

Procedure for investigating Councillor Code of Conduct Complaints

The Localism Act 2011 requires all relevant authorities to “promote and maintain high standards of conduct” by members (Section 27).

Section 28 requires authorities to adopt a Code of Conduct for members which must be consistent, when viewed as a whole, with the seven principles set out in the Act:

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership

- 1 Anyone who considers that a Member may have breached the Code of Conduct may make a complaint to the Council. Complaints shall be submitted in writing to the Monitoring Officer via email or post (details of addresses are on the Councils complaints form). They shall only be accepted on the form annexed to this procedure. Complaints not in that form will not be accepted. The Monitoring Officer will assess and enable assistance to a complainant needing support with completing the form.
- 2 The Monitoring Officer will assess each complaint to see if it falls within the Council’s legal jurisdiction. The Monitoring Officer will determine whether or not the complaint relates to a criminal matter and if so will report it to the Police for investigation. If the complaint relates to member conduct, the Monitoring Officer will satisfy themselves that the complaint meets the following tests:
 - The complaint is against one or more named Members
 - 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 under which the Subject Member was operating at the time of the alleged misconduct.

If the complaint fails one or more of these tests it cannot be investigated as a breach of the Code and the Complainant must be informed that no further action will be taken in respect of the complaint. If the complaint passes these tests, the Monitoring Officer will deal with the complaint in accordance with the procedure set out in this document.

- 3 The Monitoring Officer will, in consultation with the Independent Person, reject complaints including if a complaint is considered to be frivolous or vexatious and outline the reasons for this in writing to the complainant. The Monitoring Officer

- may facilitate a discussion and/or agreement between the Complainant and the Subject Member which resolves the complaint to the satisfaction of both parties.
- 4 Anonymous complaints or complaints not accompanied by a valid contact name and property address will not be accepted. Once accepted the property address will not be referred to any further unless related to the complaint itself.
 - 5 A complaint will be acknowledged within 5 working days.
 - 6 As a matter of fairness and natural justice a Member will usually be told who has complained about them. A person making a complaint who provides full contact details as required by 1.2 may request anonymity. In this case the Monitoring Officer shall consider the request or refer to the Standards and Ethics Committee. The Monitoring Officer or if referred the Standards and Ethics Committee may grant the request if the release of such information might put the complainant or someone close to the complainant at risk of harassment, injury or damage to his property, loss of employment or could exasperate an existing medical condition. The decision on the matter from this process shall be final. If the decision is not to grant anonymity the complainant may withdraw the complaint if they wish. No details will be released from this point. Should the complainant withdraw their complaint the case file will be destroyed. If a request for anonymity is granted the complaint shall proceed in accordance with paragraph 4 with all relevant information redacted.
 - 7 References in this procedure to an Assessment Committee mean a Standards and Ethics Committee of 4 elected members and, if available, the independent chairperson, quorate at 3 elected members, chosen from the Standards and Ethics Committee and accompanied by an appointed 'independent person' as a minimum. It should be noted only the elected members have a vote. The 'independent person' is an advisory and non-voting role held by a person outside of the Council. The Standards and Ethics Committee shall be advised by the Monitoring Officer, and at their request, the Council's Solicitor or a Director or a person nominated by the Monitoring Officer.
 - 8 Complainants should bear in mind that unless anonymity is granted under paragraph 2 above a copy of the complaint form as received (with property and email addresses deleted) will be forwarded to the Subject Member(s) concerned. Where anonymity is granted the complainant's name, contact details and signature shall be deleted. The rest of the form will remain as written.
 - 9 If a request for anonymity is referred to the Standards and Ethics Committee it shall be considered at the next meeting of a Standards and Ethics Committee before any further action is taken on the complaint. Once the question of anonymity is dealt with the complaint shall proceed in accordance with paragraph 6.
 10. The Council shall, within 7 working days of acknowledging the complaint or granting anonymity, send a copy of the complaint to the Subject Member and notify the complainant that this has been done. Prior to writing to both parties the Monitoring Officer, or a nominated person, in consultation with the Independent Person, shall assess the complaint and what further evidence is required to enable the allegation

to be considered properly and may request such information from either party. They may also contact third parties (e.g. a parish clerk, Land Registry, Companies House) who might hold information and, if necessary, interview either or both parties if they believe this will assist the initial hearing by a Standards and Ethics Committee.

11. A complaint case including the application form and any other documentation obtained under paragraph 8 should be taken to the Standards and Ethics Committee within 4 to 6 weeks or the next available committee of the complaint being received or of a decision being made on anonymity. (Standards and Ethics Committee will be deemed to be at full capacity if 6 complaints are scheduled in the session, the committee members can refuse to hear any more than this in one sitting. The decision to hear more is at the discretion of the Standards and Ethics Committee and may increase the target time for hearing where complaint levels are high.)
12. The Standards and Ethics Committee shall meet, elect a chairperson from their number and deal with the following issues:
 - (a) whether the matter should be considered in public or private. The papers will have been released in private by the proper officer on the basis that paragraphs 1 -3 of schedule 12A of the Local Government Act 1972 are likely to apply. The Sub-Committee can decide to hear the matter in public if they are satisfied that there will be no release of confidential information or if, despite one of the categories of exempt information applying, that the public interest of considering the matter in public outweighs it being considered in private;
 - (b) dealing with an application for anonymity. Once dealt with, the matter shall stand adjourned to the next hearing of a Standards and Ethics Committee to enable steps 6 to 9 to be carried out;
 - (c) to understand the complaint, assisted by the Subject Member and the Complainant if the latter is present;
 - (d) to consider what further evidence is required to enable a proper determination to be made on the complaint, who can provide such evidence and the timescale for obtaining such evidence. The Standards and Ethics Committee, if it feels it is necessary, may appoint an external investigator to investigate the matter. It is likely that such power will be reserved for complex cases;
 - (e) if the Standards and Ethics Committee does not have sufficient evidence at the preliminary hearing to make a decision it shall adjourn the matter to the next Standards and Ethics Committee hearing. This does not guarantee the same panel of members considering the case. A Standards and Ethics Committee can reserve a case to themselves in which they shall specifically re-convene on a date set by the Standards and Ethics Committee. If it does not reserve the case to itself then the next Standards and Ethics Committee

meeting shall consider the matter and commence its consideration of the matter by ensuring that it has sufficient evidence; and

- (f) At the point when a Standards and Ethics Committee considers that it has sufficient evidence to make a decision it may choose one of the following options – (1) dismiss the complaint on the basis that the Subject Member was not acting in the capacity of a councillor or the code did not apply to them at the time of the alleged breach; or (2) refer the matter to the Audit and Governance Committee for a hearing or (3) make a determination on matter or (4) Adjourn whilst further evidence is obtained indicating when they wish the complaint to be presented again to committee.
 - (g) Paragraph 10(e) shall apply to preliminary assessments as it does to hearings.
13. Where a Standards and Ethics Committee hears a complaint the following procedure shall apply:
- (a) The Subject Member and the Complainant shall be entitled to be accompanied by a legal adviser or friend;
 - (b) At the beginning of the hearing the chairperson shall explain to the parties the procedure which it proposes, to follow at the hearing;
 - (c) A hearing shall take the form of a discussion led by the Standards and Ethics Committee and cross-examination shall not be permitted unless the Standards and Ethics Committee considers that it is necessary to consider the complaint as the case may require;
 - (d) A Standards and Ethics Committee must allow both parties sufficient length of time to present their case;
 - (e) A Standards and Ethics Committee may require any person attending the hearing who in their opinion is behaving in a disruptive manner to leave the hearing and may (i) refuse to permit that person to return; or (ii) permit that person to return only on such conditions as the authority may specify; but such a person may, before the end of the hearing, at the agreement of the Standards and Ethics Committee, submit to the Standards and Ethics Committee in writing any information which they would have been entitled to give orally had they not been required to leave;
 - (f) A Standards and Ethics Committee in considering the complaint and representation made by a party take into account documentary or other information produced by a party in support of or in defence to the complaint; information not relevant to the complaint will be disregarded;
 - (g) Members of the Standards and Ethics Committee may ask questions at any time;
 - (h) In concluding the discussion the Subject Member shall be entitled to speak last.

- (i) The Standards and Ethics Committee will then consider their decision. They may find that there has not been a breach of the code and if so shall state this to the complainant and Subject Member. If they find that evidentially a breach of the code has occurred they shall then proceed to consider whether it is the public interest to proceed further. In determining such matter the Standards and Ethics Committee shall consider the following points and if any apply may conclude that it is not in the public interest to proceed:
- (1) the complaint appears to be politically motivated.
 - (2) 'tit for tat' complaints.
 - (3) repeat complaints, other than new instances of the same alleged infringement, not raising anything new.
 - (4) vexatious complaints.
 - (5) taken together with other complaints pending or being processed the Standards and Ethics Committee takes the view, acting reasonably, that the time being spent on processing code complaints is unreasonably time consuming and interfering with the proper conduct or functioning of other Council business;
 - (6) the complaint is minor and no sanctions are likely to be applied;
 - (7) the member has put forward mitigation which means that no sanctions are likely to be applied.
 - (8) dealing with the complaint would have a disproportionate effect (compared with the likely sanction to be applied) on both officer and members' time and other financial costs which may be incurred.
 - (9) the matter is better dealt with elsewhere e.g. under a council's complaints procedure or by insurers.
 - (10) the matter is already the subject of private litigation and proceeding with the complaint might prejudice that litigation.
 - (11) the complaint concerns a matter where the member was advised incorrectly by an officer and it was reasonable for the member not to doubt that advice.
 - (12) the circumstances have changed so much that nothing or little is to be by proceeding.
 - (13) the Subject Member has offered the Complainant an apology or appropriate alternative resolution or conclusion to the matter
- (j) If the Standards and Ethics Committee find a breach and that it is in the public interest to proceed the Standards and Ethics Committee will then determine whether any further action should be taken in respect of the breach and shall make one or a combination of the following decisions:

- (1) That there has been a breach of the code but they do not feel that any further action should be taken in respect of the matter;
 - (2) That the Subject Member should be issued with a conditional warning in respect of future behaviour and specify a period that such warning will last up to a maximum term of 2 years provided that this shall not be later than the expiry of the Subject Member's term of office at the respective Council. This shall mean that if a further complaint is received against the Subject Member which is substantiated that any sanction imposed for that breach will take into account the present breach as well;
 - (3) State that there has been a breach of the code of conduct and the Subject Member should be censured – an expression of strong disapproval or criticism - and that such censure will be in writing, copied to the leader of any relevant group and, if a parish member, copied to the parish clerk and chairman of the parish council;
 - (4) there has been a breach of the code of conduct and, in addition to (j(2)) the matter should be reported to Full Council and noted by Full Council or if a parish member recommending to the parish clerk that the matter is referred to a parish council meeting for noting;
 - (5) there has been a breach of the code of conduct and, in addition to (j(2)) and possibly (j(3)), the breach is so serious that a recommendation should be made to a relevant group leader or, if a parish member, the parish clerk and/or chairman that the member should be removed from relevant committees or the executive or outside bodies;
 - (6) that appropriate training should be arranged for the Subject Member by the Council's solicitor or if a parish member, the parish clerk;
 - (7) if the breach relates to the use of a Council computer, laptop, phone, etc. or web sites maintained or associated with the Council that the member should be prevented from using such equipment or making entries on such sites; and
 - (8) if the breach relates to a possible offence under the Localism Act 2011 whether additional to any sanction imposed, a copy of the decision of the Standards and Ethics Committee should be sent to the chief officer of police.
14. The Standards and Ethics Committee may adjust the above procedures if it considers it reasonable to do so to facilitate the consideration of the matter and it is in the public interest; and
 15. The decision of the Standards and Ethics Committee (but not preliminary assessment decisions) shall be confirmed in writing to the Complainant and the Member within 10 working days of the hearing.

16. The decision of the Standards and Ethics Committee shall be placed on the Copeland Borough Council web site within 1 month of issue to the complaint and member.
17. **If the Member or the Complainant fails to attend a hearing, the Standards and Ethics Committee may proceed in their absence** unless it feels that it is the public interest to adjourn the hearing to a specified date. Where a hearing is adjourned the Council shall notify the parties forthwith of the date, time and place for the resumed hearing.
18. A Complainant may withdraw a complaint at any time with permission of the Monitoring Officer in liaison with the Independent Person. Permission will normally be granted unless the complaint is of a serious nature and the matter can proceed, evidentially, without input from the Complainant.
19. Where a member is the subject of a complaint against him/her which is received by the Principle Authority whilst still holding office, and subsequently resigns prior to the determination of that complaint, that no further action be taken against that member in respect of that complaint for a period of 24 months from the date of resignation. If within that period the subject is either re-elected or co-opted on to a council, that the complaint is resumed and will be referred back to the Standards and Ethics Committee for consideration; that if the subject is not so re-elected or co-opted within that period that no further action be taken on the complaint.
20. A Standards and Ethics Committee's decision shall be final. A dissatisfied Complainant or Member may be entitled to seek judicial review of the decision but should seek legal advice before doing so. A complaint to the Local Government Ombudsman may also be made.