

Procedure for considering complaints alleging a failure to comply with the Members' Code of Conduct within Rotherham Borough Council

Introduction

1. This procedure should be used to deal with complaints submitted under the Members' Code of Conduct adopted by Rotherham Borough Council and the Parish and Town Councils in the Borough.
2. This procedure will only be engaged either in the absence of or cessation of additional criminal proceedings or other legal proceedings in respect of the same substantive matter. Any such decisions will be at the discretion of the Monitoring Officer.
3. The Members' Code of Conduct applies to elected Members and voting co-opted members when they are acting in that capacity. Complaints which relate to a failure to comply with the rules about 'Disclosable Pecuniary Interests' may (at the discretion of the Monitoring Officer) be immediately directed to South Yorkshire Police for their consideration. Complaints about a potential breach of the general obligations should be submitted to the Monitoring Officer for consideration.
4. A copy of Rotherham Council's Code of Conduct can be downloaded from the Council's website by accessing 'Code of Conduct for Members' at:
http://www.rotherham.gov.uk/downloads/file/293/appendix_6_-_code_of_conduct_for_members_and_co-opted_members_-_january_2017
or is available upon request from the Monitoring Officer. Parish and Town Councils are also required to adopt a Code of Conduct. Copies of a Parish or Town Council's Code of Conduct can be inspected by contacting the respective Parish Clerk. A list of contact details for Parish/Town Councils can be accessed via Rotherham Council's website at:
http://www.rotherham.gov.uk/info/200033/councillors_democracy_and_elections/467/see_local_elected_representatives/4
Alternatively, Democratic Services may be contacted on: tel. 01709 822477.
5. In order to ensure that the Council has all the information it needs to be able to process the complaint, the Complainant should complete the complaint form, which can be accessed from the Council's website via this link:
https://www.rotherham.gov.uk/forms/form/333/en/complain_about_a_councillor
Alternatively, a copy of the complaint form can be requested from the Legal Department - Tel. 01709 254437 or jillian.dimbleby@rotherham.gov.uk.

6. The Monitoring Officer is a senior officer of the Council 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.
7. The Monitoring Officer may nominate another officer of suitable experience and seniority to carry out any of the functions listed in this procedure.
8. Complaints will not normally be processed under either stage 1 or stage 2 of this procedure during the statutory election period for local elections or by-elections with the exception of any matter which requires referral to the Police such as complaints regarding Disclosable Pecuniary Interests.
9. The Independent Persons are people who have been appointed under the Localism Act 2011, by the Council. The Independent Person must be consulted and have their views taken into account before the Council makes a finding as to whether a Member has failed to comply with the Code of Conduct or decides on action to be taken in respect of that Member. The views of the Independent Person may also be sought at any other stages of the complaints process, or by a Member, Co-opted Member or Parish and Town Council Member against whom an allegation has been made.
10. The Independent Persons do not represent and are not advisors to the Councillor who is the subject of the complaint, but they can assist in providing factual information on the complaints process. The Independent Person must remain completely impartial and objective and cannot take sides. Their role is to assess complaints and form a view on them. There is no right for the complainant to seek the views of the Independent Person and no such contact will be permitted. The complainant can however be given advice by the Monitoring Officer.

Stage 1 - Initial assessment by the Monitoring Officer

11. Complaints should be submitted in writing using the complaint form (as mentioned above), must provide substantiated information, and should outline what form of resolution the complainant is seeking, such as an apology or explanation. Otherwise the Monitoring Officer should ask the complainant to resubmit their complaint. The complainant should use the correct complaints form to submit their complaint, but other written complaints may be accepted so long as they contain the relevant information.
12. When sufficient information has been provided, preferably on the complaint form, the Monitoring Officer will consider the complaint and make a decision within 5 working days as to the validity of the Complaint. The Monitoring Officer will communicate to the complainant the decision as to whether the complaint is to be treated as a valid complaint or not.
13. Whilst not an exhaustive list, the following types of complaint are likely to be considered as 'valid complaints' under this procedure (provided the conduct occurred while the Member complained about was in Office):

- a. Failing to treat others with respect
 - b. Bullying any person
 - c. Intimidating any person involved in an investigation or proceedings about someone's misconduct
 - d. Doing something to prevent those who work for the Council from being unbiased
 - e. Failing to respect the confidentiality of information received as a Member
 - f. Damaging the reputation of the Member's authority or office
 - g. Using their position as a Member improperly, to their own or someone else's advantage or disadvantage
 - h. Misuse of public resources
 - i. Failure to register Disclosable Pecuniary Interests, as defined in the Code of Conduct for Members
 - j. Failure to declare Disclosable Pecuniary Interests at a meeting (if not already on the Member's Register of Interests) or other interests at meetings
 - k. Failure to notify the Monitoring Officer of any gifts or hospitality received in their role as a Member, worth over £50.
14. The complaint must relate to conduct that occurred when the named Member was acting in his/her official capacity or for Parish Councillors, at any official Parish Council meeting). For example, the Council's Code of Conduct only applies to Councillors in the following circumstances:-
- a. at meetings of the Council, its Committees and Sub-Committees and its Cabinet
 - b. when acting as a representative of the authority
 - c. in taking any decision as a Cabinet member or Ward Councillor
 - d. in discharging their functions as a Ward Councillor
 - e. at briefing meetings with Officers
 - f. at site visits
 - g. when corresponding with the Council other than in a private capacity.
15. The following types of complaint will not be considered as 'valid complaints' at the discretion of the Monitoring Officer) under this procedure
- a. Complaints which are submitted anonymously (though the Monitoring Officer reserves the right to investigate if he/she thinks appropriate);
 - b. Complaints which do not identify a subject Member;
 - c. Complaints which relate to a Member's personal or private life;

- d. Complaints concerning a failure to respond to a request from a constituent or other individual;
 - e. Complaints which relate to the alleged actions of employees of the Council or non-voting co-opted members;
 - f. Complaints which relate to dissatisfaction with a Council decision or service, relating to an employee or a Committee;
 - g. Complaints which relate to a person who is no longer a Member of the Council or which refer to alleged incidents before the person became a Member of the Council, or after they have resigned or otherwise ceased to be a Member.
 - h. Complaints which refer to alleged incidents which happened so long ago that there would be little benefit in taking action now;
 - i. Complaints regarding substantially similar alleged behaviour which has already been the subject of an investigation or enquiry or some form of action.
 - j. Complaints which relate to conduct which is alleged to have taken place more than **3 months** prior to the submission of the complaint, unless there exceptional circumstances to justify the later submission of the complaint.
 - k. Complaints which are considered malicious, vexatious, politically motivated, tit-for-tat or not sufficiently serious to warrant further action.
16. If the Monitoring Officer receives a number of complaints from different complainants about the same matter, he/she will endeavour to deal with these in a manner that is a practical use of time and resources.
17. Complaints which relate to an alleged failure to comply with the rules regarding Disclosable Pecuniary Interests may be referred to South Yorkshire Police for investigation. If the Police determine not to take any action in response to the allegation, then the Monitoring Officer will consider whether it is appropriate for the complaint to be considered under this complaints procedure.
18. Complaints which contain a request for the complainant's identity to be withheld may be considered to be 'valid complaints', although the complainant's identity will only be withheld in exceptional circumstances. If the Monitoring Officer does not consider it appropriate to withhold the complainant's identity, the complainant will be given the opportunity to withdraw their complaint before it proceeds to the next stage.
- Anonymous complaints which reveal potential fraud or corruption will be referred to Internal Audit for consideration under the Council's adopted Whistleblowing Policy.
19. In all cases where the complaint names a Member of a relevant authority, the Member will be notified of the complaint. If the Monitoring Officer decides that the complaint is 'invalid', this notification is made for information purposes only.

- 20 If the complaint relates to an employee or is a service related issue, the Monitoring Officer will refer the complaint to the relevant service in order for them to respond to the complainant directly.
21. In any case where the Monitoring Officer decides that the complaint is ‘invalid’ **within 5 working days**, they will write to the complainant explaining why their complaint cannot be dealt with under this procedure. There is no appeal process for decisions taken by the Monitoring Officer at this stage.

Stage 2 - Informal Resolution

22. If, following initial assessment, the Monitoring Officer decides that the complaint should be treated as a ‘valid complaint’ they will write to the complainant **within 5 working days** and explain that the matter is to be referred to the subject Member for them to provide a response to the complaint
23. At the same time the Monitoring Officer will refer the matter to the subject Member for their consideration. In this correspondence the Monitoring Officer will provide the subject Member with a reasonable timescale within which to respond to the complaint (usually this will be **within 10 working days**, unless there is good reason for an extension to this timescale), and will provide the subject Member with the contact details for the Independent Person. See paragraph 10 above on the role of the Independent Person. A different Independent Person will then advise the Standards and Ethics Committee; if subsequently required.
24. In the case of a Parish or Town Council, a copy of the complaint will also be sent to the Clerk of the Council.
25. The subject Member will be asked to consider whether he/she is prepared to agree to or propose an informal resolution of the complaint to be communicated to the complainant. The Monitoring Officer will determine if a matter has been informally resolved.
26. Whilst not an exhaustive list, types of informal resolution might include:
 - a. An explanation by the subject Member of the circumstances surrounding the complaint;
 - b. An apology from the subject Member;
 - c. An agreement from the subject Member to attend relevant training or to take part in a mentoring process;
 - d. An agreement from the subject Member to engage in a process of mediation or conciliation between the subject Member and the complainant; or
 - e. Any other action capable of resolving the complaint.

27. Before deciding upon a course of action the subject Member may seek guidance from a Group Whip, the Independent Person, and/or the Monitoring Officer.
28. The Independent Person is available to the subject Member to give them advice on the severity of the complaint and what form of resolution they would consider appropriate. Providing such guidance will not prevent a different Independent Person from giving a view to the Standards and Ethics Committee about the complaint at a later stage.
29. **Within 5 working days** of the receipt of the Member's response, the Monitoring Officer will provide the complainant with the response and any proposals for resolution of the complaint received and ascertain whether the complainant is able to agree with any proposals.
30. Once the Monitoring Officer has received details of the complainant's position regarding the response from the subject Member he/she will determine whether the subject Member has appropriately addressed matters which have been raised by the complainant.
31. The Monitoring Officer (in consultation with the Independent Person), will consider whether the complaint is malicious, vexatious, politically motivated, tit-for-tat or not sufficiently serious to warrant further action (taking into account factors identified in paragraph 15 above). If they consider that is the case then no further action will be taken.
32. Where the subject Member has agreed to an informal resolution, provided the Monitoring Officer is satisfied with the outcome, there will be no further action taken in respect of the complaint and the Monitoring Officer will notify both the complainant and the subject Member of this decision.
33. Where it has not been possible to informally resolve matters, the complaint may be referred to a Sub-Committee of the Standards and Ethics Committee ('the Hearing Sub-Committee') for consideration. The Monitoring Officer will notify both the complainant and the subject Member of his/her decision. After considering all other aspects, the Monitoring Officer may decide not to take any action.
34. There will be no appeal process for decisions taken by the Monitoring Officer and at this stage.

Stage 3 – Standards and Ethics Committee: Hearing Sub-Committee

35. The Monitoring Officer will prepare a report for consideration by the Complaints Hearing Sub – Committee. This report will include all appropriate information (such as minutes of meetings or Clerk's notes), a summary of the complaint and the efforts made to resolve the matter informally.
36. The Monitoring Officer must arrange for a meeting of the Hearing Sub-Committee to be convened to consider the Monitoring Officer's report of the

complaint. The Hearing Sub-Committee will consider the Monitoring Officer's report in public (unless there are exceptional/extenuating circumstances – in the opinion of the Monitoring Officer - justifying a private session) but the outcome of their deliberations will be reported to the next meeting of the Standards and Ethics Committee in public.

37. The Sub-Committee will be made up of five Members of the Standards and Ethics Committee, one of whom must be from the same political group as the subject Member (wherever possible), one from a different political group , one Parish Councillor and two independent members. The Chair will be elected from the independent members at the beginning of the meeting.
38. The following people will also be invited to attend the Hearing Sub-Committee meeting:
 - a. The complainant;
 - b. The subject Member and/or their representative;
 - c. Any relevant witnesses.
39. The Monitoring Officer or his representative will also attend the meeting in order to present their report and advise the panel.
40. After initial consideration of the Monitoring Officer's report, the Hearing Sub-Committee will take statements from the following parties (either in person or in written form if the person is unable to attend the meeting):
 - a. The complainant;
 - b. The subject Member;
 - c. Any relevant witnesses.
41. The Hearing Sub-Committee may also ask questions of anyone present at the meeting in order to reach a conclusion on the complaint.
42. Before reaching a final decision, on the complaint, the Hearing Sub-Committee must seek, and take account of, the view of the Independent Person in relation to the complaint.
43. Once the Hearing Sub-Committee is satisfied with the information before it, it must decide the following issues:
 - a. Whether the subject Member has failed to comply with the Members' Code of Conduct;
 - b. Whether further action is warranted; and
 - c. What form of action might be appropriate.
44. For Parish or Town Councillor complaints:
the Hearing Sub-Committee will only make a decision regarding whether the subject Member has failed to comply with the relevant Members' Code of

Conduct. This decision, and the recommendation or sanctions and reasons for it, will be communicated to the relevant Parish or Town Council in order for it to make a decision as to whether further action is warranted and what form of action would be appropriate.

Any decision will then be reported back to the Standards and Ethics Committee.

45. **For Borough Councillors complaints:**

if the Hearing Sub-Committee concludes that, on the balance of probabilities, the subject Member did not fail to comply with the Members' Code of Conduct, this will conclude the complaints process. In such cases no further action will be taken in respect of the complaint, although the Hearing Sub-Committee may still wish to consider making a recommendation to the Council with a view to promoting and maintaining high standards of conduct in general. Such recommendations may include proposed changes to internal procedures and practices or training for Members in general.

46. If the Hearing Sub-Committee concludes that, on the balance of probabilities, the subject Member has failed to comply with the Members' Code of Conduct, the Hearing Sub-Committee must go on to consider whether action should be decided in respect of the subject Member, and what form of action might be appropriate.

47. The Council has delegated to the Standards and Ethics Committee and its Sub-Committee such of its powers to take action in respect of individual Councillors as may be necessary to promote and maintain high standards of conduct. Accordingly, the Hearing Sub-Committee may choose to apply any of the following sanctions:-

- (1) Censure or reprimand the Councillor
- (2) Publish its findings in respect of the Councillor's conduct ;
- (3) Report its findings to Council [or to the respective Parish/Town Council if appropriate], for information;
- (4) Recommend to the Councillor's Group Leader (or in the case of un-grouped Councillors, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- (5) Recommend that the Councillor be removed from the Cabinet, or be removed from particular Portfolio responsibilities;
- (6) Instruct the Monitoring Officer to [*or recommend that the Parish/Town Council*] arrange training for the Councillor;
- (7) Remove [*or recommend to the Parish/Town Council that it removes*] the Councillor from all outside appointments to which he/she has been appointed or nominated by the Council [*or by the Parish/Town Council*];
- (8) Withdraw [*or recommend to the Parish/Town Council that it withdraws*] facilities provided to the Councillor by the Council, such as a computer, website and/or email and Internet access; or

- (9) Exclude [*or recommend that the Parish Council exclude*] the Councillor from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

At the time of imposition, appropriate time limits will be imposed.

The Hearings Sub-Committee has no power to suspend or disqualify the Councillor or to withdraw Members' or Special Responsibility Allowances.

48. The Hearing Sub-Committee may also make general recommendations to the authority with a view to promoting and maintaining high standards of conduct within the authority. As stated above, such recommendations may include proposed changes to internal procedures and practices or training for Members in general. The Monitoring Officer will be responsible for communicating such recommendations to the relevant Committee or officer for consideration.
49. As soon as reasonably practicable thereafter and **within 10 working days**, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Hearing Sub-Committee and the Independent Person, and send a copy to the complainant, the subject member (Councillor) and the Parish Clerk (if appropriate). The decision notice will be made available for public inspection on the Council's website and the outcome of the hearing will also be reported to the next available meeting of the Standards and Ethics Committee.
50. There is no right of appeal for the complainant or for the subject member (Councillor) against a decision of either the Monitoring Officer or any Hearing Sub-Committee.
51. The complainant may however refer the complaint to the Ombudsman, in respect of any procedural matters.