

CODE OF CONDUCT COMPLAINTS – REVISED PROCEDURES

Procedure for investigating code of conduct complaints approved by the Audit and Governance Committee on the 9th November 2017, Council on the 5th December 2017 and Overview and Scrutiny Committee on 13th February.

- 1.1 Complaints shall be submitted to the Council's Monitoring Officer and shall be in the form annexed to this procedure. Complaints not in that form or substantially in that form will not be accepted.
- 1.2 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.
- 1.3 A complaint will be acknowledged within 5 working days.
- 1.4 A person making a complaint who provides full contact details as required by 1.2 may request anonymity. In this case an Audit and Governance Assessment Sub-Committee shall consider the request. The Sub-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 exacerbate an existing medical condition. The Sub-Committee's decision on the matter shall be final. If the decision is not to grant anonymity the complainant may withdraw the complaint if the applicant wishes.
- 1.5 References in this procedure to an Assessment Sub-Committee mean a Sub-Committee of 4 members, quorate at 3, chosen from the Audit and Governance Committee and accompanied by an appointed independent person. The independent person is an advisory and non-voting role. The Sub-Committee shall be advised by the Council's Monitoring Officer or a Director or a person nominated by either of them.
- 2 Complainants should bear in mind that unless anonymity is granted under paragraph 1 above a copy of the complaint form as received (with property and email addresses deleted) will be forwarded to the 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.
3. If a request for anonymity is made this shall be considered at the next meeting of a Sub-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 4.
4. If no request for anonymity is made or, if made, once the request has been dealt with by a Sub-Committee, the Monitoring Officer or a person appointed by him shall,

within 7 working days, send a copy of the complaint to the Member and notify the complainant that this has been done. Prior to writing to both parties the Monitoring Officer, or a person appointed by him, shall assess what further evidence is required to enable the allegation to be considered properly and may request such information from either party. He 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 he believes this will assist the initial hearing by an AGC Standards Sub-Committee.

5. The Monitoring Officer or persons appointed by him shall not be entitled to make any determination on the complaint nor come to any conclusion on it. He shall refer the complaint form and any other documentation obtained under paragraph 4 to an Audit and Governance Standards Sub-Committee within one month of the complaint being received or of a decision being made on anonymity.
6. The Audit and Governance Standards Sub-Committee shall meet 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 Sub-Committee to enable steps 2 to 5 to be carried out;
 - (c) to understand the complaint, assisted by the Member and the Complainant if the latter is present and to try and facilitate an early resolution of the complaint between the parties;
 - (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 Sub-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 Sub-Committee does not have sufficient evidence at the preliminary hearing to make a decision it shall adjourn the matter to the next Sub-Committee hearing. This does not guarantee the same panel of members considering the case. A Sub-Committee can reserve a case to themselves in which they shall specifically re-convene on a date set by the Sub-Committee. If it does not reserve the case to itself then the next Sub-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 Sub-Committee considers that it has sufficient evidence to make a decision it may choose one of three options – (a) dismiss the complaint on the basis that the Member was not acting in the capacity of a councillor or the code did not apply to him at the time of the alleged breach; or (b) refer the matter to the Audit and Governance Committee for a hearing or (c) ask both the Member and the Complainant whether they agree to the Sub-Committee disposing of the matter. If both agree the Sub-Committee may proceed to hear the matter;
- (g) Paragraph 7(e) shall apply to preliminary assessments as it does to hearings.

7. Where a Sub-Committee or the Committee itself hears a complaint the following procedure shall apply:

- (a) The Member and the Complainant shall be entitled to be accompanied by a legal adviser or friend;
- (b) At the beginning of the hearing the chairman 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 Sub-Committee or Committee and cross-examination shall not be permitted unless the Sub-Committee or Committee considers that it is necessary to consider the complaint as the case may require;
- (d) A Sub-Committee or Committee must allow both parties equal length of time to present their case;
- (e) A Sub-Committee or 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 him to return only on such conditions as the authority may specify; but such a person may, before the end of the hearing, submit to the Sub-Committee or Committee in writing any information which they would have been entitled to give orally had they not been required to leave;
- (f) A Sub-Committee or 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 Sub-Committee may ask questions at any time;
- (h) In concluding the discussion the Member shall be entitled to speak last.
- (i) The Sub-Committee or the 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 member. If they find that evidentially a breach of the code has occurred they shall then proceed to consider whether it is in the public interest to proceed further. In determining such matter the Sub-

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 Sub-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 Member has offered the Complainant an apology or appropriate alternative resolution or conclusion to the matter
- (j) If the Sub-Committee or Committee find a breach and that it is in the public interest to proceed they shall ask the Member whether he wishes to add anything. The Sub-Committee or Committee will then determine whether any further action should be taken in respect of the breach and shall make any 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 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 Member's term of office at the respective Council. This shall mean that if a further complaint is received against the 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 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 (b) 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 (b) and possibly (c) 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 member by the Council's Monitoring Officer 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 Committee or Sub-Committee should be sent to the chief officer of police.
8. A Committee or a Sub-Committee may adjust the above procedures if it considers it reasonable to do so to facilitate the consideration of the matter or if it is in the public interest.
9. The decision of the Committee or Sub-Committee (but not preliminary assessment decisions) shall be confirmed in writing to the Complainant and the Member within 5 working days of the hearing.
10. The decision of the Committee or Sub-Committee, or a summary of that decision, shall be placed on the Copeland Borough Council web site.

11. If the Member or the Complainant fails to attend a hearing the Committee or Sub-Committee may proceed in their absence unless it feels that it is in the public interest to adjourn the hearing to a specified date. Where a hearing is adjourned the Monitoring Officer or a person appointed by him shall notify the parties forthwith of the date, time and place for the resumed hearing.
12. A Complainant may withdraw a complaint at any time with permission of a Sub-Committee. Permission will normally be granted. However the Sub-Committee can ask the Monitoring Officer to continue the complaint if the complaint is of a serious nature and the matter can proceed, evidentially, without input from the Complainant.
13. A Committee or Sub-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.
14. This procedure shall be effective for all complaints received after the 1st October 2017 and those received before that date which are still undetermined.

The Proposed complaint form, this can be found on the [council website](#) and may be subject to minor change:

Complaints Form for Complaints Against Councillors in Copeland

Please read carefully before submitting your complaint, [your complaint may be rejected if it fails to meet the required criteria](#).

What kind of complaint can be made about a councillor

Complaints can be made by anybody about a councillor breaking any part of their authority's Code of Conduct when they are acting (or giving the impression, they are acting) as a representative of their Council or doing Council business. Acting as a councillor is an important point as many complaints have been received about members using personal Facebook pages and giving no indication that they are a councillor. In those case a councillor is likely to be held as not acting as a councillor. Each case will be determined on a case by case basis.

Typical code of conduct complaints include:

- Failing to treat others with respect.
- Bullying.
- Intimidating a complainant or witness.
- Compromising the impartiality of officers.

- Bringing their Council/office of councillor or executive member into disrepute.
- Disclosing information given in confidence/confidential information unless:
 - They have consent to do so; or
 - Are required to do so by law; or
 - The disclosure is necessary to obtain professional advice, or
 - Disclosure is deemed reasonable, in public interest, in good faith, in compliance with reasonable requirements of the authority.
- Using their position improperly to obtain advantage or disadvantage for anyone.
- Using Council resources for political purposes.
- Preventing anyone accessing information they have a legal right to.
- Failing to register financial or other interests.
- Failing to reveal a pecuniary interest at a meeting.
- Failing to register any gifts or hospitality they have received in their role as a member, worth over £50.

If none of the above applies to your complaint, it is probably not something we can deal with.

The complainant in this instance should be pointed in the direction of other organisations that may be able to help e.g. local Citizens Advice Bureau, Law Centre or other advice centre.

Who can be complained about

Complaints can be about councillors, members and co-opted members of all the authorities we cover. A co-opted member is a voting member of an authority or one of its committees, who was appointed to their position for their skills and experience rather than being elected.

Under this process we can only consider complaints about individual councillors or members. We do not address complaints about councils as a whole. Parish and Town Councils can adopt Copeland Borough Councils code of conduct or develop their own code copies which can be obtained by contacting the relevant Town or Parish Council direct, or visiting their website.

What form do complaints take?

Complaints need to be in writing clearly outlining the alleged breach and on the form set out below or substantially in that format.

What we cannot investigate

There are some complaints that we cannot investigate under this process, including:

- Complaints where a member is not named.
- Incidents or actions that are not covered by the Code of Conduct.
- Complaints about the actions (or inactions) of the Council as a whole.
- Complaints about people employed by local authorities.
- Incidents that happened before a member was elected.
- Complaints about the way in which the authority conducts and records its meetings.
- Repeat or vexatious complaints.

Processing and investigating a complaint

A separate guidance note on procedure exists which is available via the following link (see above).

Please remember that we can:

- Only consider complaints that are about individual councillors or members, not the authority as a whole or authority employees (there is a separate complaints process for this).
- Only investigate matters where you believe a member has breached their authority's Code of Conduct.
- Please provide us with as much information as you can about your complaint to help us decide whether or not it should be investigated. We may decide not to proceed with the complaint if there is insufficient evidence presented by the complainant. This will depend on the seriousness of the matter.
- Please avoid sending us large amounts of background information that only indirectly relates to your complaint. Please stick to the facts,. What you actually know not what you believe to be so.
- If your complaint is referred for investigation, you will have a further opportunity to provide the investigator with any information or documents that you consider to be relevant.

Copeland Borough Council Complaints form

The form covers complaints about individual members in all councils within the borough.

1 Your details

Please provide us with your name and contact details

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

Your name will normally be released as part of the complaint. Your address and contact details will not usually be released unless necessary or to deal with your complaint. **If you have serious concerns about your name being released please complete section 5 of this form.**

2. Details of the Councillor you are complaining about

Please provide us with the name of the member(s) you believe have breached the code of conduct and the name of their authority:

Title	First Name	Last Name	Council or Authority name

3. Details of the complaint

Please explain in this section what the member has done that you believe breaches the Code of Conduct and which part of the code. If you are complaining about more than one member 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 when a decision is made whether to take any action on your complaint. For example:

- ☐ You should be specific, wherever possible, about exactly what you are alleging the member said or did. For instance, instead of writing that the member insulted you, you should state what it was they said or did.
- ☐ 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.
- ☐ You should provide any relevant background information and indicate why you found the actions of the member distressing or offensive, and were there any consequences as a result of the alleged behaviour. Background information could be agenda reports, meeting minutes, Face book blogs, etc.

Please provide us with the details of your complaint. Continue on a separate sheet if there is not enough space on this form include any document to support in the appendix

Only complete this next section if you are requesting that your identity is kept confidential

5 In the interests of fairness and natural justice, we believe members who are complained about have a right to know who has made the complaint. We also believe they have a right to be provided with a summary of the complaint. We are unlikely to withhold your identity or the details of your complaint unless you have good reason. Please note that requests for confidentiality or requests for suppression of complaint details will not automatically be granted. Your request will be considered alongside the substance of your complaint. We will then contact you with the decision. If your request for confidentiality is not granted, we will usually allow you the option of withdrawing your complaint. However, it is important to understand that in certain exceptional circumstances where the matter complained about is very serious, we can proceed with an investigation or other action and disclose your name even if you have expressly asked us not to.

Please provide us with details of why you believe we should withhold your name and/or the details of your complaint:

Additional Help

6. Complaints must be submitted in writing. This includes electronic submissions. However, in line with the requirements of the Equality Act 2010, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing.

If you need any support in completing this form, please let us know as soon as possible.

Once completed please return the form to:

The Monitoring Officer,
Copeland Borough Council
The Copeland Centre,
Catherine Street,
Whitehaven, Cumbria,
CA28 7SJ

or electronically to: codeofconductcomplaints@copeland.gov.uk