

SHEFFIELD CITY COUNCIL

PROCEDURE FOR DEALING WITH COMPLAINTS REGARDING CITY, PARISH AND TOWN COUNCILLORS AND CO-OPTED MEMBERS

1. Introduction

1.1 Under the Localism Act 2011, the Council has a duty to promote and maintain high standards of conduct for its elected and co-opted members and have arrangements in place to deal with complaints.

1.2 This Procedure sets out how the Council will deal with a complaint alleging a breach of the Councillor Code of Conduct by:-

- Sheffield City Councillors
- Voting and non-voting co-opted members of the Council
- Bradfield Parish Councillors
- Ecclesfield Parish Councillors
- Stocksbridge Town Councillors

(In this Procedure the term ‘Member’ is used to describe a Councillor or Co-opted Member and Council includes Bradfield Parish Council, Ecclesfield Parish Council or Stocksbridge Town Council where appropriate.)

1.3 In dealing with complaints we will be fair to both the complainant and Member and progress matters in accordance with the timescales set out in the Procedure. Complaints will be handled in the strictest confidence at all times.

1.4 The Council has a duty to ensure no conflict of interest with officers when undertaking standards investigations. If a conflict of interest is identified, it will be determined in consultation with the Independent Person whether the matter should be dealt with by an alternative Monitoring Officer. If there is a conflict of interest which prevent the Monitoring Officer acting, then the matter will be dealt with either by the Council’s Deputy Monitoring Officer or by a Monitoring Officer from another Authority.

1.5 The Council has a clear and straightforward public interest test, which is used by the Monitoring Officer when considering complaints.

2. Monitoring Officer

2.1 David Hollis, Director of Legal and Governance, is the Council’s Monitoring Officer. This is a statutory role, responsible for ensuring that

the Council, its Members and officers carry out their functions in a lawful and ethical manner. The role includes supporting the Audit and Standards Committee and the Independent Persons in dealing with complaints alleging a breach of the Councillor Code of Conduct.

3. Independent Persons

3.1 The Council appoints Independent Persons from outside the Council to assist the Monitoring Officer and the Audit and Standards Committee in considering complaints. This is a statutory requirement under the Localism Act 2011.

3.2 The Monitoring Officer may consult the Independent Person at any stage, but the Independent Person must be consulted at various stages in the complaints process:

1. The Independent Person should be consulted on an allegation and should be given the option to review and comment on allegations which the Monitoring Officer is minded to dismiss under Paragraph 5.3 (other than where it does not raise a standards matter) or to Take No Action under Paragraph 5.4.
2. As to whether to undertake a formal investigation.
3. Before the Hearing Sub-Committee.

3.3 An elected member who is the subject of a Standards Complaint is entitled to process / procedural advice from an Independent Person, and any request shall be made via the Monitoring Officer.

If the elected member requires any other form of support, a request can be made through Democratic Services. Advice on this is available on the Members Sharepoint site.

4. Making a Complaint/Withdrawing a Complaint

4.1 Complaints alleging a breach of the Councillor Code of Conduct should be made in writing using the complaint form and sent to David Hollis, Monitoring Officer, Sheffield City Council, Town Hall, Sheffield S1 2HH or email david.hollis@sheffield.gov.uk. The complaint form is available from:-

- Website - <http://www.sheffield.gov.uk/home/your-city-council/councillors>
- Email - committee@sheffield.gov.uk
- Phone - Democratic Services on 0114 273 4015

- 4.2 If you need advice or assistance in submitting a complaint concerning an elected member, please contact Sarah Hyde in Democratic Services (email sarah.hyde@sheffield.gov.uk or phone 0114 273 4015).
- 4.3 Details of the complaint, including the name of the complainant, will be shared with the Member. The complainant can request at section 2 of the complaint form for their identity to be kept confidential. Requests for confidentiality will be considered by the Monitoring Officer, in consultation with the Independent Person, and the complainant will be informed in writing of the outcome. In the interest of fairness and natural justice, we believe Members who are complained about have a right to know who has made the complaint. We are unlikely to withhold your identity unless there are exceptional circumstances; for example, that you can demonstrate that you will suffer significant harm or distress as a result of disclosure. In 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.
- 4.4 Anonymous complaints will not be considered.
- 4.5 The complainant can withdraw their complaint at any time by informing the Monitoring Officer in writing. The Monitoring Officer will confirm this in writing with the complainant within 5 working days and also inform the Member that the complaint has been withdrawn.
- 4.6 The Monitoring Officer will make a complaint in their own name only if (a) they are the subject of, or witness to the behaviour complained of; (b) they are of the view that they are the most appropriate person to make the complaint; or (c) where a complaint has been withdrawn. In cases (b) and (c) the Monitoring Officer will only do so where in their opinion substantial concerns have been raised such that it is in the public interest to continue with the complaint and the Monitoring Officer is satisfied that the Member can properly and fairly present their case.
- 5.0 Acknowledging the Complaint/Rejecting a Complaint/Informing the Member**
- 5.1 The Monitoring Officer will acknowledge receipt of the complaint in writing within 5 working days, with details of how the complaint will be dealt with and providing a copy of this Procedure and the Code of Conduct.
- 5.2 If necessary, the Monitoring Officer will clarify any matters with the complainant as soon as possible before the Member is informed.

- 5.3 The Monitoring Officer also reserves the right to reject a complaint if it is considered to be trivial, vexatious, repetitious, not a standards matter or a general misuse of the opportunity. The complainant will be informed of the reasons why a complaint has been rejected.
- 5.4 The Monitoring Officer may also at this point Take No Action in accordance with the circumstances listed in paragraph 6.6.
- 5.5 The Member will be informed in writing that a complaint has been made about them within 5 working days of receipt of the complaint or clarification under paragraph 5.2. This will include the name of the complainant (unless the Monitoring Officer has agreed to the complainant's request that their name is kept confidential) and details of the complaint. They will also receive a copy of this Procedure and the Code of Conduct. To assist the Monitoring Officer in assessing the complaint, the Member will be invited to submit within 10 working days a written statement of fact and any other representations in response to the complaint. Members will not be notified of complaints that are rejected under paragraph 5.3
- 5.6 The Monitoring Officer will also inform the Leader of the relevant political Group, Group Whip and Chair of the Audit and Standards Committee that an accepted complaint has been received and provide a summary of the complaint. If he considers it appropriate the Monitoring Officer may also inform the Chief Executive.
- 5.7 Where a complaint relates to a Parish or Town Councillor, the Monitoring Officer will also inform the Clerk of that Council of the name of the Member and details of the complaint. The Clerk will also be kept informed of the progress and the outcome of the complaint.

6. Assessment by the Monitoring Officer

- 6.1 Before assessment of the complaint, it may be necessary for the Monitoring Officer to request further information or clarification from the complainant and/or Member and, where necessary, obtain other available information, such as the minutes of a meeting.
- 6.2 The Monitoring Officer, in consultation with the Independent Person, will consider (a) the complaint, any remedy sought by the complainant, any written statement of fact and representations submitted by the Member and any other information obtained; (b) whether the member was acting in their official capacity and that the Code of Conduct does apply; (c) if the allegation constitutes a potential breach of the Code of Conduct; and (d) would consideration of the complaint be in the public interest; and then take one of the following courses of action:-

1. Take no action
2. Take other action through informal resolution
3. Refer the matter for investigation
4. Refer the matter to the Hearing Sub-Committee

6.3 The complainant and the Member will be informed in writing within 10 working days of the outcome and the reasons for the decision.

6.4 The Monitoring Officer will also inform the Leader of the relevant political Group, Group Whip, Chair of the Audit and Standards Committee and, where the Monitoring Officer considers it appropriate the Chief Executive, of the assessment decision. Where a complaint relates to a Parish or Town Councillor, the Monitoring Officer will also inform the Clerk of that Council.

6.5 Where a complaint is not referred for investigation, the Monitoring Officer will seek to deal with the matter within 8 weeks.

6.6 Take No Action

6.6.1 It is likely that no action will be taken where:-

- A significant amount of time has elapsed since the events which are the subject of the complaint.
- The allegation relates to a cultural or recurring issue relating to standards within the Council.
- The matter should be dealt with by some other method.
- Complaints have been made about the Member relating to similar issues that have previously been dealt with through this Procedure.
- The complaint appears to be trivial, vexatious, repetitious or a general misuse of the opportunity.
- The conduct occurred during political debate or could be regarded as a political expression of views or opinion.

6.7 Take Other Action Through Informal Resolution

6.7.1 Informal resolution may be the simplest and most cost-effective way of resolving the complaint and without determining if an actual breach of the Code has taken place. It may be appropriate where:

- The Monitoring Officer considers that this is the most effective way of resolving the matter to the complainant's satisfaction;
- The Member appears to have a poor understanding of the Code of Conduct and/or related Council procedures;
- The conduct complained of appears to be a symptom of wider underlying conflicts which, if unresolved, are likely to lead to further misconduct or allegations of misconduct;
- The conduct complained of appears to the Monitoring Officer not to require a formal sanction;
- The complaint appears to reveal a lack of guidance, protocols and procedures within the District or Parish/Town Council;
- The complaint consists of allegations and retaliatory allegations between councillors;
- The complaint consists of allegations about how formal meetings are conducted; and
- The conduct complained of may be due to misleading, unclear or misunderstood advice from officers.

6.7.2 The Monitoring Officer, in consultation with the Independent Person, may take any of the following actions:-

- Take such steps as they think appropriate to prevent a future breach of the Code including training, guidance and introducing or amending policies/protocols.
- Ask the Whips to address the issue raised within their political parties or with an individual Member.
- Mediate between the parties involved to resolve the issues.
- Seek an apology from the Member.
- Any other action capable of resolving the complaint.

6.7.3 If a member of the public making a complaint is not satisfied with the action to be taken through informal resolution, they can make a request in writing to the Monitoring Officer for reconsideration. If appropriate, the Monitoring Officer may then recommend additional mediation, reconsider the original action proposed, or refer the complaint to Hearing Sub-Committee.

6.8 Refer the Matter for Investigation

6.8.1 It is expected that the Monitoring Officer will refer only the most serious breaches for investigation or where the Member fundamentally disputes or does not accept the allegations in the complaint.

6.8.2 If a complaint has been referred for investigation, the Monitoring Officer, in consultation with the Independent Person, will appoint a person to undertake the investigation and this may be either a Council Officer or an outside agent, depending on the complexity and subject of the complaint.

6.8.3 The Investigating Officer will inform the complainant and Member of the process and proposed timescale of the investigation. The investigation may involve interviewing both parties and possibly other witnesses, together with reviewing any relevant documentation or paperwork.

6.8.4 The Investigating Officer will prepare a draft report on the outcome of the investigation and provide the complainant and Member with a copy for review and comment.

6.8.5 The Investigating Officer will submit a final version of the report to the Monitoring Officer that will make a finding that either (a) there has been a breach of the Code of Conduct or (b) there has not been a breach of the Code of Conduct. The final report will also be sent to the complainant and Member.

6.8.6 The Monitoring Officer will submit the Investigating Officer's report to the Hearing Sub-Committee.

6.8.7 An investigation will be completed within 12 weeks of a referral by the Monitoring Officer. The Hearing Sub-Committee will meet within two months of the final report being submitted to the Monitoring Officer.

6.9 Refer the matter to the Hearing Sub-Committee

6.9.1 The Monitoring Officer can refer a complaint direct to the Sub-Committee if it is considered that there is evidence to support a breach of the Code but there is no dispute over the events in relation to the complaint and an investigation is not considered necessary.

6.9.2 If a member of the public making a complaint is not satisfied with the action to be taken through informal resolution, they can make a request in writing to the Monitoring Officer for reconsideration. If appropriate, the Monitoring Officer may then recommend additional mediation,

reconsider the original action proposed, or refer the complaint to Hearing Sub-Committee.

7. Hearing Sub-Committee

7.1 The Hearing Sub-Committee comprises 3 Councillors and 1 non-voting co-opted Independent Member.

7.2 The Sub-Committee will meet within two months of completion of an Investigation Report or a referral by the Monitoring Officer to consider the allegation.

7.3 The Sub-Committee will meet in public unless it decides that all or part of the meeting should be held in private in accordance with the Access to Information Procedure Rules in the Council's Constitution.

7.4 In advance of the Hearing, there may be a pre-hearing process to allow matters at the Hearing to be dealt with more fairly and economically.

7.5 The complainant and member will be given the opportunity to attend the Hearing. The Monitoring Officer, any Investigating Officer and Independent Person will also attend. The procedure at the Hearing will include: -

The complainant and member having the opportunity to ask questions of the Investigating Officer

- Making findings of fact
- Deciding if there has been a breach of the Code of Conduct
- Considering the remedies/sanctions available if there is a finding that the Member has breached of the Code of Conduct

7.6 Full details of the pre-hearing and hearing process are set out in the Procedure at Hearings. The Member and complainant will be provided with a copy of the Procedure.

7.7 A Finding of No Breach of the Code of Conduct

7.7.1 If the Sub-Committee finds that the Member did not breach the Code of Conduct no further action will be taken in respect of the complaint. However, the Sub-Committee can make a recommendation to the authority with a view to promoting and maintaining high standards of conduct in general (e.g. proposed changes to internal procedures or training for Members).

7.8 A Finding of a Breach of the Code of Conduct

- 7.8.1 If the Sub-Committee, having heard any further representations from the Member, finds that a breach of the Code of Conduct has occurred they may make any of the following recommendations and may specify to whom they wish them to be directed: -
- Recommending to Council or to Committees that he/she be removed from any or all Committees or Sub-Committees of the Council and from any external appointments made by the Council.
 - Instructing the Monitoring Officer to arrange training for the member.
 - In a case where the breach relates to use of the Council's IT systems, that the Member's access to those systems is withdrawn.
 - That policies/procedures are amended.
 - That a briefing/information note be issued.
 - That an apology be given.
 - That the Member is censured in writing and a copy of the letter is published on the Council's website.
 - Take no action where it is not considered appropriate in the circumstances to impose a sanction.
- 7.8.2 The Monitoring Officer will inform the complainant and the Member of the outcome from the Sub-Committee hearing in writing within 10 working days.
- 7.8.3 The findings and decision of the Sub-Committee will also be available on the Council's website and copies will be supplied to the Chief Executive, Leaders of all the political Groups and the Group Whips.
- 7.8.4 Where the matter relates to a Parish or Town Councillor, the Clerk of that Council will be informed of the outcome of a Hearing.

8. Appeals

- 8.1 There is no right of appeal for the complainant or Member against a decision of the Monitoring Officer or Hearing Sub-Committee.
- 8.2 If the complainant feels that the Council has failed to follow the Complaints Procedure (as set out within this Procedure document,) or has taken too long to look into the matter or has acted in a way that is maladministration, then they may make a complaint to the Local

Government and Social Care Ombudsman (<http://www.lgo.org.uk/make-a-complaint/how-to-complain> or phone 0300 061 0614).

9. Reports

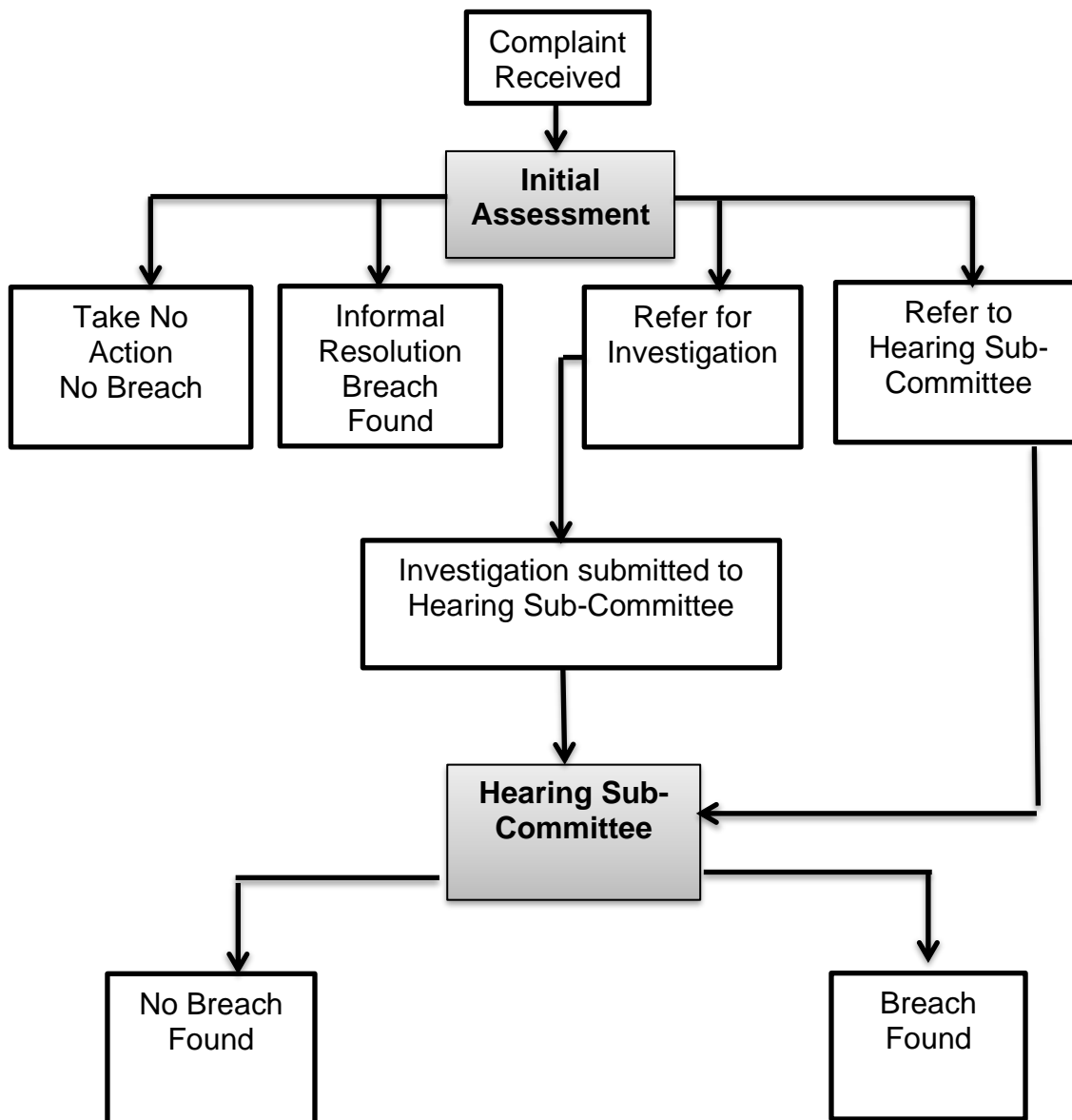
- 9.1 An annual report and half yearly interim report will be submitted to the Audit and Standards Committee with a summary of all Standards Complaints received and their outcome.

10. Data Protection

- 10.1 Complaints will be handled in the strictest confidence at all times. We will ensure that any information received as part of the handling of the complaint is disclosed only to those who can demonstrate a valid need to know it. However, when a complaint is considered at a Hearing Sub-Committee then any information will be dealt with in accordance with the Access to Information Procedure Rules in the Council's Constitution.
- 10.2 Complaints records will be stored safely and securely. Records of the number of complaints received, the outcomes and the subject Members, will be kept for so long afterwards as we consider it may be required to deal with any questions or complaints about the service which we provide. Personal information about the complainant and details of the complaint itself will be deleted after 7 years unless we elect to retain it for a longer period in order to comply with our legal and regulatory obligations.

11. Review and Changes to the Procedure

- 11.1 The Monitoring Officer will review the Procedure annually, in consultation with the Independent Persons, and submit a report on any proposed changes to the Audit and Standards Committee for consideration. In accordance with the Constitution, any changes will require final approval at Full Council.



If a breach is found, the following options are available:

- Recommending to the Council or to Committees that he/she be removed from any or all Committees or Sub-Committees of the Council and from any external appointments made by Full Council.
- Instructing the Monitoring Officer to arrange training for the member.
- In a case where the breach relates to use of the Council's IT systems, that the Member's access to those systems is withdrawn.
- That policies/procedures are amended.
- That a briefing/information note be issued.
- That an apology be given.
- That the Member is censured in writing and a copy of the letter is published on the Council's website. (**only after Hearing Sub-Committee**)
- Take no action where it is not considered appropriate in the circumstances to impose a sanction.