

5.2 COMPLAINTS PROCEDURE FOR DEALING WITH COMPLAINTS AGAINST MEMBERS

The Localism Act 2011 requires all relevant authorities (including National Park Authorities) to “promote and maintain high standards of conduct” by members and voting co-opted 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 and;
- Leadership

The Code must provide for registration and disclosure of both non disclosable pecuniary interests and non-pecuniary interests. The Authority adopted such a Code on 1 day of July 2012.

The Localism Act provides that, where there are complaints of misconduct, the Authority must have in place:-

- Arrangements under which allegations can be investigated; and
- Arrangements under which decisions on allegations can be made.

This procedure note details the arrangements under which allegations of misconduct by Authority members can be investigated, how decisions on such allegations can be made, and the sanctions that can be applied.

1. Background

Anyone who considers that a member may have breached the Code of Conduct may make a complaint to the Authority. The Monitoring Officer (“MO”) will assess each complaint to see if it falls with the Authority’s legal jurisdiction. If so he will follow the procedure set out in this procedure note.

The process for dealing with matters should be the same for all members. It must be fair and be seen to be fair.

The results of any investigation will be reported to the Governance Committee for noting.

2. Responsibilities

Where a member is the subject of an allegation, we shall refer to that member as a “Subject Member”.

We shall use the term “Independent Person” or (“IP”) to refer to the person appointed under the provisions of the Localism Act 2011 to carry out the functions set out in the Act and as detailed within this procedure note.

In order to carry out its functions efficiently and effectively, the Governance Committee will establish Sub-Committees.

The “Assessment Sub-Committee” will deal with the hearing of a complaint received by the Authority against a member.

The “Review Sub-Committee” will consider any request made by a complainant to review the MO’s decision to review either the decision or sanction of the MO.

Each Sub-Committee will consist of three members of the Governance Committee. Where it is necessary for a Sub-Committee to be convened, the Member Services Co-ordinator will contact all members of Governance Committee with a date for the Sub-Committee meeting and the first three members who respond to confirm they are able to attend on that date will be appointed.

3. Publicising the Complaints System

We will publish a notice on our website detailing where Code of Conduct complaints should be sent. This is to ensure that members of the public are aware of the responsibility for handling code complaints and what the process entails. This procedure will also be published. The Complainant’s identity will normally be disclosed to the Subject Member. We will not deal with anonymous complaints.

A Complainant must provide the following information when making a complaint:-

- His/her name, address and other contact details
- His/her status, for example member of the public, fellow member or officer
- Who the complaint is about and the authorities to which the member belongs
- Details of the alleged misconduct including, where possible, dates, witness details and other supporting information
- Equality monitoring data if applicable

Complaints must be submitted in writing to the Authority’s MO. This includes fax and electronic submissions.

We will make reasonable adjustments in line with the Equality Act 2012 to assist any Complainant who has a disability that prevents him/her from making his/her complaint in writing to do so.

Upon receipt of the complaint, the MO 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 is clearly not about member conduct, the MO will determine whether another process is appropriate. If the complaint relates to member conduct, the MO will satisfy himself that the complaint meets the following tests:-

- The complaint is against one or more named members of the Authority
- 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 MO will deal with the complaint in accordance with the following procedure.

If a complaint is considered to be frivolous or vexatious then the MO will write to the Complainant advising him that the matter will not be investigated further.

4. Confidentiality

As a matter of fairness and natural justice, a member will usually be told who has complained about them. However there may be instances where the Complainant asks for their identity to be withheld. Such requests will only be granted in exceptional circumstances and at the discretion of the MO and in consultation with the IP.

Reasons for upholding a request for confidentiality may include the following:-

- The Complainant has reasonable grounds for believing that he/she will be at risk of physical harm if his/her identity is disclosed
- The Complainant is an officer of the Authority who works closely with the Subject Member and he/she is afraid of the consequences to his/her employment if his/her identity is disclosed
- The Complainant suffers from a serious health condition and there are medical risks associated with his/her identity being disclosed. In such circumstances, the MO may wish to request medical evidence of the Complainant's condition.

The MO should also have regard to the Authority's Confidential Reporting Policy where appropriate.

5. Acknowledging receipt of a complaint

The MO will acknowledge receipt of a complaint to the Complainant and notify the Subject Member that a complaint has been made about him/her within 5 working days of receipt. Such notification will state that:

- a complaint has been made,
- the name of the Complainant (unless the Complainant has requested confidentiality and this is being upheld),
- brief details of the allegations made, and
- the relevant paragraphs of Code of Conduct which may have been breached.

The MO must ensure they have the legal power to disclose any information they choose to disclose to the Subject Member. In particular, the MO will need to consider the restrictions set out in Section 63 of the Local Government Act 2000. Additionally, the impact of the Data Protection Act 1998 must be considered.

6. Initial Assessment Reports and Enquiries

The MO will consult the IP to undertake an initial assessment of the complaint. In carrying out his assessment, the MO will give consideration to the following:-

- Whether the complaint is within the Authority's jurisdiction
- The paragraphs of the Code of Conduct the complaint might relate to, or the paragraph the Complainant has identified

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- The preparation of a summary of key aspects of the complaint if it is lengthy or complex
- Any further information that the MO may need to assist with the decision – this may include
 - a) Obtaining copy of a Declaration of Acceptance of Office Form and an undertaking to observe the Code
 - b) Minutes of Meetings
 - c) A copy of a member's entry in the register of interest
 - d) Information from Companies House or the Land Registry
 - e) Other easily obtainable documents

The MO may also contact the Complainant for clarification of his/her complaint if the MO is unable to understand any aspect of the evidence submitted. These enquiries should not be carried out in such a way as to amount to an investigation. The MO should not seek opinions on an allegation and should restrict enquiries to factual information so that any subsequent investigation is not prejudiced.

After undertaking an initial assessment, the MO may:

- Make a decision that the Subject Member has breached the Code of Conduct and impose appropriate sanctions (Decision), or
- Facilitate an agreement between the Complainant and the Subject Member which resolves the complaint to the satisfaction of both parties (Agreement); or
- Undertake a full investigation (Investigation).

Decision

Upon making a provisional decision the MO should provide the Subject Member with an opportunity to provide an explanation for his/her behaviour. The MO should take such explanation into consideration when making his final decision and deciding upon the appropriate sanction. The decision and the reason for it should be provided to the Subject Member in writing within 5 working days of the decision being made. The decision is subject to the review process.

Where the MO makes a final decision, the MO will report the matter to the IP and Chairman or Deputy Chairman of the Governance Committee.

Agreement

Wherever possible, the MO should proceed with the aim of resolving the complaint as soon as possible; focussing on a solution to the issues raised by the Complainant and agreement of the parties to an appropriate course of action or remedy. In this instance the MO is not restricted to imposing sanctions but may agree any solution that is appropriate in the circumstances. The agreement should be put in writing and signed by all parties.

If an agreed solution is reached, the MO will report the matter to the IP and Chairman or Deputy Chairman of the Governance Committee.

Investigation

If the matter is to be investigated, the MO will appoint an Investigating Officer (usually the Deputy Monitoring Officer) to prepare an initial report. The MO will write to the

relevant parties informing them that the matter is to be investigated and advising who will be responsible for conducting the investigation. The MO should give an indication as to the length of time the investigation will take and when a report is likely to be completed.

The Investigating Officer will obtain all available evidence relevant to the complaint and may interview the Complainant, the Subject Member and any witnesses to the alleged misconduct. Where possible the report will be completed and provided to the MO and IP within 15 working days.

The MO will consider the report of the Investigating Officer with the IP and will

- refer the matter to the Assessment Sub-Committee for a full hearing, or
- decide to take no further action.

If a decision is made to take no further action, the MO must give notice in writing of the decision within 5 working days, setting out clearly the reasons for the decision. This notice must be given to the Complainant and Subject Member. This decision is subject to the review process.

If the MO determines that a hearing is required, the MO will draft a covering report to the Assessment Sub-Committee attaching the report of the Investigating Officer and any evidence referred to. The MO will also notify the Subject Member and the Complainant that the matter will be dealt with at a hearing.

7. The Pre-Hearing Process

In consultation with the Chairman of the Governance Committee and the IP, the MO will write to the Subject Member proposing a date for the hearing. The MO will outline the hearing procedure, the member's rights and ask for a written response from the Subject Member within a set time to determine whether or not the Subject Member:-

- Disagrees with any of the findings of fact in the Investigation Report including the reasons for any of these disagreements
- Wants to give the evidence to the Sub-Committee either verbally or in writing
- Wants to call relevant witnesses to give evidence to the Sub-Committee
- Wants any part of the hearing to be held in private
- Wants any part of the Investigation Report or other relevant documents to be withheld from the public
- Wants to attend the hearing

The pre-hearing process should focus on isolating all relevant disputes of fact between the parties and to confirm what is agreed. This is to save time later on in the determination process.

The Subject Member, the Complainant and Assessment Sub-Committee members will be provided with the Investigation Report and a full bundle of evidence at least 5 working days prior to the hearing date. Once the papers have been issued, new evidence will not be permitted to be presented at the hearing. If witnesses are to be called, the factual summary of their evidence should be provided to the MO not less than 3 days before the Hearing.

The Assessment Sub-Committee cannot order witnesses to appear or give evidence.

8. The Hearing

The main purpose of the Assessment Sub-Committee's hearing is to decide whether the Subject Member has breached the code of conduct and, if so, to decide if a sanction should be applied. The role of the IP in the hearing process is to provide support for the Monitoring Officer or Subject Member (as appropriate) and to assist the Assessment Sub-Committee by providing evidence of the process if requested to do so.

The procedure for a Sub-Committee hearing shall be:

1. Appoint a Chairman for the meeting
2. Declarations of Interest
3. Determine whether the public should be excluded from the hearing under the provisions of Section 100(A)(4) of the Local Government Act 1972. The decision as to whether to maintain an exemption does not always have to result in the public being excluded from a meeting. It also does not always have to result in excluding details of the complaint from the report sent out in advance of the meeting.
4. Report to be presented to committee by Monitoring Officer
5. Questions of Monitoring Officer
6. Complainant gives evidence
7. Questions of Complainant
8. Subject Member gives evidence
9. Questions of Subject Member
10. Additional witnesses to be heard if considered appropriate by the Assessment Sub-Committee followed by questions
11. Sub-Committee withdraws to discuss matters and reach conclusion
12. Decision to be given through the Chairman and confirmed in writing within 5 working days.

There is no right of review of the decision of an Assessment Sub-Committee.

The Assessment Sub-Committee should hear a complaint within one month of the date upon which the Investigating Officer's report was completed and should aim to complete the hearing in one sitting or in consecutive sittings of no more than one working day in total.

Members should bear in mind that the hearing is a formal meeting of the Authority and is not a Court of Law. Members of the Assessment Sub-Committee will not hear evidence under oath, but will decide factual evidence on the balance of probabilities i.e. it is more likely than not that a particular event happened or a particular thing was said.

The Assessment Sub-Committee should work at all times in a demonstrably fair, independent and politically impartial way. The process should be seen as open, unprejudiced and unbiased. All concerned should treat the hearing process with respect

and with regard to the potential seriousness of the outcome, for the Subject Member, the Authority, the Complainant and the public.

9. Representatives

The Subject Member may choose to be represented by Counsel, a Solicitor, or by any other person they wish. If the Subject Member concerned wants to have a non-legal representative, the Subject Member must obtain the consent of the MO who will make the decision after consulting with the Independent Member. The payment of any costs or expenses incurred by the Subject Member's representative will be the responsibility of the Subject Member.

The Assessment Sub-Committee may choose to withdraw its permission to allow a representative if that representative disrupts the hearing. However an appropriate warning will usually be enough to prevent disruptions and will normally be given before permission is withdrawn.

10. Evidence

The Chairman of the Assessment Sub-Committee will control the procedure and evidence presented at the hearing, including the number of witnesses and the way in which witnesses are questioned. No new evidence can be presented at a hearing (please refer to the Pre-Hearing process)

The Assessment Sub-Committee can allow witnesses to be questioned by the Subject Member, the MO, the Investigating Officer or their representatives. Alternatively the Assessment Sub-Committee can ask these questions be directed through the Chairman. The members of the Assessment Sub-Committee can also question witnesses directly.

The Assessment Sub-Committee has the right to govern its own procedures as long as it acts fairly. For this reason, the Assessment Sub-Committee may limit the number of witnesses if it considers that the number proposed is unreasonable. The Subject Member must make his/her own arrangements to ensure that his/her witnesses (and witnesses he/she would like to question) will attend the Hearing.

11. Notice of the Assessment Sub-Committee's Findings

The Assessment Sub-Committee should, wherever possible, announce its decision at the end of the hearing. It is good practice to prepare a full written decision in draft on that day. The Officer providing administrative support to the Sub-Committee will normally also draft minutes of the meeting.

The Assessment Sub-Committee must give its full written decision to the relevant parties as soon as possible after the hearing and in any event within 5 working days of the hearing.

The relevant parties are:-

- The Subject Member
- The Complainant

12. Sanctions

If a Subject Member has failed to comply with the Code of Conduct, the MO or a Sub-Committee may impose such sanctions as are appropriate. These sanctions may include:

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- A request the Subject Member submit a written apology in a form specified by the Assessment Sub-committee
- A request that the Subject Member undertake such training as the Assessment Sub-committee specifies
- A request that the Subject Member participates in such conciliation as the Assessment Sub-committee specifies
- A requirement that the Subject Member deals with Authority business through one point of contact within the Authority
- Preventing the Subject Member from attending the offices of the Authority unless attending Committee meetings
- Reporting the Subject Member to his/her County or District Council, or the Secretary of State as appropriate and report the matter to a meeting of the full Authority Committee.

When deciding on a sanction the MO or Assessment Sub-Committee should ensure that it is reasonable and proportionate to the Subject Member's behaviour. They should also consider the following ways of preventing the issue from recurring:

- Mediation as a potential resolution to problems in working relationships
- A review of lessons learned that can be shared more widely with the membership
- Peer mentoring for the Subject Member or other members of the Authority

Sanctions involved in restricting access to an Authority's premises or equipment should not unnecessarily restrict the Subject Member's ability to carry out the responsibilities as a member of the Authority.

13. Making the Findings Public

The Assessment Sub-Committee must arrange for a summary of the Decision and reasons for it to be reported to the Governance Committee for their information.

14. Reviews

Where a decision is made by the MO following an initial assessment of the complaint or following a full investigation a decision is made that there is to be no further action, the Subject Member and the Complainant must be given an opportunity to submit a request for a review of the decision. Such a request must be made in writing to the MO within 10 working days of the date of the written Decision Notice and must contain full details of the reasons for requesting a review.

A Review Sub-Committee will be appointed to hear the evidence and should endeavour to carry out its review within a maximum of one month of receiving the request. The review will follow the procedure set out at 7 to 12 above for the hearing following a full investigation.

There is no right of review of a decision made by the Review Sub-Committee nor where the complaint has been deemed to be frivolous or vexatious.