

Arrangements for Dealing with Allegations of Member Misconduct Under the Localism Act 2011: Gloucestershire County Council

Statutory Position

The Localism Act 2011 places a general duty on Local Authorities to ensure that high standards of Member and co-opted Member conduct are maintained and demonstrated to the public. As part of this, it requires councils to have a procedure in place to investigate and determine allegations that Members have breached the Council's Code of Conduct for Members; this must involve seeking the opinion of an Independent Person before any decision is taken.

Allegations are commonly referred to as complaints.

Gloucestershire County Council has responded to these requirements by introducing a new councillor complaints procedure with clearly defined responsibilities for Independent Persons. Its arrangements are set out below:

Definition of an allegation of misconduct against Councillors: a complaint made against a Member or Co-opted Member of the Council *alleging that they have broken the Council's Code of Conduct for Members*. Complaints can be made by anyone. *Note: the Members' Code of Conduct is available on the Council's website and also on request in paper form from Shire Hall.*

Role of the Monitoring Officer: a senior officer with a statutory responsibility for maintaining the Members' Register of Interests, and a non-statutory responsibility to administer the Council's complaints procedures against Councillors.

Role of the Independent Person: an Independent Person whose view is sought by the Monitoring Officer to determine if an allegation of misconduct warrants a full investigation, and whose view is sought by the Hearings Panel to determine if a member has broken the Council's Code of Conduct. *Note: the Council has appointed three Independent Persons and given them different responsibilities in this process.*

Role of the Investigating Officer: to conduct an impartial investigation into an allegation of Member misconduct on the referral of the Monitoring Officer. This role can be taken on by a senior officer or external person.

Role of the Hearings Panel: to hear allegations of Member misconduct once the Investigating Officer has concluded that there is evidence of misconduct and the Monitoring Officer has been unable to resolve the matter through local resolution. To determine if a Member has engaged in misconduct and take sanctioning actions if required. The Hearings Panel is a sub-committee of the Audit and Governance Committee. It is comprised of 5 politically proportionate County Councillors.

Stage 1: Initial Assessment of Complaint

- The Monitoring Officer (MO) receives a complaint or allegation that a Member of the Council has broken the Council's Code of Conduct.

- The MO will send an acknowledgement of receipt within 5 working days and take a decision as to its substance within 14 working days. If these timescales look likely to be missed, the MO will let the complainant know.
- It is the MOs role to review the substance of the complaint and any supporting material and decide if the complaint warrants a full investigation. This is done against a set of relevant questions in consultation with an Independent Person.

Criteria for Determining if Allegations Warrant Full Investigations

- Q1. Has the complainant submitted enough information to satisfy the MO and/or Hearings Panel that the complaint should be referred for investigation?
If no, no further action will be taken.
- Q2. Has the complaint already been the subject of an investigation or other action by the County Council or another regulatory authority?
If yes, it is likely that no other action will be taken unless there is a clear interest in doing so.
- Q3. Is the complaint about something that happened so long ago there would be little benefit in taking action today?
If yes, it is unlikely that any further action will be taken.
- Q4. Is the complaint too trivial to warrant further action?
If yes, no further action will be taken.
- Q5. Does the complaint appear to be malicious, politically motivated or tit for tat?
If yes, it is unlikely that any further action will be taken.
- Q6. Was the complaint made anonymously?
If yes, it is unlikely that any further action will be taken.
- Q7. Would an investigation serve any public benefit?
If no, an investigation is unlikely but other appropriate actions may be considered.

- After reviewing the complaint, the MO could write to the complainant requesting additional information and at this stage could also contact the Member being complained about for information.
- Once the initial assessment is complete, the MO will write to the complainant to inform them of their decision and give reasons for it.

Actions Available to the Monitoring Officer at this stage

1. The complaint could be rejected with reasons.
2. The complaint could be judged to have merit. Once this decision has been made there are three further options available to the MO.
 - a) If there appears to be criminal misconduct, the MO will refer the case to the Police.
 - b) The MO can attempt to resolve the complaint informally by getting the Member to acknowledge that their conduct was unacceptable and apologise, or engage in other remedial actions on behalf of the authority.
 - c) The MO can appoint an Investigating Officer to fully investigate the complaint.

Note: though there is no right of appeal, both complainant and the subject of the complaint can make representations to the MO if they disagree with the decision.

Stage 2: Investigation by Investigative Officer

- If the MO decides that the complaint has merit and local resolution either fails or is not appropriate, the MO will appoint an Investigating Officer, (IO), (likely another senior officer or external person), to conduct a thorough and full investigation of the complaint.
- At this stage, the IO will write to the Member being complained about to provide them with a copy of the complaint in writing, and ask them if they would like to offer their explanation of events and provide any supporting material. *Note: unless there is a valid reason not to do so, the Member will be told the identity of the complainant.*
- The Member who has been accused of misconduct can request the view of an Independent Person. *Note: the Council has decided that this will be an Independent Person not involved in the decision to investigate the complaint.*
- At this stage, the IO has discretion to decide if they need to speak directly to the complainant for further clarity as to the nature and circumstances of the complaint and any additional information.
- Consideration of written materials and scheduled interviews are the main methods of investigation available to the IO.
- After concluding the investigation, the IO will produce a draft report with conclusions that will be circulated in confidence to the complainant and the Member for comment. Both will have the opportunity to identify elements within the report that they disagree with and believe require further consideration.
- After taking any comments into account, the IO will send a final report to the MO stating: agreed facts; facts not agreed and corresponding conflicting evidence; and a conclusion as to if there has been a breach in the Code.
- The MO will consider the report and take a decision as to if the matter requires further consideration or not.

Actions Available to the Monitoring Officer at this stage

1. The MO can ask the IO to reconsider their report if not satisfied the investigation was conducted properly.
2. If the report concluded that there was no evidence of misconduct, the MO can write to the complainant and the Member concerned to say that the investigation has concluded and that no further action will be taken.
3. If the report concluded that there is evidence of a breach of the Code, the MO can suggest that a local resolution is sought.
4. If the report concluded that there is evidence of a breach of the Code, the MO can refer the matter for local hearing before the Hearings Panel.

Stage 3: Local Resolution or Referral to the Hearings Panel

- If the MO believes that the matter can be solved through local resolution, a consultation process will begin with the complainant and the Independent Person to try and determine what fair resolution/restitution would be. This could include the Member accepting that their conduct was unacceptable and apologising or other actions taken on behalf of the authority.

- If an agreement can be reached with the complainant that the Member is happy to comply with, the MO will report the matter to the Audit and Governance Committee for information but no further action will be taken. If the Member refuses, the matter will be referred to the Hearings Panel.
- If no agreement can be reached with the complainant, the Monitoring Officer may, but does not have to, refer the matter to the Hearings Panel.
- Once a matter is referred to the Hearings Panel, the MO will provide the Panel with the IO's report and a hearing will taken place to determine if the Member has breached the Code of Conduct for Members.
- Opportunities for representations by the IO, complainant, Member and their witnesses will be given before any decision is made.
- Another Independent Person not involved in the decision to investigate the allegation, will be consulted for their view before any decision is made.
- If after consulting the Independent Person the Panel decides that the Member did not breach the Code of Conduct, no further action will be taken and all parties will be informed. *Note: while representations can be made by the complainant, there is no automatic right of review.*
- If the Panel decides the Member did breach the Code, the second Independent Person will be consulted on possible sanctions and the Member will be given the opportunity to make representations on their own behalf.

Delegated Powers Available to the Hearing Panel for Sanctioning Purposes

- a) Censure;
- b) Report to Council;
- c) Recommend actions to the Leader of the Council;
- d) Recommend actions to Group Leader;
- e) Removal from Outside Bodies;
- f) Withdrawal of facilities, such as Council email/website/internet access;
- g) Exclusion for the Council offices or other premises with the exception of meeting rooms as necessary for attending Council, Committees or Sub-Committees and/or nominating a single point of contact; and/or
- h) Requesting the Member to undertake actions deemed appropriate e.g. training, issue of an apology

- Once the Hearing is concluded, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Hearings Panel and send copies to the complainant and Member concerned. The decision notice will also be made available for public inspection and reported to the next convenient meeting of the Council.