identified Councillor specifying any potential breach(es) of the relevant Council’s Code of Conduct.
- 1.3 References in this procedure to Monitoring Officer includes the officer appointed as Monitoring Officer as well as the Deputy Monitoring Officer or officer designated by them to carry out their functions as Monitoring Officer.
- 1.4 Such arrangements are designed to be open and fair to all parties and enable both complainant and councillor concerned to have confidence in the process. The arrangements must also provide for the City Council to appoint at least 1 Independent Person, whose views must be sought by it before it takes a decision on an allegation which it has decided shall be investigated and at any other stage of the procedure, or by a Councillor or co-opted councillor of the City Council or a Parish tier Council within its area against whom an allegation has been made.

2. The Code of Conduct

- 2.1 The City Council has adopted the Local Government Association (LGA) Model Code of Conduct for Councillors, which is available for inspection on the Council or LGA website and upon reasonable notice from Reception at the Council Offices.
- 2.2 The City Council has recommended that each Parish tier Council also adopts the LGA Model Code of Conduct. Those that have already done so will have the same Code of Conduct as the Council. If you wish to establish which Code of Conduct has been adopted or inspect a Parish tier Council’s Code of Conduct, this should be available on the website operated by the relevant Council or alternatively you can contact the relevant Clerk to tell you how else you can obtain a copy or inspect it.

3. Making a complaint

- 3.1 If you wish to make a complaint alleging that a councillor has breached the Code of Conduct, the quickest and simplest way for you to do so is to complete and submit the complaints form through the City Council's website. If you are unable to do so please contact the City Council's Monitoring Officer for further information on alternative ways in which you can submit your complaint.
- 3.2 The Monitoring Officer is a senior officer of the City Council who has statutory responsibility for maintaining the register of interests and who is responsible for administering the system in respect of complaints of city and parish tier councillor misconduct.
- 3.3 In order to ensure that we have all the information which we need to be able to process your complaint, please provide as much detail as possible and respond promptly/within specified timeframes to any requests by the Monitoring Officer for further information
- 3.4 You will be asked to provide your name and a contact address or email address, so that receipt of your complaint can be acknowledged and you can be kept informed of its progress. A complainant is usually expected to be willing for their identity to be provided to the councillor concerned. However, if there are good grounds to keep your name and address confidential, please indicate this in the space provided on the complaint form together with why this is requested The Monitoring Officer will consider your request and if granted will not disclose your name and address to the Councillor against whom you make the complaint, without your prior consent.
- 3.5 The City Council does not normally investigate anonymous complaints unless there is a clear public interest in doing so.
- 3.6 Complainants are expected to say whether they are a member of the public, fellow councillor or officer, what the complaint is about and the authority that the councillor belongs to, details of the alleged misconduct including the specific paragraph of the code of conduct which is alleged to have been breached together with dates, witness details and other supporting information.
- 3.7 The Monitoring Officer will check that your complaint is valid. This involves checking that the complaint falls within the City Council's legal jurisdiction eg it relates to an alleged breach of the code of conduct by a serving councillor. You will be contacted as soon as practicable should an issue concerning validity arise.
- 3.8 The Monitoring Officer will acknowledge receipt of your complaint within 5 working days of receiving it, explain the process that will be followed and will keep you informed of the progress of your complaint. Please note that emails may be sent to you from a group email address which is standards@chelmsford.gov.uk.

- 3.9 The Councillor subject to a complaint will usually be informed of the detail of the complaint submitted at the same time as your complaint is acknowledged. The councillor subject to the complaint will also normally be given an opportunity to voluntarily respond to the complaint at that stage. However they are under no obligation to do so. Any information that is provided by the councillor may be taken into account at any stage of the complaint including initial assessment of the complaint, where information provided is considered relevant.
- 3.10 The Complaints Procedure Flowchart is annexed at **Annex 2** for your assistance.

4. Initial assessment of a complaint

- 4.1 The Monitoring Officer will review every complaint received and, will usually consult with the Independent Person. The City Council may reach one of the three decisions on an allegation that:
- 4.1.1 No further action should be taken in relation to the allegation
 - 4.1.2 “Other” action or informal resolution should be undertaken (eg apology, training, mediation)
 - 4.1.3 The matter should be referred for investigation (the Independent Person will always be consulted before a decision to investigate is taken)
- 4.2 This decision will normally be taken within 28 working days of receipt of your complaint. Your complaint will be considered in accordance with the publicly available Assessment Criteria which can be found at **Annex 3**.
- 4.2.1 Where the Monitoring Officer has taken a decision, they will inform you of their decision and the reasons for that decision.

- 4.2.2 Where the Monitoring Officer requires additional information in order to come to a decision, we may come back to you for such information, and may request information from the Councillor against whom your complaint is directed.
- 4.2.3 Where your complaint relates to a Parish tier Councillor, the Monitoring Officer may also inform the relevant clerk to the parish tier Council of your complaint and seek their views before deciding what to do.
- 4.3 In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the Councillor accepting that their conduct was unacceptable and offering an apology, or other action agreed by the City Council. Where the Councillor or the City Council makes a reasonable offer of informal resolution, but you are not willing to accept the offer, the Monitoring Officer will take account of this in deciding whether the complaint merits further investigation.
- 4.4 If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to contact the Police or other regulatory agencies and will confirm to you that this has been done. The complainant will be notified that this contact has been made where appropriate.
- 4.5 Whatever the outcome of initial assessment of a complaint (including where a matter is referred for investigation or other action), it does not mean that a decision has been made concerning the merits of the complaint. It simply means that the City Council believes the alleged conduct, if proven, may or may not amount to a failure to comply with the Code of Conduct and as to whether some action should be taken in response to the complaint.

5. How is an investigation conducted?

- 5.1 If after consultation with an independent person the Monitoring Officer decides that a complaint merits further investigation, they may appoint an Investigating Officer, who may be another senior officer of the City Council, an officer of another authority or an external investigator. The Investigating Officer or Monitoring Officer will decide whether they need to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents need to be seen, and who needs to be interviewed.
- 5.2 The Investigating Officer or Monitoring Officer will normally write to the Councillor against whom you have complained and ask the member to provide their explanation of events, and to identify what documents they need to see and who needs to be interviewed. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the member

might prejudice the investigation, your details can be withheld or notification delayed until the investigation has progressed sufficiently.

- 5.3 At the end of the investigation, the Investigating Officer will produce a draft report (“the Investigation Report”) and will send copies of that draft report, in confidence, to the Monitoring Officer. This enables the Monitoring Officer to identify any issues that require further consideration or investigation.
- 5.4 The Investigating Officer will then send to you and to the Councillor concerned a copy of the draft report, to also give you both an opportunity to identify any corrections or inaccuracies in that draft report that you consider require further consideration.
- 5.5 The Investigating Officer will consider any representations made by the parties before issuing their final report which will be sent to the Monitoring Officer. This is summarised in **Annex 4**.

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

- 6.1 The Monitoring Officer will review the Investigation Report and, if after consulting with the Independent Person, they are satisfied that the report is sufficient, the Monitoring Officer will write to you and to the Councillor concerned, as well as any relevant Parish tier Council, notifying you that they are satisfied that no further action is required. A copy of the report will be provided in confidence to the parties.

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

- 7.1 The Monitoring Officer will review the Investigation report and will then either send the matter for a hearing before the Governance Committee or, after consulting the Independent Person, seek an informal resolution.

7.1.1 Informal Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, they will consult with the Independent Person before any decision as to an alternative resolution is made. Such resolution may include the Councillor accepting that their conduct was unacceptable and offering an apology, and/or other action recommended by the Investigator or considered appropriate by the Monitoring Officer in consultation with the Independent Person. If the Councillor complies with the suggested resolution, the Monitoring Officer will report the matter to the Governance Committee, and where appropriate the Parish tier Council, for information, but will take no further action.

7.1.2 Hearing

i) If the Monitoring Officer considers that informal resolution is not appropriate, or the Councillor concerned is not prepared to undertake any other proposed action that has been recommended, such as giving an apology, then the Monitoring Officer will convene a meeting of the Governance Committee to consider the Investigation Report.

ii) The Committee may conduct a 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 Councillor.

iii) The Council has agreed a procedure for hearing complaints, which is attached as **Annex 5** to these arrangements.

iv) At the hearing-

- The Investigating Officer will present their report and make representations to substantiate their conclusion that the councillor has failed to comply with the Code of Conduct. Witnesses of fact will only be called where the facts are in dispute and live evidence from witnesses is necessary to enable the Governance Committee to reach a decision.
- The Investigating Officer or Monitoring Officer may ask you as the complainant and/or any witnesses to attend and give evidence to the Committee.
- The Councillor will then have an opportunity to give evidence to make representations to the Committee as to why they consider that they did not fail to comply with the Code of Conduct. Witnesses of fact will only be called where the facts are in dispute and live evidence from the councillor or other witnesses are necessary to enable the Governance Committee to reach a decision.

v) The Committee, with the benefit of any advice from the Independent Person, may either conclude that the Councillor -

- Did not fail to comply with the Code of Conduct, and dismiss the complaint; or
- Did fail to comply with the Code of Conduct, in which case the Chair will inform the Councillor of this finding and the Committee will then consider what action, if any, the Committee should take as a result of the Councillor's failure to comply with the Code of Conduct. In doing this, the Committee will give the Councillor an

opportunity to make representations to the Committee and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

8. What action can the Governance Committee take where a councillor has failed to comply with the Code of Conduct?¹

8.1 The City Council has delegated to the Committee such of its powers to take action in respect of individual City or Parish tier Councillors as may be necessary to promote and maintain high standards of conduct. Accordingly the Committee may:-

- 8.1.1 Publish its findings in respect of the Councillor's conduct.
- 8.1.2 Report its findings to Council or relevant Parish tier Council for information.
- 8.1.3 Recommend to Council or the relevant Parish tier Council that they be issued with a formal censure or be reprimanded.
- 8.1.4 Recommend to the Councillor's Group Leader (or in the case of ungrouped councillor, recommend to Council or to Committees) that they are removed from any or all Committees or Sub-Committees of the Council.
- 8.1.5 Recommend to the Leader of the Council that the Councillor is removed from the Cabinet, or removed from particular Portfolio responsibilities.
- 8.1.6 Instruct the Monitoring Officer or recommend that the relevant Parish tier Council arrange training for the Councillor.
- 8.1.7 Remove or recommend to the relevant Parish tier Council that the Councillor be removed from all outside appointments to which they have been appointed or nominated by that authority.
- 8.1.8 Withdraw or recommend to the relevant Parish tier Council that it withdraws facilities provided to the Councillor by the Council, such as a computer, website and/or email and internet access; or
- 8.1.9 Exclude or recommend to the relevant Parish tier Council that it excludes 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.
- 8.1.10 The Committee has no power to suspend or disqualify the Councillor or to withdraw the payment of any allowances payable to them.

9. What happens at the end of the hearing?

- 9.1 At the end of the hearing, the Chair will state the decision of the Governance Committee as to whether the Councillor failed to comply with the Code of Conduct and as to any actions or sanctions the Committee has decided to impose or recommend.
- 9.2 As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Committee, and
-
- 9.2.1 Send a copy to you, to the Councillor concerned and update any relevant Parish tier Council as to the outcome,
- 9.2.2 Make that decision notice available for public inspection and on the Council's website

10. What is the Governance Committee?

- 10.1 It is a Committee consisting of Councillors, the terms of reference of which include the management of the Standards regime under the Localism Act 2011.
- 10.2 The Committee has decided that it will comprise a maximum of seven Councillors of the Council, including not more than two members of the City Council's Executive and comprising members drawn from other political parties, as well as representatives from the Parish tier Councils. Subject to those requirements, it is appointed on the nomination of the City Council party group leaders in proportion to the strengths of each party group on the City Council.
- 10.3 If the Councillor complained about is a member of a Parish tier Council a Parish tier Council representative of the Governance Committee will also be invited to attend.
- 10.4 The Independent Person(s) are invited to attend all meetings of the Committee and their views are sought and taken into consideration before the Committee takes any decision on whether the Councillor'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 it.

11. Who is an Independent Person?

11.1 The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the members of Council.

11.2 A person cannot be “independent” if they :

11.2.1 Are, or have been within the past 5 years a member, co-opted member or officer of the City or Parish tier Council. Are a relative or close friend, of a person within this paragraph. For this purpose, a “relative” means:

- i) Spouse or civil partner.
- ii) Living with the other person as husband and wife or as if they were civil partners.
- iii) Grandparent of the other person.
- iv) A lineal descendent of a grandparent of the other person.
- v) A parent, sibling or child of a person within this paragraph ; or
- vi) A spouse or civil partner of a person within this paragraph ; or
- vii) Living with a person within this paragraph as spouses or as if they were civil partners.

12. Revision of these arrangements

12.1 The Council may agree to amend these arrangements, and has delegated to the Chair of the Committee and/or the Monitoring Officer the right to depart 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.

13. Appeals

13.1 There is no right of appeal for you as complainant or for the Councillor against a decision of the Monitoring Officer or of the Committee.

13.2 If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman at www.lgo.org.uk/making-a-complaint