

ARTICLE 10 - THE STANDARDS AND ADJUDICATION COMMITTEE

This Article sets out provisions relating to the Council's Standards and Adjudication Committee. The purpose of the Committee is to ensure high standards of conduct by Councillors and propriety of action throughout the Council.

10.01 Standards and Adjudication Committee

The Council at its annual meeting will establish a Standards and Adjudication Committee.

10.02 Composition

- a) **Membership.** The Standards and Adjudication Committee will be composed of nine Councillors, plus no more than two non-voting co-opted members representing town and parish councils in the Borough.
- b) **Quorum.** The quorum for a meeting of the Standards and Adjudication Committee shall be four.
- c) **Substitute Members.** The rules relating to substitution of members in the Council Procedure Rules, will apply in relation to elected members of this Council. Co-opted members will not be entitled to nominate substitutes.

10.03 Role and Function

The Standards and Adjudication Committee will have the following roles and functions:

- (a) Promoting and maintaining high standards of conduct by members and co-opted members as defined by section 27 of the Localism Act 2011 ('Act').
- (b) Assisting members and co-opted members to observe the Code of Conduct adopted by the Council pursuant to section 28 of the Act.
- (c) Advising the Council on the amendment or revision of the Code of Conduct and the appointment or removal of the Independent Person/s.
- (d) Monitoring the operation of the Code of Conduct and the local 'Arrangements' and making appropriate revisions to the 'Arrangements' as considered necessary.
- (e) Advising, training or arranging to train members, co-opted members and Independent Person/s on matters relating to the Code of Conduct and the Arrangements.
- (f) Granting dispensations to members and co-opted members pursuant to the provisions of section 33 (b), (c) and (e) of the Act and on such other grounds as referred by the Monitoring Officer.
- (g) Dealing with any referrals as considered appropriate by the Monitoring Officer and to receive regular reports from the Monitoring Officer on the discharge of any delegations afforded to that position.
- (h) To consider any complaints relating to an alleged breach of the Code of Conduct in accordance with the 'Arrangements' and to convene, as appropriate, sub-committees ('Referrals Panels') to consider such matters.
- (i) To make determinations in respect of complaints that members and co-opted members of the Council and Parish and Town Councils in the area may have reached the Code of Conduct and to convene, as appropriate, sub-committees

- (‘Hearings Panels’) to consider such matters and to impose, or recommend the imposition of, the sanctions detailed in the ‘Arrangements’.
- (j) To deal with the grant of exemptions from political restriction in respect of any post holder and give directions on any post to be included in the list of politically restricted posts maintained by the authority.
 - (k) To consider appeals against dismissal and grievances by employees of the Council.
 - (l) To hear and determine in accordance with the appropriate conditions of service appeals against disciplinary action and against grading assessments by the Director of Finance, Operations and Resources.
 - (m) To hear and determine appeals in relation to grievances required to be settled under the Council's Grievance Procedure.
 - (n) To hear and determine appeals arising under the appeal arrangements relative to car allowances.
 - (o) To determine student awards appeals.
 - (p) To hear and determine any other internal appeal or review within the Council not falling within the delegated powers of any other Committee.

10.04 Local Assessment arrangements

1. Context

These “Arrangements” set out how to make a complaint that an elected or co-opted Member of North East Lincolnshire Council or of a Parish or Town Council in the area has failed to comply with the Code of Conduct, and sets out how the Council will deal with allegations of a failure to comply with the Code of Conduct.

Under Sections 28(6) and (7) of the Localism Act 2011, the Council must have in place “arrangements” under which allegations that a Member or co-opted Member of the Council or of a Parish or Town Council in the area has failed to comply with the Code of Conduct can be investigated and decisions made on such allegations.

Such arrangements must provide for the Council to appoint at least one Independent Person whose views must be sought by the Council before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the Council at any other stage, or by a Member or co-opted Member of a Parish or Town Council in the area against whom an allegation has been made.

2. The Code of Conduct

The Council has adopted a Code of Conduct for its Members, which can be found within Part 3 of this Constitution.

Each Parish and Town Council is also required to adopt a Code of Conduct. The Parish and Town Councils within North East Lincolnshire have all adopted the Council’s Code of Conduct.

3. Making a complaint

Complaints should be made to the Council's Monitoring Officer. The Monitoring Officer is a Senior Officer of the Council who has statutory responsibility for maintaining the Register of Members' Interests and is responsible for administering the system in respect of complaints of Member misconduct and is the Council's Proper Officer for such matters.

As a matter of fairness and natural justice, a Member will usually be told who has complained about them. However, there may be exceptional circumstances where a complainant's identity should be withheld from disclosure such as where the complainant has reasonable grounds for believing they will be at risk of physical harm if their identity is disclosed or their employment may be placed at risk or there is a risk that any investigation may be impeded or interfered with. In such cases, the Monitoring Officer will refer the issue of disclosure to the Referrals Panel who, in reaching a decision on the issue, will carefully balance the public interest in ensuring that the Member complained of is aware of who has complained against them against the complainant's wish that their identity be withheld. The Council does not normally investigate anonymous complaints save where it considers the provisions in the Local Assessment Criteria on such complaints are met.

The Monitoring Officer will acknowledge receipt of a complaint within 5 working days of receiving it. A full copy of the complaint will, subject to any ruling on disclosure, ordinarily be sent to the Member complained of inviting their written comments within 10 working days. Thereafter, arrangements will be made for the complaint to be assessed as soon as practicable in accordance with the procedures detailed in paragraph 4.

It should be noted that complaints which allege that Members may have committed a criminal offence in breaching the 'disclosable pecuniary interest' provisions under Section 34 of the Localism Act 2011, will be referred by the Monitoring Officer to Humberside Police for consideration.

4. Will your complaint be investigated?

For complaints concerning Members of Parish and Town Councils, where those Members are not also Members of North East Lincolnshire Council, ordinarily the Monitoring Officer will assess such complaints against the Local Assessment Criteria and, after consultation with the Independent Person, take a decision as to whether a formal investigation is merited.

The Monitoring Officer may, however, in his discretion refer complaints to the Referrals Panel to assess where he feels it reasonable and appropriate to do so such as where the Monitoring Officer has had prior involvement in the complaint.

For complaints concerning Members of North East Lincolnshire Council (or where the Monitoring Officer has exercised his discretion to refer a Parish and Town Council related complaint) either in their capacity as Parish or Town Council Members or as Members of the Council, the Referrals Panel will be convened to assess whether the complaint should be investigated. In considering the matter, the Referrals Panel shall consult and consider the views of the Independent Person and apply the Local Assessment Criteria.

Decisions on whether a complaint will be investigated will normally be taken within 28 days of receipt of the complaint. A formal notice of decision will be issued in each case. The decision of the Monitoring Officer or Referrals Panel is final and is not subject to a right of appeal.

Where the Monitoring Officer or the Referrals Panel requires additional information in order to come to a decision, the complainant may be contacted to provide such further information, as may the Member against whom your complaint is directed.

Where the complaint relates to a Member of a Parish or Town Council, the Monitoring Officer may also inform the Clerk of the Parish or Town Council concerned of the complaint and seek the views of the Parish or Town Council before deciding whether the complaint merits formal investigation

In appropriate cases, the Monitoring Officer or the Referrals Panel may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the Member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the Council. Where the Member concerned makes a reasonable offer of local resolution but you are not willing to accept that offer, the Monitoring Officer or the Referrals Panel will take this into account in deciding whether the complaint merits formal investigation.

5. How is the investigation conducted?

If the Monitoring Officer or Assessment Panel decides that a complaint merits formal investigation, the Monitoring Officer will appoint an Investigating Officer, who may be another Officer of the Council, an Officer of another Council 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.

The Investigating Officer would normally, subject to any ruling on disclosure, write to the Member against whom the complaint has been made and provide him/her with a full copy of the complaint, and ask the Member to provide his/her explanation of events.

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 Member concerned to give them both an opportunity to identify any matter in that draft report which they disagree with or which they consider requires more consideration.

Having received and taken account of any comments which they may make on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer.

It should be noted that at any time during an investigation, the Investigating Officer may, following consultation with the Independent Person, refer the matter back to the Referrals Panel for re-consideration as to whether the investigation should proceed if the Investigating Officer considers that the Re-consideration Criteria are satisfied.

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

The Monitoring Officer will review the Investigating Officer's report and consult with the Independent Person. If having done so the Monitoring Officer is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to the complainant and to the Member concerned and to the Parish or Town Council on which the Member serves, notifying them that he is satisfied that no further action is required (with reasons stated), and give them both a copy of the Investigating Officer's final report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he may ask the Investigating Officer to re-consider his/her report.

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

The Monitoring Officer will review the Investigating Officer's report and after consulting the Independent Person will consider whether Local Resolution should be attempted or the matter proceed direct to hearing before the Hearings Panel.

7.1 Local Resolution

The Monitoring Officer will consult with the Independent Person and with the complainant and seek to agree what is considered to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the Member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the Council. If the Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards and Adjudication Committee and the Member's Council for information but will take no further action. However, if the complainant tells the Monitoring Officer that any suggested resolution would not be adequate or the Member concerned does not accept that the matter should be resolved in such a manner, the Monitoring Officer will refer the matter for a hearing before the Hearings Panel.

7.2 Hearings Panel

If the Monitoring Officer considers that Local Resolution is not appropriate or the complainant is not satisfied by the proposed resolution, or the Member concerned does not accept that the matter should be resolved in such a manner, then the Monitoring Officer will report the Investigating Officer's report to the Hearings Panel which will conduct a Hearing before deciding whether the Member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the failure.

In readiness for the convening of the Hearings Panel, the Monitoring Officer will conduct a written "pre-hearing process", requiring the Member concerned to give their 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.

If, through the “pre-hearing process”, the Member concerned accepts the Investigating Officer’s report, they will be given the opportunity to provide a statement of mitigation which they may invite the Hearings Panel to consider in their absence. Alternatively, they may elect to attend a Hearings Panel to present their mitigation. In either case, the ‘uncontested’ hearing procedure will be followed.

Where, following the “pre-hearing process”, the Investigating Officer’s report remains in contention, the matter will be set down for a ‘contested’ hearing before the Hearings Panel. The ‘contested’ hearing procedure will be followed. In essence, at the Hearing, 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 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 Hearings Panel. Unless called to do so by the Investigating Officer, the complainant does not have the right to address the Hearings Panel of their own volition. The Member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Hearings Panel as to why he/she considers that he/she did not fail to comply with the Code of Conduct. The Member may be legally represented at the Hearings Panel.

The Hearings Panel, with the benefit of any advice from the Independent Person, may conclude that the Member did not fail to comply with the Code of Conduct and so dismiss the complaint. If the Hearings Panel concludes that the Member did fail to comply with the Code of Conduct, the Chair will inform the Member of this finding and the Hearings Panel will then consider what action, if any, the Hearings Panel should recommend as a result of the Member’s failure to comply with the Code of Conduct. In doing this, the Hearings Panel will give the Member an opportunity to make representations to the Panel and will consult the Independent Person but will then decide what action, if any, to take in respect of the matter.

8. What action can the Hearings Panel take where a Member has failed to comply with the Code of Conduct?

The Council has delegated to the Hearings Panel 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 Hearings Panel may -

- 8.1 Write to the Member over their conduct;
- 8.2 Publish its findings in the local media in respect of the Member’s conduct;
- 8.3 Report its findings to the Council or to the Parish or Town Council concerned;
- 8.4 Recommend to the Member’s Group Leader (or in the case of ungrouped Members, recommend to the Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;

- 8.5 Recommend to the Leader of the Council that the Member be removed from the Cabinet or removed from particular Portfolio responsibilities;
- 8.6 Instruct the Monitoring Officer to, or recommend to the Parish or Town Council concerned, that it arrange training for the Member;
- 8.7 Recommend removal, or recommend to the Parish or Town Council concerned, removal of the Member from all outside appointments to which he/she has been appointed or nominated by the Council or the Parish or Town Council;
- 8.8 Withdraw, or recommend to the Parish or Town Council concerned, that it withdraws facilities provided to the Member by the Council, such as a computer, website and/or email and Internet access; or
- 8.9 Exclude, or recommend to the Parish or Town Council concerned, that it excludes the Member from the Council's Offices or other premises with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee Meetings.

The Hearings Panel has no power to suspend or disqualify the Member or to withdraw a Member's basic allowance or any special responsibility allowances.

9. What happens at the end of the Hearing?

At the end of the Hearing, the Chair will state the decision of the Hearings Panel as to whether the Member has failed to comply with the Code of Conduct and as to any action which the Hearings Panel resolves to take.

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Hearings Panel and send a copy to the complainant, to the Member and to any Parish and Town Council concerned and make such decision notice available for public inspection and report the decision to the next convenient Meeting of the Standards and Adjudication Committee.

The decision of the Hearings Panel is final and is not subject to a right of appeal.

10. Referrals Panel and Hearings Panel?

The Referrals Panel and the Hearings Panel are Sub-Committees of the Council's Standards and Adjudication Committee. The Standards and Adjudication Committee has decided that each of those Panels will comprise a maximum of 3 elected Members of the Council's Standards and Adjudication Committee. Co-opted, non-voting (Parish Council) Members of the Standards and Adjudication Committee may be asked to sit on such Panels.

The Independent Person is invited to attend all Meetings of the Referrals Panel and the Hearings Panel and his/her views are sought and taken into consideration before the Monitoring Officer or Referrals Panel takes any decision on whether a complaint should be investigated. The Hearings Panel will seek the Independent Person's views on whether a Member's conduct constitutes a failure to comply with the Code of Conduct and as to

any action to be taken following a finding of failure to comply with the Code of Conduct.

11. Who is the Independent Person?

The Independent Person is a person who has applied for the Post following advertisement of a vacancy for the Post and is then appointed by a positive vote from a majority of all the Members of the Council.

A person cannot be “independent” if he/she -

- 11.1 Is, or has been within the past 5 years, a Member, co-opted Member or Officer of the Council;
- 11.2 Is, or has been within the past 5 years, a Member, co-opted Member or Officer of a Parish or Town Council within the Council’s area; or
- 11.3 Is a relative or close friend of a person defined at paragraph 11.1 or 11.2 above. For this purpose, “relative” means –
 - 11.3.1 Spouse or civil partner;
 - 11.3.2 Living with the other person as husband and wife or as if they were civil partners;
 - 11.3.3 Grandparent of the other person;
 - 11.3.4 A lineal descendent of a grandparent of the other person;
 - 11.3.5 A parent, sibling or child of a person defined at paragraphs 11.3.1 or 11.3.2;
 - 11.3.6 A spouse or civil partner of a person defined at paragraphs 11.3.3, 11.3.4 or 11.3.5; or
 - 11.3.7 Living with a person defined at paragraphs 11.3.3, 11.3.4 or 11.3.5 as husband and wife or as if they were civil partners.

12. Revision of these arrangements

The Council may, by resolution, agree to amend these arrangements and has delegated to the Chair of the Referrals Panel and the Hearings Panel the right to depart from these arrangements where he/she considers it is expedient to do so in order to secure the effective and fair consideration of any matter.

For the avoidance of doubt, Members who have sat on the Referrals Panel are not precluded from sitting on a subsequent Hearings Panel called to determine the same complaint as considered by the Referrals Panel.

13. Appeals

There is no right of appeal for the complainant or for the Member against a decision of the Monitoring Officer, the Assessment Panel or the Hearings Panel.

If the complainant feels that the Council has failed to deal with the complaint in accordance with these arrangements, he/she may make a complaint to the Local Government Ombudsman.