

ARRANGEMENTS FOR DEALING WITH STANDARDS ALLEGATIONS UNDER THE LOCALISM ACT 2011

These “Arrangements” set out how you may make a complaint that an elected or co-opted member of Selby District Council (or of a parish or town council within its area) has failed to comply with that Council’s Code of Conduct, and sets out how the Council will deal with allegations of a failure to comply with the Council’s Code of Conduct.

Under Section 28(6) and (7) of the Localism Act 2011, the Council must have in place “arrangements” under which allegations that a member or co-opted member of the Council (or of a parish or town council within the Council’s area), or of a Committee or Sub-Committee of the Council, has failed to comply with that Council’s Code of Conduct can be investigated and decisions made on such allegations.

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

The Code of Conduct

Selby District Council has adopted a Code of Conduct for members, which is set out at Part 4 of this Constitution and available for inspection on the Council’s website.

Each parish or town council is also required to adopt a Code of Conduct. If you wish to inspect a Parish or Town Council’s Code of Conduct, you should inspect any website operated by the parish or town council or request the clerk to allow you to inspect that council’s Code of Conduct.

1. Making a complaint

If you wish to make a complaint, please write or email to:

The Monitoring Officer
Selby District Council
Civic Centre
Doncaster Road
Selby YO8 9FT

Or:

monitoringofficer@selby.gov.uk

The Monitoring Officer is a senior officer of the Council who has statutory responsibility for maintaining the register of members’ interests and who is responsible for administering the system in respect of complaints of Councillor misconduct.

2. Procedure for Dealing with Complaints

In order to ensure that we have all the information which we need to be able to process a complaint, complainants are asked to complete and send us the standard complaint form, which can be downloaded from the Council's website, next to the Code of Conduct. Complainants who choose not to use the standard form must ensure that they provide us with all of the equivalent information; otherwise we may not be able to deal with their complaint.

The Council does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

The Monitoring Officer will acknowledge receipt of a complaint within 5 working days of receiving it. He/she will keep parties informed of the progress of a complaint.

The Monitoring officer will also normally inform the subject Councillor that a complaint has been made and send them a copy of it. If a complainant has a genuine reason why their details should be withheld from the subject Councillor they should advise the Monitoring Officer of this. The Monitoring Officer may decide to withhold the details or advise the complainant that in the interests of fairness the details will not be withheld. In that case the complainant may choose not to proceed with the complaint.

The following presumptions will apply to the procedure

- There will be a working assumption that details of the allegations made against a Councillor should not be made public until the end of the process and only if there is an investigation (subject to the rules on access to information).
- There will be recognition from the outset of any complaint that the action that can be recommended at the end of any process must be proportionate to the need to ensure effective administration of the Council, the welfare of its staff or the reputation of the Council.
- There will be an overriding presumption that complaints should be settled quickly, efficiently and informally and in a way that represents value for money and takes into account the limited action that can be taken against a Councillor.

Assessment stage

The Monitoring Officer will review every complaint received and apply the assessment criteria at Appendix 1 in considering whether it is in the public interest to formally investigate. He/she will, after consultation with the Independent Person, take a decision as to whether it merits further formal action.

This decision will normally be taken within 14 days of receipt of a complaint. Where the Monitoring Officer has taken a decision, he/she will inform the complainant and the subject Councillor of his/her decision, the views of the Independent Persons and the reasons for the decision.

Where he/she requires additional information in order to come to a decision, he/she may come back to the complainant for such information, and may request information from the member against whom the complaint is directed. Where a complaint relates to a Parish or Town Councillor, the Monitoring Officer may also inform the Parish or Town Council of the complaint and seek views before deciding whether the complaint merits formal investigation.

In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for further formal action. Such informal resolution may involve the Councillor against whom the complaint is made accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the Councillor.

Where the Councillor or the Council make a reasonable offer of local resolution, but the complainant is not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits further formal action.

If a complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police and other regulatory agencies.

The Investigation Stage

If the Monitoring Officer decides that a complaint merits further formal action he/she will appoint an Investigating Officer who will arrange for an investigation to take place.

There will be a presumption that any investigations will be completed quickly and where possible by correspondence.

Wherever possible the investigation will conclude and report within 6 weeks of the matter being referred for investigation.

The Hearings Stage

On receipt of the investigation report and where the report indicates that a breach of the Code has occurred the Monitoring Officer will arrange a Hearing. The Monitoring Officer will make reasonable efforts to ensure that the date for the hearing is suitable to all parties but will not tolerate unreasonable delay.

The Hearing will be before the Standards Sub-committee of the Audit and Governance Committee. The Sub-committee will consist of 3 District Councillors who will not all be from the same political party. Where a complaint is in relation to a Town or Parish Councillor the panel will also include two co-opted Town or Parish Councillors. The co-opted Parish representatives will not be from the same parish as the subject councillor.

The Complainant will be offered the opportunity to set out their complaint and comment on the investigation report.

The Subject Councillor will have an opportunity to respond to the Complaint and the investigation report.

The Sub-committee will then decide whether a breach has occurred and announce their findings. If the Hearing finds no breach of the Code of Conduct they will close the hearing and close the complaint.

If the hearing finds a breach of the Code of Conduct the Sub-committee may, after consulting the Independent Person, seek a local resolution. Such resolution may include the Councillor accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the Councillor. If the Councillor complies with the suggested resolution, the Monitoring Officer will report the matter to the Council (or the Parish or Town Council) for information, but will take no further action.

However, if no local resolution is possible or appropriate, the Monitoring Officer will refer the matter to the relevant Council and indicate the Sub-committee's views and recommendation on the appropriate sanction.

Recommended Action

The Sub-committee may recommend any sanction which is in accordance with the law and is proportionate to the findings. Examples of such sanctions include:

- 2.1 That Council pass a motion of censure against the Councillor concerned.
- 2.2 Publishing the findings in respect of the member's conduct;
- 2.3 Recommending to the Councillor's Group Leader (or in the case of un-grouped Councillors, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 2.4 Recommending to the Leader of the Council that the Councillor be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 2.5 Arranging training for the Councillor;
- 2.6 Removing (or recommend to the Parish or Town Council that the member be removed) from all outside appointments to which he/she has been appointed or nominated by the Council (or by the Parish or Town Council);
- 2.7 Withdrawing (or recommend to the Parish or Town Council that it withdraws) facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
- 2.8 Excluding (or recommend that the Parish or Town Council exclude) the Councillor from the Council's offices or other premises, with the exception of meeting rooms necessary for attending Council, Committee and Sub-Committee meetings.

The Council has no power to suspend or disqualify the Councillor or to withdraw Councillors basic or special responsibility allowances.

Revision of these arrangements

These arrangements will be kept under review and may be amended by resolution of the Audit and Governance Committee.

Appeals

There is no right of appeal for complainants or for the Councillor against a decision of the Monitoring Officer or Sub-committee.

Jurisdiction and Assessment Criteria

Jurisdiction

Before assessment of a complaint begins, the Monitoring Officer, in consultation with the Independent Person, should be satisfied that the complaint meets the following tests:

1. it is a complaint against one or more named Members/voting co-opted Members (“Members”) of the authority or of a Parish Council within the District;
2. the named Member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time.
3. the complaint, if proven, would be a breach of the Code under which the Member was operating at the time of the alleged misconduct.

If the complaint fails one or more of these tests it cannot be investigated as a breach of the Code, and the complainant must be informed that no further action will be taken in respect of the complaint.

Assessment Criteria

All complaints falling within the jurisdiction of the standards regime will be assessed by the Monitoring Officer, in consultation with the Independent Person, in accordance with the criteria below.

More than one criteria may be applicable to a complaint.

1. Capacity

Was the Councillor acting in in the capacity of councillor at the time of the alleged conduct?

If the answer is **no**, the Code did not apply to the Councillor at the time of the alleged conduct and therefore there can be no breach of the Code.

2. Triviality

Is the complaint too trivial to warrant further action?

If the answer is **yes**: the Monitoring Officer may decide the matter does not warrant further investigation

3. Sufficient Information

Has the complainant submitted enough information to satisfy the Monitoring Officer assessing the complaint that the complaint should be referred for investigation or other action?

If the answer is **no**: the Monitoring Officer may decide the matter does not warrant further investigation

4. Prior Investigation/Action

Has the complaint already been the subject of an investigation or other action relating to the Code of Conduct? Similarly, has the complaint been the subject of an investigation by other regulatory authorities?

If the answer is **yes**: the Monitoring Officer may decide the matter does not warrant further investigation

5. Passage of Time

Is the complaint about something that happened so long ago that there would be little benefit in taking action now?

If the answer is **yes**: the Monitoring Officer may decide the matter does not warrant further investigation

6. Underlying Motivation

Does the complaint appear to be simply malicious, vexatious, politically motivated or tit-for-tat?

If the answer is **yes**: the Monitoring Officer may decide the matter does not warrant further investigation

8. Anonymous Complaints

Is the complaint under consideration anonymous?

If the answer is **yes**, the Monitoring Officer will only refer such a complaint for investigation or some other action if it includes documentary or photographic evidence indicating an exceptionally serious or significant matter and/or if there is a significant public interest in doing so.

9. Requests for Confidentiality

Has the complainant asked for his/her identity to be withheld?

If the answer is **yes**, the Monitoring Officer will need to consider the request by the complainant for confidentiality alongside the substance of the complaint itself. As a matter of fairness and natural justice, Members will usually be told who has complained about them. Requests for confidentiality should only be granted in exceptional circumstances and at the discretion of the Monitoring Officer, in consultation with the Independent Person.

The following considerations may assist the Monitoring Officer's deliberations in this respect:

- a) Whether the complainant has reasonable grounds for believing that they will be at risk of physical harm if their identity is disclosed;

- b) Whether the complainant is an officer who works closely with the subject Councillor and they are afraid of the consequences to their employment or of losing their job if their identity is disclosed (NB: this should be covered by the Council's Whistle-Blowing Policy);
- c) Whether the complainant suffers from a serious health condition and there are medical risks associated with his/her identity being disclosed. In such circumstances, the Monitoring Officer may wish to request medical evidence of the complainant's condition. In such cases, the Monitoring Officer may give the complainant the option of requesting a withdrawal of his/her complaint;
- d) Whether the disclosure of the complainant's identity is necessary for the investigation of the complaint; for example, this may be relevant in a bullying allegation. In such cases, the Monitoring Officer may give the complainant the option of requesting a withdrawal of his/her complaint;
- e) Whether it is possible to investigate the complaint without making the complainant's identity known;
- f) Whether the public interest in proceeding with an investigation outweighs the complainant's wish to have their identity withheld from the subject Member.

Where the Monitoring Officer decides to refuse a request by a complainant for confidentiality, s/he may, in the particular circumstances, decide to offer the complainant the option to withdraw the complaint, rather than proceed with their identity being disclosed.

10. Withdrawal of Complaints

Has the complainant indicated that s/he wishes to withdraw his/her complaint?

If the answer is **yes**, the Monitoring Officer will need to decide whether to grant the request. The following considerations may assist the deliberations in this respect:

- a) Does the public interest in taking some action on the complaint outweigh the complainant's desire to withdraw it?
- b) Is the complaint such that action can be taken on it, for example an investigation, without the complainant's participation?
- c) Is there an identifiable underlying reason for the request to withdraw the complaint? For example, is there information to suggest that the complainant may have been pressured to withdraw the complaint?

Possible decisions

The Monitoring Officer assessing a complaint may decide to refer the complaint for investigation or seek local resolution (e.g. training, conciliation); or may decide that no action should be taken in respect of the complaint.