

Rutland County Council Arrangements for Dealing with Conduct Allegations under the Localism Act 2011 (with effect from 11 April 2022)

1 Background

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 council, 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 Monitoring Officer 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 on the Council's website and on request from Customer Services (telephone 01572 722577; e-mail enquiries@rutland.gov.uk). The Town and Parish Councils have adopted their own codes of conduct. They will be on the councils' websites or on request to the town or parish clerk. The Council's Customer Services team will forward enquiries.

3 Making a complaint

Complaints must be about named elected members or co-opted members and can be made by members of the public, elected members or officers of the Council. If the Monitoring Officer makes a complaint, it shall be made to the Conduct Committee via the Deputy Monitoring Officer.

To make a complaint, write or e-mail : – Monitoring Officer Rutland County Council Catmose Oakham Rutland LE15 6HP or 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.

You should provide as much detail of your complaint as possible and your name and a contact details together with any relevant documents in support of your complaint.

The Monitoring Officer will acknowledge receipt of the complaint within 5 working days of receipt. The subject member will also be notified of the complaint within 5 working days 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 this stage.

Where an anonymous complaint is received or the complainant wishes to remain anonymous it will be at the Monitoring Officer's discretion, in consultation with the Independent Person 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, decide whether it merits further examination. This decision will be made within 14 days of receiving the complaint.

The initial tests to determine whether a complaint should be examined further are:-

- a) is the complaint against one or more named current members of a relevant council?
- B) was the member acting as a councillor at the time of the alleged conduct?
- C) if proven, would the complaint be a breach of the relevant Code of Conduct?
- D) If the complaint is anonymous or the complainant has asked to remain anonymous can there be a fair and sufficient examination of the complaint without the complainant's identity being known or disclosed.
- E) Is the claim clearly vexatious or frivolous

Where additional information is required to make an initial decision, the Monitoring Officer may request information from the complainant and/or subject member.

Once the Monitoring Officer has made a decision, they will inform the complainant and the subject member of that decision and the reasons for it.

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 Chair if appropriate), of the complaint and may seek their views.

5. Informal Resolution / Local Settlement

In appropriate cases, the Monitoring Officer, following consultation with the Independent Person, may seek to resolve the complaint informally, without the need for further examination. Informal resolution may involve the subject member accepting that their conduct was unacceptable and offering an apology, or other remedial action.

Where the subject member or the Council makes 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 complainant alleges criminal conduct or a breach of other regulation by any person, the Monitoring Officer will refer the complaint to the Police or other appropriate regulatory body. It is likely that the Council will need to put the complaint investigation on hold until any criminal investigation is complete.

There may be circumstances where it is appropriate for the Monitoring Officer, in consultation with an Independent Person, to take action in the interim without investigating the matter.

6 What if Informal Resolution is not appropriate/successful?

In cases where informal resolution is not appropriate or successful, the Monitoring Officer will, following consultation with the Independent Person, take the next appropriate steps by way of a fact-finding exercise and/or a full investigation to establish the grounds of the complaint.

If on conducting the fact-finding exercise, there are no facts found which substantiate the complaint, or the complaint is deemed to be frivolous or vexatious, the Monitoring Officer will, following consultation with the independent person, 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 the new evidence merits further examination.

If on conducting the fact-finding exercise, the Monitoring Officer finds that there are facts found which substantiate the complaint, they will, following consultation with an Independent Person, prepare a report to submit to the Conduct Committee for a decision about what, if any action, should be taken in respect of the breach. Similarly, if at any stage the Subject Member agrees that they have breached the code of conduct, the matter will be referred to the Conduct Committee for a decision about what, if any action, should be taken in respect of the Subject Member. The Monitoring Officer will produce a draft report and send to the parties before finalising the report in accordance with the procedure for the Investigating Officer’s report set out below.

Should the Monitoring Officer determine, following consultation with the Independent Person, 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 they need to meet or speak to the complainant and/or the Subject Member to understand the nature of the complaint and will provide an opportunity for the complainant and/or the Subject Member 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 their 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 their final report to the Monitoring Officer. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, they may ask the Investigating Officer to reconsider their report.

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

Where on completing the investigation, the Investigating Officer concludes that there is no evidence of a breach of the code of conduct, the Investigating Officer will submit their report to the

Monitoring Officer to present 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 does not agree with the Investigating Officer's findings and/or may want to ask questions of the complainant and/or the subject member to fully understand the circumstances of the complaint and/or require the Investigating Officer to undertake further inquiries. Where this is requested by the Committee, the meeting may be adjourned to enable the attendance of the parties.

The subsequent meeting will be conducted in the same way as for where the Investigating Officer finds that there is a breach of the code of conduct.

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 publicised 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, the matter will be referred to the Conduct Committee.

The Monitoring Officer will conduct whatever steps they consider appropriate as a "pre-hearing process" to identify what is likely to be agreed and what is likely to be in contention at the hearing.

At the meeting of the Committee, the Investigating Officer will present their report, call such witnesses as they consider necessary and make representations to substantiate their conclusion that the subject member has failed to comply with the Code of Conduct.

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 evidence, to call witnesses and to make representations to the Committee as to why they consider that they did not fail to comply with the Code of Conduct. Legal representation will not be allowed, but the parties may be accompanied by a representative.

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 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: –

1. Issue a formal letter to the member found to have breached the code; and/or
2. Impose formal censure; and/or
3. 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; and/or
4. A press release and other appropriate publicity; and/or
5. 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.

The decisions of the Conduct Committee, including the name of the subject member, will be published after the meeting, unless there are suitable reasons for the information not to be made public.

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 secure the effective and fair consideration of any matter