



Lichfield
District Council

CODE OF CONDUCT FOR MEMBERS GUIDANCE NOTES

A. Submitting a Complaint

Complaints must be submitted in writing. This includes fax and electronic submissions on including the online complaint form. Frivolous, vexatious and politically motivated tit-for-tat complaints are likely to be rejected.

If you have a disability that prevents you from making your complaint in writing or English is not your first language we can assist you in making a complaint. Please contact monitoringofficer@lichfielddc.gov.uk or ring 01543 308064.

B. Confidentiality of Complainant

In the interests of fairness and in compliance with the rules of natural justice, Members who are complained about have a right to know who has made the complaint and the substance of the allegation(s) made against him / her. We are, therefore, unlikely to withhold your personal details or the details of your complaint unless you have good reasons to believe that you have justifiable grounds, for example:- you believe you may be victimised or harassed by the Member(s) against whom you are submitting a written complaint (or by a person associated with the same); or you believe you may receive less favourable treatment from the Council because of the seniority of the Member against whom you are submitting a written complaint.

Please note that requests for confidentiality or suppression of the personal and complaint details will not automatically be granted. The request will be considered alongside the substance of your complaint and the Monitoring Officer will then contact you with the decision. If your request for confidentiality is not granted, we will usually allow you the opportunity, if you so wish, of withdrawing your complaint.

However, it is important to understand that - in exceptional circumstances, where the matter complained about is very serious - we may proceed with an investigation (or other action) and may have no choice but to disclose your personal and complaint details, because of the allegation(s) made, even if you have expressly asked us not to.

C. Complaints Process

Once a valid complaint relating to an alleged breach of the Code of Conduct has been submitted to the Monitoring Officer it will be dealt with in accordance with the arrangements approved by Lichfield District Council.

Initially the Monitoring Officer will, in consultation with the Independent Person (or designated Associate Independent Person):-

- (i) determine whether a complaint merits formal investigation and to arrange such investigation,
- (ii) to seek resolution of complaints without formal investigation wherever

practicable,

- (iii) to refer decisions on investigation to the Member Standards Committee (or appropriate Sub-Committee) where the Monitoring Officer feels that it is inappropriate for them to take the decision, subject to the Monitoring Officer reporting to the Member Standards Committee at least annually on the discharge of this function.

D. Tests

The following tests will be applied:

- the complaint is against one or more named Councillors or co-opted members of the Council or of a Parish Council within the District
- the Respondent was in office at the time of the alleged conduct and the Code of Conduct was in force at the time
- the conduct subject of the complaint relates to the Respondent in his/her capacity as a Councillor
- the complaint, if proven, would be a breach of the Code of Conduct under which the Respondent was operating at the time of the alleged misconduct

If the complaint fails any of these tests it will be rejected.

E. Criteria

If appropriate, the Monitoring Officer and the Independent Person will then go on to apply the following criteria in deciding whether a complaint should be accepted for investigation, for other action, dealt with informally, or rejected:

- Sufficiency of Information - Is there sufficient information or evidence provided with the allegation? If it is clear that substantiating evidence may be available, but has not been provided, the Monitoring Officer may ask for that additional evidence, but the onus is on the complainant to ensure all relevant information is included.
- Seriousness of the Complaint - Is the complaint Trivial, vexatious, malicious, politically motivated or 'tit for tat'? Are the resources/cost involved in investigating and determining the complaint wholly disproportionate to the allegations?
- Duplication - Is the complaint a substantially similar allegation which has previously been made by the Complainant to the Member Standards Committee (or appropriate Sub-Committee), or has the complaint been the subject of an investigation by another regulatory authority?
 - If a single event gives rise to similar complaints from a number of different complainants, wherever possible these complaints will be considered, but will be determined individually
- Length of Time - Did the events or behaviour to which the complaint relates take place more than 6 months ago. Does the time lapse involved mean that those involved are unlikely to remember it clearly enough to provide credible evidence, or where the lapse of time means there would be little benefit or point in taking action now? Such allegations are only likely to be considered in exceptional circumstances, such as where the conduct relates to a pattern of behaviour which has recently been repeated

- Public Interest - Would the public interest or any public benefit be served in referring the complaint for investigation or other action? For example, it may be not in the public interest when the member has died, resigned or is seriously ill. Similarly, if the member has offered an apology or other remedial action to resolve the matter. If it is clear that the subject of the allegation is relatively inexperienced as a Member, or has admitted making an error, and the matter would not warrant a more serious sanction
- Other Action - Whether the complaint can be dealt with best by informal resolution, including training or conciliation
- Wider Application - Does the complaint have wider applications, such as suggesting a wider problem throughout the Council concerned

F. Review of Decision

If the complainant considers that not all relevant facts have been taken into account at the initial assessment stage he/she may submit additional information relating to the complaint subject to that initial assessment to the Member Standards Committee (or appropriate Sub-Committee).

At the written request of the complainant, the Member Standards Committee (or appropriate Sub-Committee) can review and change a decision not to refer an allegation for investigation or other action.

The complainant's written request for a review must be submitted to the Monitoring Officer of Lichfield District Council within 10 working days from the date of the notice of the initial assessment of the complaint explaining in detail on what grounds the decision should be reviewed.

The request should be addressed to the Monitoring Officer.

The review carried out by the Member Standards Committee (or appropriate Sub-Committee) will be of the written evidence only. Neither the complainant nor the respondent shall be permitted to make oral representations to the Committee.

G. Additional Information

The Monitoring Officer may require additional information to come to a decision and may request information from the Respondent. Where the complaint relates to a Parish Councillor, the Monitoring Officer may also inform the Clerk of the Parish Council of the complaint and seek the views of the Clerk of the Parish Council before deciding whether the complaint merits formal investigation or other action.

There is no right of appeal available against a decision on a Code of Conduct complaint, except through the courts by way of judicial challenge.

Independent Person - Role

The Localism Act, 2011, stipulates that arrangements to deal with allegations re: a breach of the Code of Conduct adopted by a Council must include provision for the appointment by Council of at least one Independent Person. Lichfield District Council has appointed persons for this purpose.

The Independent Person must be consulted by the Monitoring Officer and the Standards Committee (as appropriate to the procedure set out above) before a decision is reached on an allegation and the Independent Person's view must be taken into account. In addition a person against whom a complaint is made may also

seek the views of the Independent Person. The idea behind this is that if a Councillor feels victimised or pressured by a Member or Members of the Council or the Authority, he or she can have access to the Independent Person for a view. This applies both to Lichfield District Councillors and to the Parish Councillors. For further information about how to approach one of the Independent Persons, please contact the Monitoring Officer.

ANNEXE 1

PROCEDURE FOR HEARINGS

Hearings will where possible be held within two months of receipt of the Monitoring Officer (MO) of the investigator's final report.

The Hearing will be before the Assessment Sub-Committee. One of the members will be elected Chairman.

The MO or Deputy MO will be present as legal adviser to the Sub-Committee. The legal adviser can speak at any time to advise the Sub-Committee on technical matters or ask questions of any party.

The Independent Person appointed under Section 28 of the Localism Act 2011 will also be present.

Both the subject Councillor and complainant will be invited to appear. They may present their own case or they may be represented.

They may bring witnesses (of a number the sub-committee considers is reasonable), **in which case written statements from the witnesses must be lodged with the MO at least eight working days before the Hearing.**

'Character witnesses' who cannot provide evidence on the matter complained about will not be permitted.

The cost of any attendance/representation must be borne by the party concerned.

All written evidence will be circulated to the Sub-Committee, the IP, the Councillor and the complainant at least five working days before the Hearing.

Written statements will not be read out at the Hearing as it will be assumed all those present are already familiar with their contents.

The legal adviser can speak at any time to advise the Sub-Committee on technical matters or ask questions of any party.

Proceedings – Summary

- The complainant can address the Sub-Committee and call witnesses (if any).
- The Councillor can ask the complainant and witnesses questions.
- The Sub-Committee and IP can ask the complainant and witnesses questions.
- The Councillor can address the Sub-Committee and call witnesses (if any).
- The complainant can ask the Councillor and witnesses questions.
- The Sub-Committee and IP can ask the Councillor and witnesses questions.
- The complainant can make a closing statement.
- The Councillor can make a closing statement.
- All those present except the Sub-Committee, the IP, the legal adviser and Monitoring Officer will leave the room while the Sub-Committee makes its decision.
- The Sub-Committee's decision will be announced orally as soon as possible, including any specific advice sought and given from the IP.
- A written report of the Hearing and decision, with reasons, will be prepared, usually within five working days. A copy will be sent to all those present at the hearing and to the Clerk of the Parish/Town Council if the complaint was about a Parish/Town Councillor.

The written report will be available for public inspection.

1. Detailed Procedure at the Hearing

(a) Attendance of the Councillor

(i) If the Subject Councillor is not present at the start of the meeting, the Sub-Committee shall adjourn to enable the Subject Councillor to attend, unless they are satisfied that there is insufficient reason for the failure of the Subject Councillor to attend, in which case the Committee may resolve to proceed in the absence of the Subject Councillor; and

(ii) Where the Sub-Committee proceeds in the absence of the Subject Councillor, the procedure for the meeting shall be adapted as necessary, giving any representatives of the Councillor who is present such rights as would otherwise be accorded to the Subject Councillor.

(b) Order of Business

The order of business at the meeting shall be as follows:

1. **Election of Chairman of the Sub-Committee;**
2. **Exclusion of Press and Public;**
3. **Declarations of Interest;**
4. **Possible adjournment (if appropriate)** – Consideration as to whether to adjourn or to proceed in the absence of the Subject Councillor, if the Subject Councillor is not present;

5. **Introduction** of the Sub-Committee, Investigator (any reference hereafter shall include a reference to their representative if appropriate), the Monitoring Officer or Deputy Monitoring Officer, the Subject Councillor and any representative of the Subject Councillor and the Complainant and any representative of the Complainant. The Independent Person appointed under sub-section 28(7) of the Localism Act 2011 will also be present. His/her views will be requested and taken into account by the Sub-Committee but by law he/she cannot vote;
6. **Presentation by the Investigator of the Investigation Report** - The Investigator, shall at this stage address only the issue of whether the Subject Councillor has acted in breach of the Code of Conduct.

The Investigator may introduce witnesses required to substantiate any matter contained in that report which the Subject Councillor has disputed in his/her written statement in response.

Members of the Sub-Committee may question the Investigator, and any witness on any matter within their competence. There shall be no cross-examination by the Subject Councillor or the Complainant, but the Subject Councillor or the Complainant may request the Chairman of the Meeting to direct appropriate questions to the Investigator, or to any witness he/she has introduced;

7. **Presentation by the Complainant** - The Complainant or his/her representative shall at this stage address only the issue of whether the Subject Councillor has acted in breach of the Code of Conduct. The Complainant or his/her representative may introduce witnesses required to substantiate any matter contained in his/her written statement in response.

Members of the Sub-Committee may question the Complainant and any witness on their evidence. There shall be no cross-examination by the Subject Councillor, Investigator, Monitoring Officer or Deputy Monitoring Officer, but the Subject Councillor, Investigator, Monitoring Officer or Deputy Monitoring Officer, may request the Chairman of the Meeting to direct appropriate questions to the Complainant or to any witness who he/she has introduced;

8. **Presentation by the Subject Councillor** - The Subject Councillor or his/her representative shall at this stage address only the issue of whether he/she has acted in breach of the Code of Conduct. The Subject Councillor or his/her representative may introduce witnesses required to substantiate any matter contained in his/her written statement in response. Members of the Sub-Committee may question the Subject Councillor and any witness on their evidence. There shall be no cross-examination by the Complainant, Investigator but the Complainant, Investigator, may request the Chairman of the Meeting to direct appropriate questions to the Subject Councillor or to any witness who he/she has introduced.

Where the Subject Councillor seeks to dispute any matter in the Investigation Report which he/she has not given notice of intention to dispute in his/her written statement in response, the Legal Adviser shall draw this to the attention of the Sub-Committee. The Sub-Committee may decide:

- (a) not to admit such dispute but to proceed to a decision on the basis of the information contained in the report;

(b) to admit the dispute, but invite the Investigator, to respond thereto, recalling any witness as necessary; or

(c) to adjourn the meeting to enable the Investigator, to investigate and report on the dispute and/or to arrange for the attendance of appropriate witnesses as to the disputed information.

9. **Response to Subject Councillor Comments** – At the conclusion of the presentation by the Subject Councillor, the Chairman shall ask the Investigator, whether there was any matter raised during the course of that presentation which was not raised in the Subject Councillor's written statement in response.

The Investigator may then respond to any such new matter, or may request the Sub-Committee to adjourn to enable him/her to investigate and report on that new matter and/or to secure the attendance of witnesses as to the new matter;

10. **Decision** – The Sub-Committee is required to come to a decision as to whether the Subject Councillor acted in breach of the Code of Conduct. Accordingly, they have to satisfy themselves that they have sufficient information upon which to make that decision, and they may question the Investigator, Monitoring Officer or Deputy Monitoring Officer, the Subject Councillor, the Complainant and any witness in order to obtain sufficient information to enable the Sub-Committee to come to a decision on this issue.

The Sub-Committee will adjourn into another room with the Legal Adviser where they will consider in a private session whether the Subject Councillor has acted in breach of the Code of Conduct. At any stage in their consideration they may return to ask any further questions of the Investigator, Monitoring Officer or Deputy Monitoring Officer or the Subject Councillor.

The Committee may at any time seek legal advice from its Legal Adviser.

The Independent Person's views will be requested and taken into account by the Sub-Committee but by law he/she cannot vote.

At the conclusion of their consideration, the Sub-Committee will return and the Chairman will advise the Investigator and the Subject Councillor of their decision as to whether the Subject Councillor has acted in breach of the Code of Conduct and the reasons for that decision;

11. **Sanctions (if appropriate)** – If the Sub-Committee concludes that the Subject Councillor has acted in breach of the Code of Conduct, the Sub-Committee will then hear representations (if any) from the Investigator, and then the Subject Councillor as to whether the Sub-Committee should take any action against the Subject Councillor and what form any action should take.

Members of the Sub-Committee may ask questions of the Investigator and the Subject Councillor and seek legal advice in order to satisfy themselves that they have the information upon which to make a proper decision;

The Sub-Committee will then adjourn into another room together with the Committee Services Officer and the Legal Adviser where they will consider in a private session whether to take any action in respect of the Subject Councillor and what form any such action should take.

The actions available to the Sub-Committee are as follows (in the case of a District Councillor):-

- (i) No action need be taken; or
- (ii) Censure the Respondent;
- (iii) Request the Respondent to submit a written apology in a form specified by the Sub-Committee;
- (iv) Request the Respondent to undertake such training as the Sub-Committee considers to be appropriate;
- (v) Request that the Respondent participates in such conciliation as the Sub-Committee considers appropriate;
- (vi) Report to the relevant Council on the outcome of the hearing with an appropriate recommendation;
- (vii) Advise the Leader of the Council and/or Leader of the Political Group to which the person belongs, of the outcome of the hearing in order that they can consider whether, and if so what appropriate disciplinary or other action should be taken;
- (viii) Issue a press release setting out the outcome of the hearing;
- (ix) Such other sanction as may be permitted under the law.

The Sub-Committee may also make any recommendations it considers appropriate to the Council concerned on procedural amendments that might assist Councillors generally to follow the Code of Conduct.

In the case of a Parish Councillor the above sanctions can only be recommended to the relevant Parish Council, it is for the Parish Council to decide on the appropriate sanction.

The decision of the Sub-Committee will be verbally given at the hearing with a written report of the Hearing and decision, with reasons, prepared usually within five working days. A copy will be sent to all those present at the hearing and to the Clerk of the Parish/Town Council if the complaint was about a Parish/Town Councillor.