

**CONDUCT COMMITTEE**

1 November 2018

**ALLEGATION OF BREACH OF CODE OF CONDUCT BY  
COUNCILLOR ALDERMAN****Report of the Monitoring Officer**

Strategic Aim:	All	
Exempt Information	No	
Cabinet Member(s) Responsible:	N/A	
Contact Officer(s):	P Horsfield, Deputy Director: Corporate Governance	01572 758154 phorsfield@rutland.gov.uk
	Natasha Taylor, Governance Manager	01572 720991 ntaylor@rutland.gov.uk
Ward Councillors	N/A	

**DECISION RECOMMENDATIONS**

That the Committee:

1. Decides whether the Complaint should be referred for Investigation.
2. Approves the terms of reference for the investigation set out in Appendix B and delegates authority to the Monitoring Officer to make any amendments required as the process proceeds.

**1 PURPOSE OF THE REPORT**

- 1.1 To enable the Conduct Committee to decide whether the complaint in relation to Councillor Alderman should be referred for investigation.

**2 BACKGROUND**

- 2.1 The Council has adopted the Standards Process as attached at Appendix A. Councillors will see that this process requires that the Committee make an initial decision on whether or not a matter should be referred for investigation.
- 2.2 The Council has received at least 6 complaints that relate to the posts that Councillor Alderman made and his subsequent conviction. The complaints may all be

summarised as alleging a breach of the Code of Conduct. The allegations focus largely on bringing the Council into disrepute both through the act, subsequent interviews, the conviction and potentially other aspects of the Code of Conduct such as the section relating to the Equalities Act 2010.

2.3 Councillor Alderman has been asked to submit any written representations that he may have in relation to the decision as to whether or not the Committee should decide that the matter warrants investigation. At the date of writing no submissions had been received.

2.4 Should the Conduct Committee be minded to refer for investigation then it is asked to approve the terms of reference set out in Appendix B and the delegation above.

### **3 CONSULTATION**

3.1 The subject member has been asked to provide their comments as set out in paragraph 2.3 above.

### **4 ALTERNATIVE OPTIONS**

4.1 The Committee has a choice as to whether or not this matter is referred for investigation as set out in the procedure at Appendix A.

### **5 FINANCIAL IMPLICATIONS**

5.1 The Council has a small budget set aside for Standards matters, should the cost of any investigation exceed this then the funds will be vired from the legal budget and this will be reported through the budget process.

### **6 LEGAL AND GOVERNANCE CONSIDERATIONS**

The Council has a duty under Section 27 of the Localism Act to promote and maintain high standards of conduct by members.

### **7 DATA PROTECTION IMPLICATIONS**

7.1 A Data Protection Impact Assessments (DPIA) has not been completed as the case law is clear that where such matters are heard then there is a presumption that they will generally be heard in public and this is reinforced by the public interest in the matter following the criminal proceedings.

### **8 EQUALITY IMPACT ASSESSMENT**

8.1 An Equality Impact Assessment (EqIA) has not been completed as these matters relate only to the individual councillor. We have not been notified of any protected characteristics that would have a bearing on the decision before the Committee.

**9 CONCLUSION AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS**

9.1 The Committee is asked to determine whether or not an investigation should proceed.

**10 BACKGROUND PAPERS**

10.1 There are no background papers to the report.

**11 APPENDICES**

11.1 Appendix A - Rutland County Council Arrangements for Dealing with Conduct Allegations under the Localism Act 2011.

11.2 Appendix B - Investigation Terms of Reference.

**A Large Print or Braille Version of this Report is available upon request – Contact 01572 722577.**

## Appendix A

# **Rutland County Council Arrangements for Dealing with Conduct Allegations under the Localism Act 2011 (with effect from 1st July 2012)**

## **1 Context**

These Arrangements set out how a person may make a complaint that an elected or co-opted member of Rutland County Council or of a Town or Parish Council within Rutland has failed to comply with the Members' Code of Conduct of the relevant authority, and how the County Council ("the Council") will deal with allegations of a failure to comply with that Code.

The Arrangements are made under section 28(6) and (7) of the Localism Act 2011 ("the Act"). The Council is responsible for dealing with allegations concerning town and parish councillors as well as county councillors.

The Council has appointed Independent Persons, as defined in the Act. The view of an Independent Person must be sought before a decision is made on an allegation which has been investigated. The Council may seek the view of an Independent Person at any other stage, as may a member against whom an allegation has been made ("the subject member").

## **2 The Code of Conduct**

The Council has adopted a Code of Conduct for members, which is available for inspection on the authority's website and on request from Customer Services at the Council Offices, Catmose, Oakham (telephone 01572 722577; e-mail enquiries@rutland.gov.uk).

The Town and Parish Councils have adopted their own codes of conduct. They may be seen on websites if the councils have one, or on request to the town or parish clerk. The Council's Customer Services team will forward enquiries if requested.

## **3 Making a complaint**

If you wish to make a complaint, please write or e-mail to: –

Monitoring Officer  
Rutland County Council  
Catmose  
Oakham  
Rutland  
LE15 6HP

e-mail: monitoringofficer@rutland.gov.uk

The Monitoring Officer is a senior officer of the authority who has statutory responsibility for maintaining the register of members' interests and who is responsible for administering the system in respect of complaints of member misconduct.

In order to ensure that all the information required is available with the complaint, the complainant will be asked to provide their name and a contact address or e-mail address together with any relevant documents in support of their complaint.

The Monitoring Officer will acknowledge receipt of the complaint within 5 working days of receiving it.

Where an anonymous complaint is received or the complainant wishes to remain anonymous it will be at the Monitoring Officer's discretion as to whether the complaint proceeds. Consideration will be given to the public interest and whether the complaint can be justified or determined without the complainant's participation.

#### **4 What happens to my complaint?**

The Monitoring Officer will review every complaint received and, after consultation with an Independent Person, make a decision as to whether it merits further examination. This decision will normally be taken within 14 days of receiving the complaint.

Once the Monitoring Officer has taken a decision, he/she will inform the complainant of that decision and the reasons for it.

The initial tests are:-

- a) is the complaint against one or more named members of a relevant council?
- b) was the named member in office at the time of the alleged conduct and was the Code of Conduct in force at the time?
- c) if proven, would the complaint be a breach of the Code of Conduct under which the subject member was operating at the time of the alleged misconduct?

The subject member will be notified of the complaint at the earliest opportunity and given the opportunity to respond to it, unless the Monitoring Officer accepts that a request for confidentiality made by the complainant is justified at that stage.

Where the complaint relates to a Town or Parish Councillor, the Monitoring Officer may also inform the Parish Council, through the Parish Clerk (or the Chairman if appropriate), of the complaint and seek the views of the Parish Council before deciding whether the complaint merits further examination.

Where additional information is required in order to come to a decision, the Monitoring Officer may refer back to the complainant for such information, and may request information from the subject member.

In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for further review. Such informal resolution may involve the member

accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the authority. Where the member or the authority make a reasonable offer of local resolution, but the complainant and/or the subject member are not willing to accept that offer, the Monitoring Officer may take account of this in deciding whether the complaint merits further examination.

If the complaint alleges criminal conduct or a breach of other regulation by any person, the Monitoring Officer will refer the complainant to the Police or other appropriate regulatory body. The Council's dealing with the allegation will cease on the complainant's referral to such bodies.

## **5 What if Informal Resolution is not appropriate/successful?**

In cases where informal resolution is not appropriate or successful, the Monitoring Officer may conduct a fact-finding exercise to establish the grounds of the complaint. This would not amount to a full investigation of all the circumstances, but would be sufficient to enable the Monitoring Officer, in consultation with an Independent Person, to decide whether the allegation should be referred to the Council's Conduct Committee.

If on conducting the fact-finding exercise, there are no facts found which might tend to substantiate the complaint, or the complaint is deemed to be frivolous or vexatious, the Monitoring Officer will notify the complainant and the subject member that there is "no case to answer" and the matter will cease. There is no right of review of this decision unless new evidence is presented in support of the complaint. It will be at the discretion of the Monitoring Officer, in consultation with an Independent Person, to determine whether such new evidence merits further examination.

Where facts are found which might tend to substantiate the complaint, the Monitoring Officer will prepare a report for the Conduct Committee, which will determine the further steps to be taken in relation to the complaint.

The Conduct Committee is subject to the normal local government rules in relation to public meetings and it will decide at the start of the meeting whether it is appropriate to hold some or all of the meeting in closed session.

Subject to their right to attend as members of the public, the complainant and the subject member will not be present at the meeting, but their views will have been sought prior to the meeting to enable their opinions to be presented.

If the Committee determines that there is no case to answer, or that no further action is required, this will be reported back to the complainant and the subject member. The complainant may request that the Committee reviews the decision, but this will be allowed only where there is new evidence in relation to the complaint.

There may be instances where the Committee considers the action of the subject member to be so serious as to warrant criminal investigation. In such circumstances, the Committee will instruct the Monitoring Officer to refer the matter to the appropriate body for investigation.

Should the Committee determine that the allegation warrants a detailed investigation, the Monitoring Officer will appoint an Investigating Officer, who may be an officer of the authority, an officer of another authority or an external investigator. The Investigating Officer will decide whether he/she needs to meet or speak to the complainant to understand the nature of the complaint and will provide an opportunity for the complainant to explain their understanding of events and suggest what documents the Investigating Officer needs to see, and who the Investigating Officer should interview.

At the end of his/her investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to the complainant and to the subject member, to give them both an opportunity to identify any matters in the draft report with which they disagree or consider requires more consideration.

Having received and taken account of any comments, the Investigating Officer will send his/her final report to the Monitoring Officer. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider his/her report.

## **6 What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?**

On completing the investigation, the Investigating Officer will present his/her report to the Conduct Committee, which will take into account the facts and evidence produced.

Subject to their right to attend as members of the public, the complainant and the subject member will not be present at the meeting, but their views will have been sought prior to the meeting to enable their opinions to be presented.

If satisfied that the Investigating Officer's report is sufficient, the Committee will accept the findings of the report and request the Monitoring Officer to write to the complainant and to the subject member notifying them that it is satisfied that no further action is required, providing a copy of the Investigating Officer's final report.

There may be instances where the Committee wishes to ask questions of the complainant and/or the subject member in order to fully understand the circumstances of the complaint. Where this is requested by the Committee, the meeting will be adjourned to enable the attendance of all parties. The subsequent meeting of the Committee will be conducted in a manner similar to court proceedings where each party may present their arguments. Legal representation will not be allowed, but either party may be accompanied by a friend.

In any case where the conclusion is that there is no evidence of a failure to comply with the Code of Conduct, the subject member will be asked if he/she wishes the outcome of the matter to be published through a press statement made by the Council.

## **7 What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?**

Where the Investigating Officer has determined that there has been a breach of the Code of Conduct, he/she will present the report to the Conduct Committee.

The Monitoring Officer will conduct a “pre-hearing process”, requiring the subject member to give his/her response to the Investigating Officer’s report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing, and the Chairman of the Committee may issue directions as to the manner in which the hearing will be conducted.

At the meeting of the Committee, the Investigating Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the subject member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask the complainant to attend and give evidence to the Committee. The subject member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Committee as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

Legal representation will not be allowed, but either party may be accompanied by a friend.

The Committee, with the benefit of any advice from the Monitoring Officer and having sought the view of an Independent Person, may conclude, in disagreement with the Investigating Officer that the subject member did not fail to comply with the Code of Conduct, and so dismiss the complaint. If the Committee concludes that the subject member did fail to comply with the Code of Conduct, the Chairman will inform the meeting of this finding and the Committee will then consider what action, if any, should be taken as a result of the member’s failure to comply with the Code of Conduct. Before deciding on appropriate action, the Committee will give the

subject member an opportunity to make representations and will consult an Independent Person.

The Chairman will state the decision of the Committee as to any actions which the Committee resolves to take.

As soon as reasonably practicable, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chairman of the Committee, and send a copy to the complainant and to the subject member, and to the Town or Parish Council where appropriate.

## **8 What action can the Conduct Committee take where a member has failed to comply with the Code of Conduct?**

The Council has delegated to the Conduct Committee such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly the Committee may: –

- Issue a formal letter to the member found to have breached the code;

- Impose formal censure;
- Make recommendations to the full Council to remove the member from committee(s) and other appointments, unless the member is a member of a political group, in which case the decision could only be to recommend the group leader to change the group's nominated appointees;
- A press release and other appropriate publicity;
- Recommend training.

The Committee has no power to suspend or disqualify the member or to withdraw members' or special responsibility allowances.

In relation to Town or Parish Council members, the Committee can only make recommendations for sanctions. The responsibility for agreeing and enforcing those sanctions will fall to the Town or Parish Council, with the assistance and guidance of the Monitoring Officer.

## **9 Appeals**

There is no internal right of appeal against a decision of the Conduct Committee following an investigation.

Judicial Review or a complaint to the Local Government Ombudsman might be available to aggrieved parties.

## **10 Revision of these arrangements**

The Council may by resolution agree to amend these arrangements, and has delegated to the Monitoring Officer, in consultation with an Independent Person, the right to depart from these arrangements where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

## **Appendix B**

# **Terms of Reference for the investigation in respect of Conduct Complaints made about Councillor Alderman of Rutland County Council**

The investigator is instructed to:-

1. provide to the instructing officer an initial investigation plan showing persons to be interviewed, evidence to be obtained and actions to be taken with target dates on commencement of the investigation and to provide an updated plan every four weeks thereafter;
2. conduct an investigation in accordance with the Council's arrangements and the investigation plan into the complaint as set out in the decision notice, such investigation to seek to determine:-
  - (a) the facts in relation to the complaints;
  - (b) whether Councillor Alderman actions fall within the ambit of the Code of Conduct;
  - (c) whether his conduct amounts to a breach of the code of conduct.
3. obtain evidence in the investigation in the form as the investigator sees fit;
4. notify the instructing officer in advance of contact to be made with any sensitive witnesses and as soon as possible of any references in the press or social media to the investigation.

Phillip Horsfield  
Monitoring Officer