

Broads Authority

02 December 2022

Agenda item number 18

Member Code of Conduct – updated Complaints Procedure (draft)

Report by Chief Executive

Purpose

This report presents a draft updated complaints procedure to accompany the Member Code of Conduct adopted on 23 July 2021.

Recommended decision

To adopt the updated Member Code of Conduct complaints procedure, pending any further amendments agreed at today's meeting.

1. Introduction

- 1.1. At its meeting on 23 July 2021, the Broads Authority adopted an updated Member Code of Conduct for Authority members, based on the Local Government Association's new Model Code of Councillor Conduct. The arrangements for dealing with complaints under the Code of Conduct has now been updated, and is at Appendix 1 for members' consideration.

2. Draft Complaints Procedure

- 2.1. The purpose of the complaints procedure is to set out the process to be followed in the assessment, investigation and determination of a complaint that any member of the Broads Authority has failed to comply with the Member Code of Conduct. The procedure is followed and applied in accordance with the requirements of Section 28 of the Localism Act 2011.
- 2.2. The draft document has been prepared by the Monitoring Officer, in consultation with Jonathan Goolden and Estelle Culligan of Wilkin Chapman, the Chief Executive and Senior Governance Officer.
- 2.3. The revised procedure is shown at appendix 1; it updates the current version adopted by the Authority in November 2018. It has been reformatted, which includes renumbering paragraphs etc and sections have been moved around and so it will look vastly different in appearance to the current document. This means that it has not been

possible to show as tracked changes but a copy of the original document is provided at appendix 2 for comparison purposes.

2.4. Key amendments to note are as follows:

- Sections 3 and 13 – text is added to clarify the roles of the Independent Person(s) and the Hearings Committee
- Section 4 – this incorporate the content of Appendices 2 and 3 from the current procedure (criteria for MO to assess a complaint, and for assessing whether a complaint is frivolous or vexatious)
- Section 6 – new section covering referral to the Police
- Section 8 – our ‘Local Resolution Procedure’ is replaced by a simpler and more flexible ‘Informal Resolution’ process with the format, timescale and objectives to be determined by the Monitoring Officer. This is common practice within other National Parks and also local authorities.

2.5. Members’ comments are invited on the draft Complaints Procedure. Pending any further changes agreed at today’s meeting, it is recommended that the Complaints Procedure be adopted and appended to the Member Code of Conduct.

2.6. The accompanying complaints form will be updated as necessary in due course and it is also proposed to include a flowchart as an appendix to the procedure, to provide a quick overview.

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Date of report: 17 November 2022

Appendix 1 – Draft updated Member Code of Conduct Complaints Procedure

Appendix 2 – Code of Conduct Complaints Procedure (November 2018)

Arrangements for dealing with complaints under the Code of Conduct for Members

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1. Introduction
 - 1.1. This procedure applies when a complaint is received that a Member or Co-opted Member has, or may have, failed to comply with the Code of Conduct for Members.
 - 1.2. The person making the complaint will be referred to as “the Complainant” and the person against whom the complaint is made will be referred to as the “Subject Member”.
 - 1.3. No Member or officer will participate in any stage of the arrangements if he or she has, or may have, any personal conflict of interest in the matter.
2. Making a complaint
 - 2.1. A complaint must be made in writing either by post or email to: The Monitoring Officer, Broads Authority, Yare House, 62-64 Thorpe Road, Norwich NR1 1RY or by email to monitoring.officer@broads-authority.gov.uk
3. Independent Person
 - 3.1. The Authority is required by law to appoint at least one Independent Person and seek their views before taking a decision on a complaint. An Independent Person should normally be involved in initial meetings and discussions concerning the handling of a complaint.
 - 3.2. A Subject Member wishing to seek the views of an Independent Person has a statutory right to do so under the Localism Act 2011 and can ask the Monitoring Officer or Senior Governance Officer for contact details.
 - 3.3. A Complainant does not have a statutory right to consult with the Independent Person.
4. Initial Assessment of Complaint
 - 4.1. The Monitoring Officer will review the complaint and, following consultation with the Independent Person, take a decision (initial assessment) as to whether it merits investigation or another course of action. This decision will normally be taken within a month of receipt of a complaint. If there is likely to be any delay in this decision, the Monitoring Officer will notify the complainant.
 - 4.2. The Monitoring Officer will then apply the following criteria in deciding whether a complaint should be accepted for investigation, dealt with informally, or rejected:
 - (a) whether the complaint is within the Authority’s jurisdiction i.e. that the complaint is against one or more named members of the Broads Authority (The Authority);
 - (b) whether the Subject Member was in office at the time of the alleged conduct;
 - (c) whether the Subject Member was acting in their official capacity as a member at the time of the alleged conduct.

- (d) whether the complaint is a 'repeat complaint', unless supported by new or further evidence substantiating or indicating that the complaint is exceptionally serious or significant;
 - (e) whether the complaint is about something that happened so long ago that those involved are unlikely to remember it clearly enough to provide credible evidence, or where the lapse of time means there would be little benefit or point in taking action now. As a guideline, complaints about matters which happened more than 3 months ago will be rejected;
 - (f) whether the complaint is anonymous, unless supported by independent documentary evidence substantiating or indicating that the complaint is exceptionally serious or significant;
 - (g) whether the allegation discloses a potential breach of the Code of Conduct, but the complaint is not serious enough to merit any action and:
 - (h) the resources needed to investigate and determine the complaint are wholly disproportionate to the allegations; and
 - (i) in all the circumstances there is no overriding public benefit in carrying out an investigation;
 - (j) whether the complaint is malicious, trivial, politically motivated or 'tit-for-tat';
 - (k) whether the complaint suggests that there is a wider problem throughout the Authority;
 - (l) whether it is apparent that the subject of the allegation is relatively inexperienced as a Member or has admitted making an error and the matter would not warrant a more serious sanction;
 - (m) whether training or conciliation would be the appropriate response.
- 4.3. The Monitoring Officer will consult with the Independent Person and then give a decision on how the complaint will be dealt with.
- 4.4. There is no right of appeal against the Monitoring Officer's decision. However, if the Complainant submits additional relevant information, the Monitoring Officer will consider and decide if the matter warrants further consideration under these Arrangements, in which case it shall be treated as a fresh complaint.
5. Confidentiality
- 5.1. If the Complainant has asked for their identity to be withheld, this request will be considered by the Monitoring Officer at the initial assessment stage.
- 5.2. As a matter of fairness and natural justice the Subject Member should usually be told who has complained about them and receive details of the complaint. However, in exceptional circumstances, the Monitoring Officer may withhold the Complainant's

identify if, on request from the Complainant, or otherwise, they are satisfied that the Complainant has reasonable grounds for believing that they or any witness relevant to the complaint may be at risk of physical harm, or his/her employment may be jeopardised if their identity is disclosed, or where there are medical risks (supported by medical evidence) associated with the Complainant's identity being disclosed.

- 5.3. If the Monitoring Officer decides to refuse a request by a Complainant for confidentiality, they will offer the Complainant the option to withdraw the complaint, rather than proceed with his/her identity being disclosed. The Monitoring Officer will balance whether the public interest in taking action on a complaint will outweigh the complainant's wish to have his/her identity withheld from the Subject Member.
- 5.4. The Monitoring Officer will acknowledge the complaint and will notify the Subject Member that a complaint has been made, the name of the Complainant (unless confidentiality has been agreed), details of the complaint and which section(s) of the Code of Conduct are alleged to have been breached.
- 5.5. The Monitoring Officer will usually not accept anonymous complaints, subject to 5.2 above.
6. **Referral to Police**
- 6.1. If the complaint identifies criminal conduct or breach of other regulations by any person, the Monitoring Officer is authorised to report this to the Police or other prosecuting or regulatory authority in addition to any action taken pursuant to the Code of Conduct.
- 6.2. Criminal conduct includes a failure to declare a Disclosable Pecuniary Interest (DPI) and/or to declare a DPI and to then participate in/vote on that matter.
- 6.3. If the complaint includes allegations concerning a Member's DPIs which may amount to criminal conduct, and where the Member has not received a dispensation, the Monitoring Officer may advise the Complainant to report their allegation directly to the Police.
- 6.4. If the Member concerned had a dispensation to participate or vote on an item where they have an Interest, the Monitoring Officer will explain the position to the Complainant. In that case the Monitoring Officer would not advise the Complainant to report their allegation directly to the Police.
7. **Additional Information**
- 7.1. The Monitoring Officer may require additional information to make a decision and may request information from the Complainant or Subject Member and/or other person relevant to the complaint before deciding whether the complaint merits formal investigation or other action.

What process to apply – no action/informal resolution/investigation

8. Informal Resolution

8.1. The Monitoring Officer may, at any stage, (whether without the need for an investigation or before or after the commencement or conclusion of an investigation) seek to resolve the complaint informally. Such informal resolution may involve the Subject Member accepting that his/her conduct was unacceptable and offering an apology or taking other steps. Where the Subject Member or the Authority (in appropriate cases) makes a reasonable offer of informal resolution, but it is rejected by the complainant, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation. Examples of circumstances which might merit informal resolution include, but are not limited to:

- complaints that one member has failed to show respect and consideration for others;
- vexatious, malicious and trivial complaints which are considered low level and political tit for tat;
- other low-level complaints which in the opinion of the Monitoring Officer, following consultation with an Independent Person, are suitable for informal resolution.

8.2. Where the Monitoring Officer decides, after consulting with the Independent Person, that informal resolution is appropriate after an investigation, the process is called Resolution Without a Hearing and is referred to below at section 12.

8.3. Informal resolution might take the form of one of the following remedial actions:

- an explanation, retraction and/or apology from the Subject Member;
- mediation;
- training;
- some other practical conflict management agreement between the Complainant and Subject Member.

9. Investigation

9.1. The Monitoring Officer, in consultation with the Independent Person, will consider whether the complaint is serious enough to merit investigation, considering the following factors:

- (a) public interest factors including the seriousness of the alleged breach, and whether the matter is serious enough that, if proven, it would justify the range of sanctions available;
- (b) whether there has been any breach of trust, the extent of any harm caused and whether there has been any discrimination;

- (c) proportionality by balancing the seriousness of the allegation against the resources required to investigate the allegation;
 - (d) whether there are any aggravating factors or significant mitigating factors;
 - (e) whether a prompt acknowledgment and apology has been offered;
 - (f) whether the complaint is one of a pattern of less serious behaviour that is unreasonably disrupting the business of the Authority and there is no other avenue left to deal with it other than investigation;
 - (g) whether the complaint appears to be malicious, frivolous or vexatious;
 - (h) whether the complaint suggests that there is a wider problem that affects the Authority;
 - (i) whether training or conciliation would be the appropriate response.
- 9.2. Where the complaint is referred for investigation, the Monitoring Officer will appoint an Investigating Officer who may be an officer, an officer from another authority, or an external investigator.
- 9.3. The Investigating Officer will ensure that the Subject Member has received a copy of the complaint, subject to the Monitoring Officer's decision on confidentiality.
- 9.4. At the end of their investigation, the Investigating Officer will produce a draft report and will send copies of that draft report to the Complainant and Subject Member for comments. The Investigating Officer will take such comments into account before issuing their final report to the Monitoring Officer.
10. Investigating Officer's finding of no failure to comply with the Code of Conduct
- 10.1. Where the Investigating Officer's report finds that the Subject Member has not failed to comply with the Code of Conduct, the Monitoring Officer, in consultation with the Independent Person, will review the Investigating Officer's report and, if satisfied, confirm the finding of no failure to comply with the Code of Conduct and give their reasons.
- 10.2. The Monitoring Officer will write to the Complainant and the Subject Member within 10 working days with a copy of the decision and the Investigating Officer's report.
- 10.3. If the Monitoring Officer is not satisfied that the investigation has been conducted thoroughly, the Investigating Officer may be asked to reconsider the report and the conclusions.
11. Investigating Officer's finding of sufficient evidence of a failure to comply with the Code of Conduct
- 11.1. Where the Investigating Officer's report finds that the Subject Member has failed to comply with the Code of Conduct, the Monitoring Officer will review the Investigating Officer's report and will then, having consulted the Independent Person, either send

the matter for hearing before the Hearings Committee or seek a resolution without a hearing.

12. Resolution without a Hearing

12.1. If the Monitoring Officer considers that the matter can reasonably be resolved without the need for a hearing they will consult with the Independent Person and the Complainant and seek to agree a fair resolution. Such resolution may include the Subject Member accepting that their conduct was unacceptable and offering an apology or retraction, and/or other remedial action as set out in paragraphs 8.3 above and 12.4 below.

12.2. If the Subject Member accepts the suggested resolution, the Monitoring Officer will report the outcome to the Authority for information, but will take no further action.

12.3. If the Subject Member refuses this method of resolution in principle or to engage with the agreed outcome and/or the Monitoring Officer, in consultation with the Independent Person, believes that the process of resolution without a hearing is not going to successfully conclude the complaint, the Monitoring Officer will consider what further action should be taken. This could include referring the matter for a hearing without further reference to the Complainant or the Subject Member.

12.4. Resolution without a hearing might take the form of one of the following remedial actions:

- an explanation, retraction and/or apology from the Subject Member;
- mediation;
- training;
- Some other practical conflict management agreement between the Complainant and Subject Member.

12.5. It should be noted that there are occasions when it is not possible to resolve a complaint other than by a Hearing.

13. Hearing

13.1. Where, in the opinion of the Monitoring Officer, resolution without a hearing is not appropriate or the Complainant and/or Subject Member refuses to accept this form of resolution, then the Monitoring Officer will report the Investigating Officer's findings to the Authority's Hearing Committee which will conduct a hearing before deciding whether the Subject Member has failed to comply with the Code of Conduct and, if so, what action (if any) to take in respect of the Subject Member.

13.2. If a hearing is required, the Monitoring Officer will write to the Subject Member proposing a date for the hearing. This date will normally be within six weeks of the investigation report and will be before the Hearings Committee.

- 13.3. The Monitoring Officer, in consultation with the Independent Person, will decide whether a hearing can go ahead on the papers only, negating the need for attendance by either party.
- 13.4. If it is decided there will be a hearing on the papers only the Monitoring Officer will notify the Complainant and Subject Member. The Monitoring Officer will ask the Subject Member whether:
- The Subject Member disagrees with any of the findings of fact in the investigation report and, if so, which findings and the reason for disagreement;
 - The Subject Member wishes to provide a written submission;
 - The Investigating Officer wishes to provide a written submission.
- 13.5. If the matter proceeds to a hearing, the Monitoring Officer will engage the Subject Member in a pre-hearing process. The Monitoring Officer will outline the hearing procedure and the Subject Member's rights and ask for a written response from the Subject Member within a set time to establish whether:
- The Subject the Member wishes to attend the hearing;
 - the Subject Member disagrees with any of the findings of fact in the investigation report and if so which findings and the reason for disagreement;
 - the Subject Member wishes to give oral evidence, or rely on written submissions;
 - the Subject Member wishes to call witnesses to give evidence (there is no power on the part of the Authority to compel attendance by a witness).
- 13.6. If the Monitoring Officer considers that a preliminary hearing is necessary to consider these matters, they shall convene one.
- 13.7. Any party may have at their own expense a companion or representative, provided that in the case of representation the Monitoring Officer and other party have been given 21 days' notice to this effect.
- 13.8. The parties and the Hearing Committee will be sent a full bundle of documents for the hearing at least 5 days prior to the hearing.
14. Constitution of the Hearings Committee
- 14.1. The Hearings Committee will be constituted in accordance with Part B of the Authority's Standing Orders and shall comprise three Members from a pool of five, one of whom shall be elected as Chairman.
- 14.2. The Independent Person will also attend and their views must be sought and taken into consideration before the Hearings Committee takes any decision on whether the Subject Member's conduct constitutes a failure to comply with the Code of Conduct and as to any sanction to apply.

- 14.3. The Independent Person should normally be present throughout the hearing (but not during the deliberations of the Hearings Committee which are held in private) but in the event that this is not possible, may instead submit their views on the complaint to the Hearings Committee, in writing.
- 14.4. All matters/issues before the Hearings Committee will be decided by a simple majority of votes cast, with the Chairman having a second or casting vote.
- 14.5. Where the Subject Member fails to attend the Hearings Committee and where the Hearings Committee is not satisfied with the explanation for their absence, the Hearings Committee may in the first instance have regard to any written representations submitted by the Subject Member and may resolve to proceed with the hearing in the Subject Member's absence and make a determination or, if satisfied with the Subject Member's reasons for not attending the hearing may adjourn the hearing to another date.
- 14.6. The Hearings Committee may also resolve in exceptional circumstances that it will proceed with the hearing on the basis that it is in the public interest to hear the allegations expeditiously.
- 14.7. The hearing will be open to the public although the Hearings Committee may resolve to exclude the Press and public if it is likely that discussion will include exempt information. The Hearings Committee may only exclude the Press and public if the public interest in maintaining the exemption outweighs the public interest in the meeting being open and visible to the public. Prior to taking the decision whether to hold the hearing in private, the Committee will invite the Monitoring Officer and Subject Member to make any representations about the issue of whether the hearing should be open to the public or not.
15. Right to be accompanied by a representative
- 15.1. The Subject Member may choose to be accompanied and/or represented at the Hearings Committee by a fellow councillor, friend or colleague.
16. The Conduct of the Hearing
- 16.1. Subject to paragraph 16.2 below, the order of business will be:
 - (a) elect a Chairman;
 - (b) apologies for absence;
 - (c) declarations of interest;
 - (d) in the absence of the Subject Member, consideration as to whether to adjourn or proceed with the hearing (refer to paragraphs 14.5 and 14.6 above);
 - (e) introduction by the Chairman, of members of the Hearings Committee, the Independent Person, Monitoring Officer, Investigating Officer, legal adviser/clerk, Complainant and Subject Member and their representatives;

- (f) to receive representations from the Monitoring Officer and/or Subject Member as to whether any part of the hearing should be held in private and/or whether any documents (or parts thereof) should be withheld from the public/Press;
 - (g) to determine whether the public/Press are to be excluded from any part of the meeting and/or whether any documents (or parts thereof) should be withheld from the public/Press.
- 16.2. The Chairman may exercise his/her discretion and amend the order of business, where it is considered expedient to do so in order to secure the effective and fair consideration of any matter.
- 16.3. The Hearings Committee may adjourn the hearing at any time.
- 16.4. Presentation of the complaint
 - (a) the Investigating Officer presents the report including any documentary evidence or other material and calls witnesses (if any). No new points will be permitted;
 - (b) members of the Hearings Committee and/or the Subject Member or their representative may question the Investigating Officer and any witnesses called by the Investigating Officer.
- 16.5. Presentation of the Subject Member's case
 - (a) the Subject Member or their representative presents their case and calls their witnesses;
 - (b) members of the Hearings Committee may question the Subject Member and any witnesses called by the Subject Member.
- 16.6. The Investigating Officer will sum up the report.
- 16.7. The Subject Member or their representative will sum up their case.
- 16.8. The Chairman will invite the Independent Person to express their view on whether or not they consider that on the facts presented to the Hearings Committee, there has been a breach of the Code of Conduct.
- 16.9. The Hearings Committee will adjourn the hearing and deliberate in private (assisted on matters of law by a legal advisor/clerk) to consider whether or not, on the facts found, the Subject Member has failed to comply with the Code of Conduct.
- 16.10. The Hearings Committee may at any time come out of private session and reconvene the hearing, in order to seek additional evidence from the Investigating Officer, the Subject Member or the witnesses. If further information to assist the Committee cannot be presented, the Committee may adjourn the hearing and issue directions as to the additional evidence required and from whom.

- 16.11. The Hearings Committee will make its decision on the balance of probabilities, based on the evidence before it during the hearing.
- 16.12. The Chairman of the Hearings Committee will announce whether the Subject Member has failed to comply with the Code of Conduct and the principal reasons for the decision.
- 16.13. The Chairman of the Hearings Committee will announce what sanctions (if any) will be applied and/or recommendations to the Monitoring Officer.
- 16.14. There is no right of appeal against the Hearings Committee's decision and/or recommendations, although the Subject Member can complain to the Local Government and Social Care Ombudsman.
17. Range of possible sanctions
- 17.1. Where the Hearings Committee determines that the Subject Member has failed to comply with the Code of Conduct, any one or more of the following sanctions may be applied/recommended. Note that any sanctions which remove a member's privileges or membership of a committee apply equally to a co-opted member:
- a request that the Member submit a written apology or retraction in a form specified by the Hearings Committee;
 - a request that the Member undertake specified training;
 - a request that the Member participates in such conciliation as may be specified;
 - a requirement that the Member deals with Authority business through one specified point of contact;
 - placing such restrictions on Member's access to staff which may be reasonable in the circumstances and in accordance with the Protocol on Member and Officer relations, providing that such restrictions do not prevent the Member from carrying out their duties;
 - a requirement that the Member does not attend at the Authority's offices, unless attending statutory meetings;
 - reporting the Member to his/her County or District Council, Secretary of State as appropriate and reporting the matter to a full meeting of the Authority;
 - reporting the matter to a full meeting of the Authority with a recommendation that the Member has any privileges to which they are entitled removed or that they be removed from any appointment made by the Authority to any external body;

- reporting the matter to a full meeting of the Authority with a recommendation that the Member be removed from any committee to which they are currently appointed;
 - the Subject Member be issued with a formal censure (i.e. the issue of an unfavourable opinion or judgment or reprimand) by motion;
 - report the Committee's findings to the Authority for information;
 - instruct the Monitoring Officer to apply the informal resolution process;
 - send a formal letter to the Subject Member;
 - recommend that the Authority issues a press release or other form of publicity;
 - publish its findings in respect of the Subject Member's conduct in such manner as the Committee considers appropriate.
 - No sanction.
- 17.2. The Hearings Committee has no power to suspend or disqualify the Subject Member or to withdraw basic or special responsibility allowances.
- 17.3. The Hearings Committee may specify that any sanction take effect immediately or take effect at a later date and that the sanction be time limited.
18. Publication and notification of the Hearing Committee's decision and recommendations
- 18.1. Within 20 working days of the Hearing Committee's announcement of its decision and recommendations, the Monitoring Officer will publish the name of the Subject Member and a summary of the Hearing Committee's decision and recommendations and reasons for the decision and recommendations on the Authority's website.
- 18.2. Within 20 working days of the announcement of the Hearing Committee's decision, the Monitoring Officer will provide a full written decision and the reasons for the decision, including any recommendations, to:
- (a) the Subject Member;
 - (b) the Complainant.
- 18.3. The Monitoring Officer will report the Hearings Committee's decision and recommendations to a meeting of the Authority for information or a summary of the complaint and findings will be reported to a full meeting of the Authority, for their information.



Code of Conduct for Members - Complaints Procedure

November 2018

Version 2.2

Updated 23.11.18

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Complaints Procedure

- 1.1 The Localism Act provides that, where there are complaints of misconduct, the Authority must have in place arrangements under which allegations can be investigated and arrangements under which decisions on allegations can be made. The following procedure applies to complaints made against a Member by another Member, or by officers or any other person.
- 1.2 In relation to officers, a complaint should be after consultation with their Director and may be made in relation to a breach of the Protocol on Member and Officer Relations.

Making a complaint

- 1.3 The complaint should be made to the Monitoring Officer in writing or by e-mail. The address is:

Monitoring Officer, Broads Authority, Yare House, 62-64 Thorpe Road,
Norwich NR1 1RY

E-mail address: monitoring.officer@broads-authority.gov.uk

- 1.4 A copy of the complaint form, which should be used for all complaints, is attached at Appendix 1. This form should also be used for making a complaint under the Local Resolution Procedure. Completion of a Complaint Monitoring Form at Appendix 1a is also requested, but is not compulsory. Complaints should be made within 3 calendar months of the matter complained of, unless the complainant can provide a good reason for not having done so.
- 1.5 In order to make a complaint, a Member will need to have reasonable belief that there has been a breach of the Code. In order to have a reasonable belief that a breach has occurred, there will need to be direct evidence which supports the complaint. Members should consult the Monitoring Officer for advice if they are in doubt. Where the breach is a very minor or technical one, or where there is no clear evidence that a breach occurred, the Monitoring Officer may advise Member of the likely threshold and suggest that the matter might be more appropriately dealt with through the Authority's Local Resolution Process.
- 1.6 Once received a complaint will be acknowledged by the Monitoring Officer within five working days.

Confidentiality

- 1.7 As a matter of fairness and natural justice the subject Member should usually be told who has complained about them and received details of the complaint. However, in exceptional circumstances, the Monitoring Officer may withhold the complainant's identity if on request they are satisfied that the complainant has reasonable grounds for believing that they or any witness relevant to the complaint may be at risk of physical harm, or his or her employment may be jeopardised if their identity is disclosed, or where there are medical risks

(supported by medical evidence) associated with the complainant's identity being disclosed.

- 1.8 If a request for confidentiality is refused, the Monitoring Officer will explain the reason and give the complainant the option to withdraw the complaint, rather than proceed with his or her identity being disclosed.
- 1.9 The complaint will be acknowledged and the subject Member will be informed that a complaint has been made about him or her. Such notification will state that the complaint has been made; the name of the complainant (unless the complainant has requested confidentiality and this is being upheld, brief details of the complaint and the paragraphs of the Code which may have been breached. In very limited situations, the subject of the complaint may not be notified, in which case the Monitoring Officer will record his reason. Such situations may be where it is not reasonably possible to identify who the subject of the complaint might be.
- 1.10 Where specific details of complaints are passed to the local press and media, or posted on social media, this may prejudice an investigation and may also be a breach of the Code. Well-founded breaches of the Code should be reported to the Monitoring Officer and Members making allegations should not generate publicity in advance of the outcome of the complaint.

Initial Assessment

- 1.11 In determining whether to investigate a complaint, the Monitoring Officer will adopt a three-stage process, all in consultation with an Independent Person. At each stage the Monitoring Officer may request further clarification or documentation from the complainant, without this forming part of any investigation.

Stage 1 – The Monitoring Officer will decide whether the complaint is within the Authority's jurisdiction or "capacity", which will include consideration of the paragraphs of the Code to which the complaint might relate. If there is no jurisdiction then the complainant will be informed that the complaint will not be considered further.

Stage 2 - The Monitoring Officer will decide whether there is direct evidence that a breach took place. The level of proof will be on the balance of probabilities, that is to say, whether it is more likely than not. If there is no direct evidence, or if the complaint is considered to be vexatious (see paragraphs 1.20 and 1.21 below), or the matters complained of took place more than 3 months ago and there is no satisfactory explanation for the delay provided, then the complaint will be dismissed.

Stage 3 – The Monitoring Officer will decide whether the complaint is suitable to be dealt with within the Local Resolution Procedure, or whether it should be the subject of a full investigation. The criteria which will be used for this analysis are set out in Appendix 2.

Local Resolution

- 1.12 The Local Resolution Procedure is a process for low-level complaints including those made by one Member against another.
- 1.13 If the Monitoring Officer, in consultation with the Independent Person, decides to refer the matter to local resolution, then the complainant will be informed within 5 working days and the Local Resolution Procedure shall then apply (see page 7 below).
- 1.14 The criteria for referring the matter to the Local Resolution Procedure will include the following:
- Complaints that one member has failed to show respect and consideration for others
 - Complaints that one Member has made vexatious, malicious or frivolous complaints towards another.
 - Other low-level complaints which in the opinion of the Monitoring Officer, following consultation with an Independent Person, are suitable for informal resolution.

Formal Investigation

- 1.15 If the matter is to be fully investigated, as opposed to being dismissed or referred to the Local Resolution procedure, the Monitoring Officer will appoint an Investigating Officer who will prepare an initial report and recommendation. An Investigating Officer may be an officer or solicitor of another authority or a person independent of local government. When appointing the Investigating Officer, the Monitoring Officer will write to the relevant parties informing them that the matter is to be fully investigated and informing them who will be responsible for conducting the investigation. The Monitoring Officer should give an indication as to likely timescale for the completion of the investigation, which should be within 28 days. Referring a matter for investigation does not mean that there have been any findings of fact. It simply means that the alleged conduct, if proved, may amount to a failure to comply with the Code and that some action should be taken in response to the complaint.
- 1.16 A draft report will be sent by the Investigating Officer to the parties for them to comment on prior to the Monitoring Officer receiving the final version.
- 1.17 The Monitoring Officer will consider the recommendation of the Investigating Officer's report. If the recommendation is that there has been no breach of the Code, the Monitoring Officer will consult the Independent Person. If, having taken into account the views of the Independent Person, the Monitoring Officer approves the recommendation of the report then the Monitoring Officer will write to the complainant and the Member concerned to inform them that there will be no further action. This will normally be undertaken within 10 working days of the receipt of the report. The Monitoring Officer will give reasons for the decision. There is no appeal or review of that decision by the Authority or any other person.

- 1.18 If the investigation concludes that there is evidence of a breach of the Code then the Monitoring Officer will consult the Independent Person and decide either to:
- (a) resolve the matter without the need for a hearing. That may include the application of those sanctions limited to those set out in paragraph 1.40 below. The Monitoring Officer will write to the complainant and the member concerned to inform them of the decision. The Monitoring Officer will give reasons for the decision. There is no appeal or review of that decision by the Authority or any other person; or
 - (b) convene a meeting of the Authority's Hearings Committee, to hear the matter.
- 1.19 In exceptional circumstances it may be considered by the Monitoring Officer and Independent Person that the Chair of the Authority should be invited to consider whether the member should be asked to withdraw from Authority duties pending the outcome of the Hearings Committee. There will need to be reasonable grounds for the belief that such a step is in the interests of the subject Member or the Authority.

Frivolous and Vexatious Complaints

- 1.20 Complaints made against other Members or officers or people working on behalf of the Authority must be based upon fact and not motivated by malice or by political rivalry. Members should avoid making complaints which have little or no substance or where the evidence of any breach is weak or non-existent. Such complaints may be dismissed at the initial assessment stage. In the case of doubt as to whether a threshold has been met, advice should be sought from the Monitoring Officer. The making of frivolous or vexatious complaints may be conduct which will be considered a breach of the Code and dealt with under the Local Resolution Procedure.
- 1.21 Guidance on what circumstances may lead to a determination that a complaint is frivolous or vexatious are set out in Appendix 3. 3.

Local Resolution Procedure

- 1.22 The Authority has adopted this Local Resolution Procedure in order to promote and maintain high standards of conduct amongst members. It is intended to assist in the swift resolution of issues, so as to avoid the unnecessary escalation of the situation which may damage personal relationships within the Authority and the Authority's reputation. This procedure is also intended to resolve matters on an informal basis, where this is appropriate.
- 1.23 For informal resolution of a problem involving a member identified or reported to the Chair, Chief Executive or Monitoring Officer (where a formal complaint has not been made) the request will be passed on to the Chair and Vice-Chair (in the event they are not the original recipient). Confidential meetings will then be arranged between relevant parties with the Chair and Vice-Chair to engage in the process and seek a resolution to the issues raised. Any meetings may take place at the Authority's offices or other locations as is convenient. The process will be confidential and without prejudice to the parties involved to bring a formal complaint if the matter is not resolved. In the event that the matter is not resolved the content of the discussions shall not be referred to in any subsequent complaint. There is no power for any matter referred under the informal process to be subject to any sanction under the Code of Conduct. ³
- 1.24 Complaints may be dealt with under this procedure as follows. Anyone who wishes to submit an allegation under this procedure should send the complaint (in the case of an officer following consultation with their Director) to the Monitoring Officer. Additionally, the Monitoring Officer may have referred a complaint to this procedure following consultation with an Independent Person. Following receipt of the complaint, or referral, the Monitoring Officer will act as follows:

Stage 1

- 1.25 The Monitoring Officer will undertake a brief preliminary investigation to establish the facts and the areas of dispute. Possible resolutions will be canvassed with the complainant and then the Member about whom the complaint has been made.
- 1.26 Then Monitoring Officer will also consider, following this, whether another course of action or more formal investigation, is more appropriate.

Stage 2

- 1.27 A mediation meeting will be held between the person making the complaint, the Member against whom the complaint is made, the Monitoring Officer and (if considered appropriate) other persons invited by the Monitoring Officer. Such persons may include an Independent Person, the Chief Executive, Chair of the Authority, or in the case of a complaint being made by an officer, a companion or Director. The meeting may commence

with the parties in separate rooms and the Monitoring Officer acting as a mediator. The purpose of the meeting will be to try and resolve the matter without it going further.

Stage 3

- 1.28 If the matter is not resolved at stage two and the complainant wishes to proceed with it, the matter will be referred to a local resolution hearing before the Hearings Committee (see para 1.32 below in relation to the constitution of the Hearings Committee). The person making the complaint will be asked to submit a statement in writing within 14 days and the member complained against will respond within 14 days. Either party may submit a statement from a witness.
- 1.29 Within 28 days of the written evidence a hearing will be set before the Hearings Committee. Any party may have at their own expense a companion or representative, provided that in the case of representation the Monitoring Officer and other party have been given 21 days' notice to this effect. Evidence will be limited to the contents of the statements. If any party does not attend, the hearing will proceed in their absence. The Monitoring officer will be available to advise the committee. After hearing oral evidence, the Hearings Committee will come to a conclusion on the allegation, which will be notified to the parties.
- 1.30 The possible outcomes to a hearing under the Local Resolution Procedure are:
- A finding that the matter does not warrant any further action to be taken
 - A recommendation to the Monitoring Officer that there be a change to procedures or that more formal investigation action be taken
 - A finding that the complaint be recorded by the Monitoring Officer as vexatious
 - A finding that the complaint is upheld, but no further action is required
 - A finding that the complaint is upheld and that the Member should be censured
- 1.31 Unless the complaint has been upheld, publicity will not be given to the names of the parties. The hearing before the Hearings Committee will be confidential.

3. Paragraph inserted 12.07.18

Hearings Procedure

- 1.32 If a hearing is required, the Monitoring Officer will write to the subject Member proposing a date for the hearing. This date will normally be within six weeks of the investigation report and will be before the Hearings Committee. The Hearings Committee shall be constituted in accordance with Part B of the Authority's Standing Orders and shall have a quorum of three Members.
- 1.33 The Monitoring Officer will outline the hearing procedure, the Member's rights and ask for a written response from the Member within a set time to establish whether:
- the Member wishes to attend the hearing
 - the Member disagrees with any of the findings of fact in the investigation report and if so which findings and the reason for disagreement
 - the Member wishes to give oral evidence, or rely on written submissions
 - witnesses will be called by the Member to give evidence (there is no power on the part of the Authority to compel attendance by a witness)
 - they wish any part of the hearing to be in private
 - they wish any part of the investigation report or other documents to be withheld from the public
- 1.34 In complex cases, if the Monitoring Officer considers that a preliminary hearing is necessary to consider the matters in 1.33, they shall convene one.
- 1.35 Any party may have at their own expense a companion or representative, provided that in the case of representation the Monitoring Officer and other party have been given 21 days' notice to this effect.
- 1.36 The parties and the Hearing Committee will be sent a full bundle of documents for the hearing at least 5 days prior to the hearing.

Procedure at hearing

- 1.37 The procedure at the hearing will be in accordance with a procedure to be determined by the Monitoring Officer. It will usually adopt the following procedure
- The Investigating Officer will present his/her report to the Hearing Committee
 - The Investigating Officer will be questioned on the report by any party and by the Hearings Committee
 - Evidence will be given with questions being asked by any party and by the Hearings Committee. The order will be the complainant first, then the Member the subject of the complaint and then any witnesses in such order as the Hearings Committee decides appropriate
 - The Hearings Committee will withdraw to consider their decision, with the outcome notified by the Chair. The decision will be confirmed in a

Decision Notice which will be sent to the parties within 5 working days of the hearing.

- 1.38 If the Hearings Committee concludes that there has been no breach of the Code, there will be no further action. There is no appeal or review of that decision by the Authority or any other person. The Hearings Committee will give reasons for its decision.
- 1.39 If the Hearings Committee concludes that the Member the subject of the complaint has failed to comply with the Code, then the Authority has delegated its powers to make such sanction as it considers it to be appropriate and proportionate in order to promote and maintain high standards.

Sanctions

- 1.40 These sanctions may include any of the following:
- A request that the Member submit a written apology in a form specified by the Hearings Committee
 - A request that the Member undertake specified training
 - A request that the Member participates in such conciliation as may be specified
 - A requirement that the Member deals with Authority business through one specified point of contact
 - Placing such restrictions on Members access to staff which may be reasonable in the circumstances and in accordance with the Protocol on Member and Officer relations, providing that such restrictions do not prevent the Member from carrying out their duties
 - A requirement that the Member does not attend at the Authority's offices, unless attending statutory meetings
 - Reporting the Member to his/her County or District Council, Secretary of State as appropriate and reporting the matter to a full meeting of the Authority
 - Reporting the matter to a full meeting of the Authority with a recommendation that the Member has any privileges to which they are entitled removed or that they be removed from any appointment made by the Authority to any external body
 - Reporting the matter to a full meeting of the Authority with a recommendation that the Member be removed from any committee to which they are currently appointed.
 - No sanction

Publication of findings

- 1.41 A summary of the complaint and findings will be reported to a full meeting of the Authority, for their information.



Members' Code of Conduct Complaint Form

To be used if you wish to make a complaint that a Member or co-opted Member of the Authority, has failed to comply with the Members' Code of Conduct.

If English is not your first language, please contact us if you require help to complete this form.

Your details

1. Please provide us with your name and contact details

Title:	
First Name:	
Last Name:	
Address:	
Daytime telephone:	
Evening telephone:	
Mobile telephone:	
Email address:	

We will only use the information you provide to us for the purposes of processing your complaint. Your information, including any personal information you provide to us (such as name and contact details) may be shared with the people referred to below, or with other relevant authorities as required, only for the purposes of processing your complaint.

All comments and complaints are treated confidentially and will not disadvantage you in any future dealings with Broads Authority. It may not always be possible to keep your details confidential, such as where your complaint is about a third party or where particular legislation applies to your complaint.

We will tell the following people about this complaint:

- The Member(s) you are complaining about
- The Monitoring Officer to the Authority
- The Authority's Independent Person
- The Chair of the Authority
- The Chief Executive of the Authority

If you have serious concerns about your name and details of your complaint being released, please complete **section 6** of this form.

2. Please tell us which complainant type best describes you:

<input type="checkbox"/>	Member of the public
<input type="checkbox"/>	A Member or co-opted Member of an authority
<input type="checkbox"/>	Member of Parliament
<input type="checkbox"/>	Local authority monitoring officer
<input type="checkbox"/>	Broads Authority employee or volunteer
<input type="checkbox"/>	Other (please provide details)

Making your complaint

- 3.** Once you have submitted your complaint, it will be considered by the Monitoring Officer of the Authority and after reasonable consultation with the Authority's Independent Person, who will assess, on the basis of your written submission and any additional relevant material, whether the alleged conduct might amount to a failure to comply with the Members' Code of Conduct.

The Monitoring Officer has the following range of options available to him/her: Formal Investigation (which will involve an investigation of the complaint), referral to the Authority's Local Resolution Procedure or no further action, for instance if it is considered that any failure to comply with the Code of Conduct is of a trivial nature.

- 4.** Please provide us with the name of the Member(s) you believe have breached the Broads Authority Members' Code of Conduct and, where the Member is also a Councillor, the name of their authority.

Title	First Name	Last Name	Authority Name

5. Please explain in this section (or on separate sheets) what the Member has done that you believe breached the Members' Code of Conduct. If you are complaining about more than one Member you should clearly explain what each individual person has done that you believe breached the Code of Conduct.

A copy of the Authority's Members' Code of Conduct can be found on the Broads Authority website at [Constitutional documents \(broads-authority.gov.uk\)](http://www.broads-authority.gov.uk/Constitutional_documents/broads-authority.gov.uk)

Alternatively, a paper copy can be obtained from the Monitoring Officer to the Authority by writing to:

Monitoring Officer, Broads Authority, Yare House, 62-64 Thorpe Road,
Norwich, Norfolk. NR11RY

- You should be specific, wherever possible; about exactly what you are alleging the Member said or did. For instance, instead of writing that the Member insulted you, you should state what it was they said.
- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide any relevant background information.
- You should tick the box to confirm that the facts set out are true

Please provide us with the details of your complaint and the outcome from this complaints process that you would like to see happen. Continue on a separate sheet if there is not enough space on this form.

Do you wish your complaint to be dealt with under the Authority's Local Resolution Procedure?

Yes/No

If you answered No, please briefly explain your reason:

☐ I confirm by ticking this box and sending this form that the facts I have set out in my complaint are true

Date:

Only complete this next section if you are requesting that your identity is kept confidential.

6. In the interests of fairness and natural justice, we believe Members who are complained about have a right to know who has made the complaint. We also believe they have a right to be provided with a summary of the complaint. We are unlikely to withhold your identity or details of your complaint unless you have good reason to justify the Authority doing so.

Please note that requests for confidentiality or requests for suppression of complaint details will not automatically be granted. The Monitoring Officer to the Authority, in consultation with the Authority's Independent Person, will consider the request alongside the substance of your complaint. We will then

contact you with the decision. If your request for confidentiality is not granted, we will usually allow you the option of withdrawing your complaint.

However, it is important to understand that in certain exceptional circumstances where the matter complained about is very serious, we can proceed with an investigation or other action and disclose your name even if you have expressly asked us not to.

Please provide us with details of why you believe we should withhold your name and/or the details of your complaint:

Additional Help

7. Complaints must be submitted in writing. This includes electronic submissions. However, in line with the requirements of equalities legislation, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing.

If you need support in completing this form, please let us know as soon as possible.

This complaint should be submitted to the Monitoring Officer to the Authority, by sending to the following contact addresses:

By post to: Monitoring Officer, Broads Authority, Yare House, 62-64 Thorpe Road, Norwich, Norfolk. NR11RY

Or by e-mail to: monitoring.officer@broads-authority.gov.uk

Privacy and Data processing ^{5.}

8. The Authority will process any personal information in line with the Data Protection Act 2018 and the EU General Data Protection Regulation.

Information you provide to us on this form will be shared with certain individuals who undertake roles within the complaints process, including the subject Member, Independent Person, Investigating Officer (who may be external to the Authority) and members of the Hearings Committee.

You also acknowledge by making your complaint that personal information which you give us may be placed in the public domain should the matter proceed to a hearing.

The basis of processing will be that of public task i.e. tasks carried out by the Authority in the public interest or power vested in the Authority.

Your information will be retained for 7 years following the outcome of your complaint or last action taken in relation to it. We will process your data in accordance with Data Protection Principles using appropriate technical and organisational measures.

Broads Authority is the Data Controller in relation to your data. It has a Data Protection Officer (DPO) who can be contacted at the postal address on this form or at dpo@broads-authority.gov.uk. Our DPO is currently the Director of Operations.

You have the right to see any personal information that we hold about you. Such requests are called subject access requests. If you would like to make a subject access request please contact the Authority's Data Protection Officer. We will respond to such requests within one month. There is no fee to make a request.

You may ask us to rectify any personal information which is incomplete or inaccurate. You may also ask us to erase such data once processing is no longer necessary or if you object to processing or consider that we are processing it unlawfully. We will consider such requests and if we refuse, we will give reasons.

5. Section 8 added 12.0718



Private and Confidential

Code of Conduct Complaint Monitoring Form

The Broads Authority is committed to the provision of equal opportunity and specifically to conducting its affairs in a manner which will not discriminate against, either directly or indirectly, any person on the grounds of: disability; gender; transgender; race; ethnic or national origin; religion or belief; age or sexual orientation.

To help us meet this commitment, it would be helpful if you would complete this form. This monitoring form will be separated from your complaint on receipt and will be used solely for the purposes of monitoring the process.

Section 1 (please tick the boxes which apply)

My age is:	Under 21	<input type="checkbox"/>
	21-30	<input type="checkbox"/>
	31-40	<input type="checkbox"/>
	41-50	<input type="checkbox"/>
	51-60	<input type="checkbox"/>
	61-64	<input type="checkbox"/>
	65 or over	<input type="checkbox"/>
My gender is:	Female	<input type="checkbox"/>
	Male	<input type="checkbox"/>

Section 2 (please tick one box only)

I would describe myself as:	White:	British	<input type="checkbox"/>	
		Irish	<input type="checkbox"/>	
		Any other	<input type="checkbox"/> please write in	
	Mixed:	White and Black Caribbean	<input type="checkbox"/>	
		White and Black African	<input type="checkbox"/>	
		White and Asian	<input type="checkbox"/>	
		Any other	<input type="checkbox"/> please write in	
		Asian or Asian British:	Indian	<input type="checkbox"/>
			Pakistani	<input type="checkbox"/>
			<input type="checkbox"/>	

	Bangladeshi Any other	<input type="checkbox"/> please write in
Black or Black British:	Caribbean African Any other	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> please write in
Chinese or other ethnic group:	Chinese Any other	<input type="checkbox"/> <input type="checkbox"/> please write in

Section 3		
Do you consider yourself to have a disability*?	Yes <input type="checkbox"/>	No <input type="checkbox"/>

Thank you for your co-operation. Please return this form with your complaint.

*The Equality Act 2010 defines disability as 'a physical or mental impairment which has a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities'.

Criteria for consideration of a complaint by Monitoring Officer

In deciding whether to accept or reject a complaint of breach of the Code, or to refer it to the Local Resolution Procedure, the Monitoring Officer has a wide discretion. He or she will take into account the following criteria, where relevant.

- Public interest factors including the seriousness of the alleged breach, whether there has been any breach of trust, the extent of any harm caused and whether there has been any discrimination.
- Proportionality by balancing the seriousness of the allegation against the resources required to investigate the allegation
- Whether there are any aggravating factors or significant mitigating factors
- Whether a prompt acknowledgment and apology has been offered
- Whether the complaint is one of a pattern by or against a Member
- Whether the complaint appears to be malicious, frivolous or vexatious
- Whether the complaint suggests that there is a wider problem as affects the Authority
- Whether training or conciliation would be the appropriate response
- Whether either the complainant or subject Member has indicated a preference for Local Dispute resolution

Criteria for determination as to whether a complaint is frivolous or vexatious

At the Initial Assessment Stage, the following criteria shall be used in determining whether a complaint is frivolous or vexatious:

- Whether the matters complained of occurred more than 3 calendar months earlier and if so whether any reason given for a delay in making the complaint is sufficient.
- Whether the complaint appears to be of “tit for tat” nature in that for example, the complainant has themselves been the subject of a complaint by the subject member.
- Whether in less-serious cases, the matter has already been the subject of reasonable and sufficient attempts by the subject member to apologise and make amends for any behaviour complained of.
- Whether the complainant has made other complaints under the Members’ Code of Conduct. If so, the number, nature and subject matter of those complaints will also be considered.
- Whether the subject matter of the complaint is a trivial matter out of proportion to its significance.
- Whether the complainant has adopted a “scattergun” approach: pursuing a complaint with the Authority and at the same time, with any number of the following such as a Member of Parliament, the Authority’s independent auditor, National Audit office, Government department, local police, solicitors, media and on social media.
- Whether the complaint arises from facts which have been the subject of a prior determination by a decision-making body.
- Whether the content of the complaint includes gratuitous comments about the subject Member or other third parties which could be considered insulting, abusive or defamatory in nature.