

Part 5(xiii) Member Code of Conduct Complaints Procedure

Making a Complaint

Complaints alleging that Members of the District Council, or the Town/Parish Councils in Mid Sussex have breached the Members Code of Conduct should be made to the Monitoring Officer using the complaint form on the website, which guides a Complainant to provide the information required.

Withdrawal of a Complaint

In the event that a Complainant withdraws a complaint at any time prior to a decision having been made under this procedure, the Monitoring Officer may, following consultation with the Independent Person, decide that no further steps be taken in respect of that complaint but shall, in taking such decision, take into account any issues that may arise under the Code of Conduct, particularly any intimidation.

Initial Assessment

On receipt of a written complaint the Monitoring Officer will send a copy to one of the Independent Persons:

- Wendy Swinton-Eagle for District Councillors and Town and Parish Councils beginning with the letter A to D.
- Paul Cummins as above for the letters E to G.
- Dr David Horne as above for the letters H to Z.

and will consult them as to whether the complaint:

- appears to relate to the Code of Conduct.
- has sufficient substance to justify consideration by the Audit & Governance Committee

If, following this consultation, the Monitoring Officer concludes that the complaint is not appropriate for consideration by the Audit & Governance Committee, they will write to the Complainant explaining this decision, and identifying any other course of action the Complainant may wish to take.

The Monitoring Officer may decide to take no action if, for example:

- (a) The Code of Conduct was not engaged (the Subject Member was not acting as a Councillor at the time of the alleged breach took place).
- (b) Where the matter took place more than six months ago (except in exceptional circumstances or in the public interest);
- (c) Where the allegations are anonymous.
- (d) The complaint appears to be malicious, vexatious, politically motivated, tit for tat, or is so minor that there is no overriding public benefit in carrying out an investigation.
- (e) Where a challenge made to an expression of fact or opinion made during a debate at a Council meeting is fundamentally a challenge to the underlying merits of a Council determination (e.g., a planning application).

These are just some examples, but the list is not exhaustive. The Monitoring Officer (in consultation with the Independent Person) may decide that a complaint does not merit further consideration for any other reason which appears to them to be relevant.

If the Monitoring Officer concludes that the complaint does justify Committee consideration, they will write to the Complainant explaining that their complaint will be sent to the Subject Member named in the complaint for their comments (unless the Monitoring Officer considers that it would be contrary to the public interest or would prejudice the consideration of the complaint to do so). The Subject Member will be provided with the details of the Independent Person should they require guidance on the process for investigation of the complaint.

The Monitoring Officer will complete an initial assessment of the complaint within 20 working days of receipt of all relevant information.

Assessment Criteria

The following criteria shall be applied by the Standards Assessment Sub-Committee when considering allegations that a member has failed to comply with the Code of Conduct. The first 5 criteria are also used by the Monitoring Officer in consultation with the Independent Person to judge whether a complaint can be brought before the Sub-Committee as a possible breach of the Code of Conduct. The Sub-Committee, however, needs to make its own decision on these 5 criteria if a matter is brought before them.

- 1) Is the complaint within the jurisdiction of the Committee?
- 2) Is it a complaint against one or more named members or co-opted members of the Council covered by the Member Code of Conduct?
- 3) Was the Subject Member in office at the time of the alleged conduct and the Code of Conduct was in force at the time?
- 4) Would the complaint, if proven, be a breach of the Code under which the member was operating at the time of the alleged misconduct?
- 5) Is the complaint really about dissatisfaction with a Council decision?

Note – If the complaint fails one or more of the above tests it cannot be investigated as the breach of the Code.

- 6) Is there a prima facie evidence of a breach of the Code?
- 7) Is it serious enough to require investigation?
- 8) Is this part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the authority and there is no other avenue left to deal with it except investigation?

Note - In considering the case the Sub-Committee will take into account the time that has passed since the alleged conduct occurred.

- 9) Is the case suitable for local investigation?
- 10) Is there enough information currently available to justify a decision to take the matter further for investigation?

Note - While anonymous complaints will not be accepted, in exceptional circumstances the Complainant's name will not be disclosed to the Subject Member, applying the following factors:

- 1) There are reasonable grounds for believing the Complainant will be at risk of physical harm if their identity is disclosed.
- 2) The Complainant is an Officer who works closely with the Subject Member and is afraid of the consequences to their employment if their identity is disclosed.
- 3) There is evidence of medical risks associated with the Complainant's identity being disclosed.
- 4) It is feasible for the complaint to be investigated without the Complainant's identity being disclosed.
- 5) There are grounds to believe that disclosure of the Complainant's identity and/or

the provision of the written summary of the allegation may lead to intimidation of a witness or the destruction of evidence.

The Subject Member has 14 days in which to respond in writing with their version of events, if they wish. They are advised they may wish to take professional advice. They can also speak to the Independent Person.

Assessment Sub-Committee

The papers (including the Monitoring Officer's written advice) are sent to the Assessment Sub-Committee, consisting of three members of the Audit & Governance Committee (including at least one co-opted Town/Parish Member where the Subject Member is a Town/Parish Councillor).

The Assessment Sub-Committee meets privately with the Monitoring Officer and the first question asked is whether the Code of Conduct applies to the events described. If the answer to that question is "no" that is the end of the matter. Assuming the answer to that question is "yes", the Sub-Committee has to decide whether there is a potential breach of the Code of Conduct. If they decide there is no potential breach of the Code of Conduct that is the end of the matter. If they believe there is a potential breach of the Code of Conduct, they need to decide whether it is in the public interest for that to be further investigated at public expense, or whether informal guidance should be given to the Subject Member.

The results of their deliberations are sent in writing to the Complainant, to the Subject Member, to their Group Leader (if any), and to any relevant Town or Parish Council.

Review Sub-Committee

If the Assessment Sub-Committee decides against the matter being investigated, the Complainant may ask for this decision to be reviewed. The Subject Member has no right to request a review. If the Complainant does request a review, a Review Sub-Committee is appointed consisting of three different members of the Audit & Governance Committee (including at least one co-opted Town/Parish Member where the Subject Member is a Town/Parish Councillor) to consider all the previous papers, any additional submissions that may be made by the Complainant, and the comments of the Subject Member.

The Review Sub-Committee goes through the same exercise in private and their deliberations are reported in the same way.

Investigation

If the Assessment Sub-Committee and/or the Review Sub-Committee decides that the matter should be investigated, then an Independent Investigator is appointed by the Monitoring Officer within 10 working days of the decision to carry out that task.

The Independent Investigator will have no previous involvement or knowledge of the matter. The investigator will normally interview relevant persons and prepare a report and recommendations within two months of appointment. The Subject Member may be accompanied by a friend or an adviser when attending any meeting or interview as part of the investigation of the complaint.

The draft report will be shared with the Independent Person for their comments. It will then be shared with the Complainant and the Subject Member for their comments before the report is finalised.

Hearing Sub-Committee

The finalised report is sent to the Hearing Sub-Committee, consisting of three different members of

the Audit & Governance Committee (including at least one co-opted Town/Parish Member where the Subject Member is a Town/Parish Councillor). If the report concludes there is no breach of the Code of Conduct and the Hearing Sub-Committee agrees, then that will be the end of the matter and it will be reported accordingly.

If, however, the Hearing Sub-Committee decides that there needs to be a hearing or the report suggests a breach of the Code of Conduct, then that will be set up and the report will be presented by the Investigating Officer.

The Subject Member will then be able to respond and be legally represented if they wish and call a limited number of witnesses. Witnesses may be questioned by the Hearing Sub-Committee members, the Independent Person, the Investigating Officer and the Subject Member.

This is a public meeting, and the Complainant may wish to be present. The Subject Member may choose to be represented, at their own cost. The Hearing Sub-Committee may refuse to allow any person to remain at the hearing if they are disruptive.

If the Subject Member does not attend the hearing, the Sub-Committee may adjourn the hearing or may continue to reach a decision on the basis of the Investigating Officer's report, and if it decides to do so, any evidence that it hears.

The Sub-Committee will decide disputed issues and whether the Subject Member has breached the Code of Conduct on the 'balance of probabilities'.

PROCEDURE

Findings of Fact

- (a) The Chairman introduces the Sub-Committee, and any other persons present, including the Monitoring Officer, the Independent Person, and the Investigating Officer.
- (b) The Subject Member introduces any person who is acting as their representative and any witnesses to be called on their behalf.
- (c) The Chairman shall explain the procedure that shall be followed.
- (d) The Investigating Officer is invited to present their report and to call any witnesses.
- (e) The Subject Member may ask questions of the Investigating Officer and/or any witnesses which are to be put through the Chairman.
- (f) The Members of the Sub-Committee may ask questions of the Investigating Officer.
- (g) The Subject Member is invited to respond to the Investigating Officer's report and to call any witnesses.
- (h) The Investigating Officer may ask questions of the Subject Member or any witnesses which are to be put through the Chairman.
- (i) The Members of the Sub-Committee may ask questions of the Subject Member.
- (j) The Chairman may request advice from the Monitoring Officer, and/or the Independent Person.

Decision

- (a) The Sub-Committee shall adjourn to consider whether there has been a breach of the Code of Conduct. The Sub-Committee may request the presence of the Monitoring Officer to assist in setting out the reasons for their decisions.
- (b) The Sub-Committee shall reconvene to orally deliver its decision.
- (c) If the Sub-Committee decides that there has been a breach of the Code of Conduct, then it shall consider whether a sanction should be imposed.

Sanctions

- (a) The Chairman shall invite representations from the Investigating Officer as to whether a sanction should be imposed.
- (b) The Chairman shall invite representations from the Subject Member as to whether a sanction should be imposed.
- (c) The Chairman shall ask the Monitoring Officer if they wish to express an opinion as to whether a sanction should be imposed, and whether to comment on the appropriate sanctions.
- (d) The Chairman shall ask the Independent Person if they wish to express an opinion as to whether a sanction should be imposed, and whether to comment on the appropriate sanctions.
- (e) The Sub-Committee shall adjourn to consider whether to impose a sanction.
- (f) The Sub-Committee may request the presence of the Monitoring Officer during their deliberations. In so doing, the Sub-Committee should consider all the mitigating and aggravating circumstances that appear to be relevant, e.g.:
 - (i) What were the actual and potential consequences of the breach?
 - (ii) How serious was the breach?
 - (iii) What is the attitude of the Subject Member now? Have they apologised?
 - (iv) Has the Subject Member previously been dealt with for a breach of the Code of Conduct?
- (g) The following are examples of mitigating and aggravating factors, (but these are not exhaustive):

Mitigating Factors

- (a) An honest but mistaken belief that the action was not a breach of the Code of Conduct
- (b) A previous record of good service
- (c) Evidence that they were suffering from ill health at the time of the breach

Aggravating Factors

- (a) Dishonesty
- (b) Continuing to deny the factors or blaming other people
- (c) Evidence of a failure to follow advice or warnings.

The priority of the Sub-Committee should be to ensure there are no further breaches of the Code of Conduct and that public confidence is maintained.

The Decision

- (a) The Sub-Committee shall reconvene to orally deliver its decision in respect of a sanction.
- (b) The Chair will explain that written notice of the decision and the reasons for it shall be sent to all parties within 14 days of the date of the hearing, including the Town/Parish Council if the Subject Member is a Town Parish Councillor.
- (c) The Chairman will formally close the hearing.

The decision of the Hearing Sub-Committee is final and can only be challenged by way of judicial review.

Sanctions

The powers of the Hearing Sub-Committee are limited to the sanctions below. If, however, there has been uncovered something that could potentially be a criminal offence, then the Hearing Sub-Committee should report it to the police for further investigation. They have no power themselves to

suspend or disqualify an elected member.

If an investigation is carried out and the Hearing Sub-Committee finds there has been a breach of the Code of Conduct, it may decide not to impose a sanction or it may impose one or more of the following sanctions:

- (a) The Monitoring Officer to send a formal letter to the Subject Member.
- (b) The Subject Member to make a public apology at Full Council. In the event of an apology not being made, the Subject Member may be censured at a meeting of the Full Council.
- (c) The Monitoring Officer to provide further training and guidance to the Subject Member.
- (d) The Subject Member to write a personal apology to the Complainant.
- (e) The Subject Member be excluded from the Council offices (except for attending formal meetings), and/or providing them with a single point of contact.
- (f) A recommendation to the relevant Group Leader that the Subject Member be removed from the Cabinet or a Committee (or Sub-Committee, Working Group or External Body) for a specified period of time.