

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.
- 2.2. Receipt of a complaint will be acknowledged within five working days.

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 usually be rejected (unless there are exceptional circumstances, which will be considered by the Monitoring Officer based on the evidence submitted with the complaint);
 - (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 identity 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 within five working days 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 Sub-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 Standards Committee 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 Hearings Sub-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 Sub-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 Hearings Sub-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 Sub-Committee
 - 14.1. The Hearings Sub-Committee is a sub-committee of the Standards Committee and will be constituted in accordance with Part B of the Authority's Standing Orders ("Committees") and shall comprise three Members, one of whom shall be elected as Chair. The quorum for such meetings will be two members.
 - 14.2. The Independent Person will also attend, and their views must be sought and taken into consideration before the Hearings Sub-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 Sub-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 Sub-Committee, in writing.
 - 14.4. All matters/issues before the Hearings Sub-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 Sub-Committee and where the Hearings Sub-Committee is not satisfied with the explanation for their absence, the Hearings Sub-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 Sub-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 Sub-Committee may resolve to exclude the Press and public if it is likely that discussion will include exempt information. The Hearings Sub-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 Sub-Committee by a fellow member, 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 Chair;
- (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 Chair of: members of the Hearings Sub-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 Chair may exercise their 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 Sub-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 Sub-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 Sub-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 Chair will invite the Independent Person to express their view on whether or not they consider that on the facts presented to the Hearings Sub-Committee, there has been a breach of the Code of Conduct.
- 16.9. The Hearings Sub-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 Sub-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 Sub-Committee will make its decision on the balance of probabilities, based on the evidence before it during the hearing.
- 16.12. The Chair 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 Chair 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 Sub-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 Sub-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 Sub-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 the 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 their County or District Council, Secretary of State as appropriate and reporting the matter to a meeting of the Standards Committee;
 - reporting the matter to a 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 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;
 - 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 in such manner as the Committee considers appropriate, noting that the findings will usually be made public on the Authority's website in accordance with section 18 below;
 - no sanction.
- 17.2. The Hearings Sub-Committee has no power to suspend or disqualify the Subject Member or to withdraw basic or special responsibility allowances.
- 17.3. The Hearings Sub-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 Hearings Sub-Committee's decision and recommendations
- 18.1. Within 20 working days of the Hearings Sub-Committee's announcement of its decision and recommendations, the Monitoring Officer will publish the name of the Subject Member and a summary of the Hearings Sub-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 Hearings Sub-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 Sub-Committee's decision and recommendations to a meeting of the Standards Committee for information.

APPENDIX TO MEMBER CODE OF CONDUCT COMPLAINTS PROCEDURE
Complaints procedure flow chart

