



Report to: Standards Committee

Report of: Monitoring Officer

Date: 17 September 2019

Subject: Code of Conduct Complaints Procedure

1. PURPOSE

To inform and advise members regarding the adoption of a procedure relating to complaints under the Members' Code of Conduct.

2. RECOMMENDATIONS

That Committee note and approve the Procedure document at Appendix A.

3. BACKGROUND

Conduct complaints are not currently processed under any defined or published procedure. The Constitution does not set out any guidelines or advice about the practical side of making a complaint.

4. KEY INFORMATION

The attached procedure sets out how a complaint may be made, the stages through which it will pass and the range of possible outcomes. It establishes how an investigation will be conducted, which will also guide and assist any investigating officer appointed by the Monitoring Officer to deal with a complaint. The procedure appends a flowchart to demonstrate the process, a set of assessment criteria to provide clarity on how complaints will be treated, and a procedure for investigating officers to ensure consistency of approach.

5. FINANCIAL IMPLICATIONS AND BUDGET PROVISION

None

6. RISK IMPLICATIONS

Without clear underlying policy and procedure, individuals wishing to make a complaint

are unclear about the practicalities of making a complaint, and will not understand the basis on which their complaint will be considered. This may lead to inconsistency, inappropriate expectations and a lack of confidence in the standards framework.

7. **CONCLUSIONS**

8. **BACKGROUND PAPERS/EXISTING COUNCIL POLICIES**

BACKGROUND PAPERS

Code of Conduct for Members at Article 42 of the Constitution.

APPENDICES:

Appendix A – Code of Conduct Complaints Procedure

Checklist

Area for consideration	Comment
Monitoring Officer Consultation:	N/A
Section 151 Officer Consultation:	At ELT
Environmental Implications:	None
Equality Analysis: is Equality Impact Assessment required?	No



GREAT YARMOUTH BOROUGH COUNCIL

Code of Conduct Complaints Procedure

1. Context

- 1.1 This procedure sets out how a complaint may be made that an elected or co-opted member within Great Yarmouth Borough (including the elected or co-opted members of the Parish Councils within the Borough) has failed to comply with the relevant Code of Conduct for Members, and sets out how the authority will deal with allegations of a failure to comply with the Code of Conduct.
- 1.2 Under Section 28(6) and (7) of the Localism Act 2011 the Council must have in place arrangements under which allegations that a member has failed to comply with Code of Conduct may be investigated and which sets out how decisions made on such allegations. Such arrangements must provide for the authority to appoint at least one "Independent Person" whose views must be sought by the authority before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the authority at any other stage, or by a member against whom an allegation has been made.
- 1.3 By virtue of section 6 of the Human Rights Act 1998 it is unlawful for a public authority to act in a way that is incompatible with human rights, as set out by the European Convention on Human Rights. These requirements apply to the consideration and investigation of conduct complaints. For example, the right to freedom of expression and the right to a family/private life may be relevant and the Monitoring Officer, Investigating Officer and Standards Committee will need to consider and apply the relevant law.
- 1.4 Where the Monitoring Officer or Standards Committee Members feel that they may be conflicted in relation to a specific case then they must arrange to be substituted for the purpose of the conduct of that investigation and/or for any related hearing.

2. Great Yarmouth Borough Council Code of Conduct

- 2.1 The Council has adopted a Code of Conduct for Members, which is contained within the Constitution and is available for inspection on the authority's website or on request from Democratic Services.
- 2.2 Parish Councils adopt their own Codes of Conduct which should be available via their respective websites, or on request from the relevant Parish Clerk.

3. Making a complaint

- 3.1 If you wish to make a complaint under the Code of Conduct you should use the form provided on the Council's website or available in hard copy from Democratic Services. Before making a complaint you must look at the relevant Council's Code of Conduct

(Borough or Parish) and decide which specific section or sections of the code have been breached. You will need to include this information on the complaint form.

- 3.2 The Monitoring Officer has statutory responsibility for maintaining the register of members' interests and is responsible for administering the system in respect of complaints of member misconduct.
- 3.3 As part of your complaint you should provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form. The Monitoring Officer will consider your request for confidentiality and, if granted, we will not disclose your name and address to the member against whom you make the complaint, without your prior consent.
- 3.4 The authority does not normally investigate anonymous complaints unless there is a clear public interest in doing so.
- 3.5 The Monitoring Officer will acknowledge receipt of your complaint within 14 working days of receiving it, and will keep you informed of the progress of your complaint.
- 3.6 The Complaints Procedure Flowchart is annexed at Appendix 1.
- 3.7 The Monitoring Officer will send a copy of the complaint to the Member who is the subject of the Complaint and invite a response within 14 days.

4. Will your complaint be investigated?

- 4.1 The Monitoring Officer will review every complaint received and may consult with the Independent Person before taking a decision as to whether it:
 - 4.1.1 Merits no further investigation
 - 4.1.2 Merits further investigation
 - 4.1.3 Should be referred to the Standards Committee
- 4.2 This decision will normally be taken within 28 working days of receipt of your complaint. Your complaint will be considered in accordance with the Assessment Criteria annexed at Appendix 2. Where the Monitoring Officer has taken a decision, she will inform you of her decision and the reasons for that decision. The Monitoring Officer may consult the authority's "Independent Person" before reaching a decision (see paragraph 10). Where the Monitoring Officer requires additional information in order to come to a decision, she may come back to you for such information, and may request information from the member against whom your complaint is directed.
- 4.3 In appropriate cases, the Monitoring Officer may seek to resolve the complaint (whether a formal breach is identified or not) informally, without the need for a formal investigation. Such informal resolution may involve the member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the authority. Where the member or the authority makes a reasonable offer of informal resolution, but the complainant is not willing to accept the offer, the Monitoring Officer will take account of this in deciding whether the complaint merits further investigation.
- 4.4 If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police or other regulatory agencies.

5. How is the investigation conducted?

- 5.1 The Council has adopted a procedure for the investigation of conduct complaints, which is attached as Appendix 3 to these arrangements.
- 5.2 If the Monitoring Officer decides that a complaint merits further investigation, s/he may appoint an Investigating Officer, who may be another senior officer of the authority, an officer of another authority or an external investigator such as a lawyer.
- 5.3 The Investigating Officer or Monitoring Officer will decide whether s/he needs to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents need to be seen, and who needs to be interviewed.
- 5.4 The Investigating Officer or Monitoring Officer will normally write to the member against whom you have complained and provide him/her with a copy of your complaint. The MO will ask the member to provide his/her explanation of events, and to identify what documents she needs to see and who she needs to interview. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the member, or delay notifying the member until the investigation has progressed sufficiently.
- 5.5 At the end of his/her investigation, the Investigating Officer or Monitoring Officer will produce a draft report ("the Investigation Report") and will send copies of that draft report, in confidence, to you and to the member concerned, to give you both an opportunity to identify any matter in that draft report which you disagree with or which you consider requires more consideration.
- 5.6 Having received and taken account of any comments which you may make on the draft Investigation Report, a final Investigation Report will be prepared by the Investigating Officer or Monitoring Officer as appropriate.

6. What happens if the Investigating Officer or Monitoring Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?

- 6.1 If an Investigating Officer has been appointed the Monitoring Officer will review the Investigating Officer's report and, if she is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the member concerned notifying you that s/he is satisfied that no further action is required, and give you both a copy of the Investigation Final Report.
- 6.2 If an Investigating Officer has been appointed and if the Monitoring Officer is not satisfied that the investigation has been conducted properly, she may ask the Investigating Officer to reconsider his/her report.

7. What happens if the Investigating Officer or Monitoring Officer concludes that there is evidence of a failure to comply with the Code of Conduct?

- 7.1 If an Investigating Officer has been appointed the Monitoring Officer will review the Investigating Officer's report and will then either send the matter for a hearing before the Standards Committee, or in consultation with the Independent Person, seek an informal resolution.

7.1.1 Informal Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, s/he will consult with the Independent Person and with you as complainant and seek to agree what you may consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the authority. If the member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee for information, but will take no further action.

7.1.2 Hearing by Standards Committee

If the Monitoring Officer considers that informal resolution is not appropriate, or the Member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will refer the Investigation Report to a Standards Committee which may conduct a hearing before deciding whether the member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the member.

At the hearing, the Investigating Officer or the Monitoring Officer will present her report, call such witnesses as she considers necessary and make representations to substantiate her conclusion that the member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer or Monitoring Officer *may* ask the complainant to attend and give evidence to the sub-committee. This will not always be necessary, particularly if the facts are not in dispute.

The member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the sub-committee as to why they consider that they did not fail to comply with the Code of Conduct.

The Committee, with the benefit of any advice from the Independent Person, may conclude that the member did not fail to comply with the Code of Conduct, and dismiss the complaint. If the Committee concludes that the member did fail to comply with the Code of Conduct, the Chair will inform the member of this finding and the Committee will then consider what action, if any, should be taken as a result of the member's failure to comply with the Code of Conduct. In doing this, the Committee may consult the Independent Person.

8. What action can the Standards Committee take where a member has failed to comply with the Code of Conduct?

8.1 The Council has delegated to the Standards Committee such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly the Committee may:-

8.1.1 Publish its findings in respect of the member's conduct (agreeing to waive the application any confidentiality decision made in connection with the hearing);

8.1.2 Report its findings to Council for information;

8.1.3 Recommend to Council that the member be issued with a formal censure or be reprimanded

8.1.4 Recommend to the member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that s/he be removed from any or all Committees or sub-committees of the Council;

8.1.5 Recommend to the Leader of the Council that the member be removed from a particular Committee or from particular responsibilities;

8.1.6 Instruct the Monitoring Officer to arrange training for the member;

8.1.7 Remove from all outside appointments to which the member has been appointed or nominated by the authority;

8.1.8 Withdraw facilities provided to the member by the Council, such as a computer, website and/or email and internet access; or

8.1.9 Exclude the member from the Council's Offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and sub-committee meetings.

8.2 In the case of a Parish Councillor, the Committee may also put forward any of the above suggestions to the relevant Parish Council.

8.3 The Committee has no power to suspend or disqualify the member or to withdraw members' or special responsibility allowances.

9. What happens at the end of the hearing?

9.1 At the end of the hearing, the Chair will present the decision of the Standards Committee as to whether the member failed to comply with the Code of Conduct and as to any actions which the Committee resolves to take.

9.2 As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Committee, and send a copy to the complainant and to the member, the decision notice will be made available for public inspection, although this may be in a redacted form.

10. Who is the Independent Person?

10.1 The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed from a majority vote by members of Council.

10.2 A person cannot be "independent" if s/he:

- a) is, or has been within the past 5 years, a member, co-opted member or officer of the authority, save where any transitional provisions permit; or
- b) is a relative or close friend, of a person within paragraph a) above. For this purpose, a "relative" means:
 - i. Spouse or civil partner;
 - ii. Living with the other person as husband and wife or as if they were civil partners;
 - iii. Grandparent of the other person;
 - iv. A lineal descendent of a grandparent of the other person;
 - v. A parent, sibling or child of a person within paragraphs i) or ii); or
 - vi. A spouse or civil partner of a person within paragraphs iii), iv) or v); or

- vii. Living with a person within paragraphs iii), iv) or v) as husband and wife or as if they were civil partners.

11. Revision of these arrangements

The Council may by resolution agree to amend these arrangements, and has delegated to the Chair of the Committee the right to depart from these arrangements where s/he considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

APPENDIX 1 COMPLAINTS PROCEDURE FLOWCHART

Complaint considered by Monitoring Officer

Applies Preliminary tests:

- ☐ Acting in capacity as a member?
- ☐ In office at time of alleged misconduct?
- ☐ Very minor or trivial matter?
- ☐ Vexatious or malicious?
- ☐ Historical?
- ☐ Potential breach of the Code?
- ☐ What to do with it?
- ☐ Assessment of public interest?
- ☐ Decision within 28 working days of

Complaint
rejected with
reasons

Informal Resolution
(Mediation, apology etc)

Appointment of Investigating Officer
and Investigation

Potential criminal
conduct/breach of other
regulations

Informal resolution in
consultation with an
Independent Person

(See Appendix 3)

Investigation Report to include:

- Agreed facts;
- Facts not agreed and corresponding conflicting evidence
- Conclusion whether a breach of the code or not

Report referred to MO - decision made in consultation with an Independent Person as to whether a Standard Committee hearing is required

If there is to be no Committee hearing the MO will decide (in consultation with an Independent Person if required) whether there is to be:

1. No Further Action
2. Informal Resolution
3. Formal Decision/Action

APPENDIX 2 STANDARDS COMPLAINTS ASSESSMENT CRITERIA

Complaints which would not normally be referred for investigation

1. The complaint is not considered sufficiently serious to warrant investigation; or
2. The complaint appears to be simply motivated by malice or is “tit-for-tat”; or
3. The complaint appears to be politically motivated, vexatious or trivial; or
4. It appears that there can be no breach of the Code of Conduct; for example, that it relates to the Councillor’s private life or is about dissatisfaction with a Council decision; or
5. It is about someone who is no longer a Councillor; or
6. There is insufficient information available for a referral; or
7. The complaint has not been received within 3 months of the alleged misconduct unless there are exceptional circumstances e.g. allegation of bullying, harassment etc; or
8. The matter occurred so long ago that it would be difficult for a fair investigation to be carried out; or
9. The same, or similar, complaint has already been investigated and there is nothing further to be gained by seeking the sanctions available to the Standards Committee; or
10. It is an anonymous complaint, unless it includes sufficient documentary evidence to show a significant breach of the Code of Conduct; or
11. Where the member complained of has apologised and/or admitted making an error and the matter would not warrant a more serious sanction.

Complaints which may be referred to Standards Committee

1. It is serious enough, if proven, to justifying the range of actions available to the Standards Committee; or
2. There are individual acts of minor misconduct which appear to be a part of a continuing pattern of behaviour that is unreasonably disrupting the business of the Council and there is no other avenue left to deal with it other than by way of an investigation.
3. When the complaint comes from a senior officer of the Council, such as the Chief Executive or the Monitoring Officer and it would be difficult for the Monitoring Officer to investigate; or
4. The complaint is about a high profile Member such as the Leader of the Council and it would be difficult for the Monitoring Officer to investigate
5. Such other complaints as the Monitoring Officer considers it would not be appropriate for her to investigate

Whilst complainants must be confident that complaints are taken seriously and dealt with appropriately, deciding to investigate a complaint formally or to take further action will cost both public money and officers’ and members’ time. This is an important consideration where the complaint is relatively minor and so the principle of proportionality will apply: the requirement for a full investigation and/or a hearing will be considered against the seriousness of a particular matter.

APPENDIX 3 PROCEDURE FOR INVESTIGATING OFFICERS

Receive instructions from MO to carry out investigation



Acknowledge receipt



Identify:

- whether further information is required from complainant
- what paragraphs of code are alleged to have been breached
- the facts which need to be determined to establish if the member has breached the code
- the evidence needed to determine those issues
- how you plan to gather the evidence
- how long it is likely to take to complete the investigation



- Contact complainant & request any supporting or further documentary evidence
- Contact subject Member with details of the complaint & seek explanation



Identify and interview any witnesses



Interview Subject Member



Draft report and submit to MO for consideration. Report to contain:

- Agreed facts
- Facts not agreed & corresponding conflicting evidence
- Conclusion as to whether there is a breach of the code or not



- MO either accepts report or asks for report to be reconsidered.
- The report will be shared with the IP
- Once the report is confirmed accepted by the MO, a copy will be sent to the Subject Member for comment.



Report may be referred to Standards Committee for a determination, if the MO decides that a hearing is necessary.

The IP may have input by making his/her own written report to Committee and/or by speaking in person at the hearing