

## **Procedure for dealing with Code of Conduct complaints against Councillors**

### **1. The Code of Conduct**

The Localism Act 2011 requires all Local Authorities to adopt a Code of Conduct setting out the standards of behaviour expected from their Councillors.

South Kesteven District Council has adopted a Code of Conduct for its Councillors, which is available on the Council's website and on request from the Monitoring Officer. This Code of Conduct reflects the Model Councillor Code of Conduct for Councillors as recommended by the Local Government Association.

Each of the Parish/Town Councils within South Kesteven may adopt their own Code of Conduct and a copy of their Code of Conduct should be found on the relevant Parish/Town Council website.

The Localism Act 2011 also requires Local Authorities to have in place "arrangements" under which allegations that an elected or co-opted member of the District or Parish/Town Council has failed to comply with the relevant Code of Conduct can be investigated and decisions made on such allegations.

These arrangements set out:

1. How to make a complaint about the conduct of an elected or co-opted member of South Kesteven District Council or of any Parish/Town Councils
2. How the Council will deal with such complaints

### **2. Making a complaint**

Complaints must be submitted in writing to the Council's Monitoring Officer and can be submitted electronically or by post using the link, email address or postal address shown below:

Online e-form: <https://www.southkesteven.gov.uk/?service=COCOFO>

By email: [legal@southkesteven.gov.uk](mailto:legal@southkesteven.gov.uk)

By post: Monitoring Officer, South Kesteven District Council, Council Offices, The Picture House, St Catherine's Road, Grantham, Lincolnshire, NG31 6TT

The Monitoring Officer will not normally consider a complaint unless it is in writing. This is to ensure that all of the relevant information is provided and, where necessary, consent to share information has been obtained so that the complaint can be processed.

If you do not have access to the internet or have difficulty completing the form, please contact 01476 406080 for assistance.

Where a complaint is made against more than one Councillor, it must be clear in your complaint which aspects of the alleged breach of the Code of Conduct relate to each individual Councillor. Otherwise, it may be necessary to submit separate complaints.

If you are making the complaint on behalf of a number of individuals, please nominate one person as the single point of contact to whom all correspondence will be addressed.

### **3. The complaint process**

The Monitoring Officer will acknowledge receipt of the complaint within five working days.

The Monitoring Officer is entitled to dismiss the complaint at the outset if:

- the Subject Councillor is no longer a Councillor.
- the complaint is made anonymously.
- the same, or substantially the same issue has been the subject of a previous Code of Conduct allegation and there is nothing further to be gained.
- the complaint is essentially against the action of the Council as a whole and cannot properly be directed against individual Councillor(s).
- the complaint does not relate to the conduct of a Councillor and is a service complaint or other matter.
- the complaint is against an Officer of the Council.
- The complaint relates to an incident that occurred over 6 months prior to the date of the complaint

If the complaint identifies criminal conduct (including a failure to register Disclosable Pecuniary Interests) or breach of other regulations by any person, the Monitoring Officer will refer the complaint to the Police or other regulatory agencies. No further action will be taken in relation to such complaints until any related criminal/regulatory investigation, proceedings or processes have been concluded.

Anonymous complaints will not normally be investigated, unless there is clear public interest in doing so and the Monitoring Officer considers that a fair investigation can be carried out.

Requests from complainants for the Monitoring Officer to withhold their identity, so that they remain anonymous to the Subject Councillor, are not ordinarily granted. The Monitoring Officer has to balance the right of the Subject Councillor to properly understand the complaint against them and respond to it, with the rights of the complainant. This normally means that the Subject Councillor will need to be told who is making the complaint.

All parties are encouraged to respond promptly to any correspondence in relation to the complaint. All parties will be kept updated as to how the complaint is progressing. If at any stage in the complaint process the complainant fails to respond, the complaint may be treated as withdrawn. If the Subject Councillor fails to respond, the complaint will be determined on the basis of the information available.

#### **4. Will the complaint be investigated?**

The Monitoring Officer, or Deputy Monitoring Officer, will review every complaint received against the assessment criteria set out below. This is known as the Assessment Stage and its purpose is to establish if there are valid grounds to investigate the complaint. The below assessment criteria will be used as part of this stage of the process:

<b>Adequate information</b>	<p>The Monitoring Officer must be satisfied that there is sufficient information available at the “initial test and assessment stage” to decide whether the complaint should be referred for investigation or other action.</p> <p>The Monitoring Officer may provide other information which is readily available, and which may assist in the consideration of the complaint “initial test and assessment stage”. This may include details of attendees at events, copies of agendas, reports and minutes of meetings or copies of the Members’ entry in the Register of Members’ Interests. It will not include conducting interviews with witnesses.</p> <p>If insufficient information is available, the Monitoring Officer will not normally refer the complaint for investigation or other action.</p>
<b>Official capacity</b>	The Monitoring Officer must be satisfied that the Subject Councillor was acting in an official capacity or that there was a clear link to the Local Authority.

<b>Timescale</b>	The Monitoring Officer will consider when the events subject to the complaint took place and will not normally investigate or pursue other action if the events occurred more than six months prior to the complaint being submitted other than in exceptional circumstances, such as where the conduct relates to a pattern of behaviour which has recently been repeated.
<b>Seriousness</b>	<p>The Monitoring Officer will not normally refer a matter for investigation or other action if it is considered trivial, malicious, vexatious, politically motivated or tit-for-tat.</p> <p>Where the complaint appears to relate to the “rough and tumble of political debate” and pertains to conduct between Members or Members and co-opted Members rather than between Members and the public or officers, in most instances no further action will be taken.</p>
<b>Public interest</b>	<p>Consideration will be given as to whether the public interest would be served by referring a complaint for investigation or other action.</p> <p>The public interest would not normally be served where, for instance, a member has died, resigned or is seriously ill.</p> <p>If the complaint has already been the subject of an investigation or other action relating to the Code of Conduct or the subject of an investigation by other regulatory authorities, it is unlikely that it will be referred for investigation or other action unless it is evident that the public interest will be served by further action being taken.</p>
<b>Multiple Complaints</b>	A single event may give rise to similar complaints from a number of complainants. Where possible these complaints will be considered by the Monitoring Officer at the same time. Each complaint will, however, be determined separately. If an investigation is deemed to be appropriate the Monitoring Officer may decide that, in the interests of efficiency, only one complaint should go forward for investigation, with the other complainants being treated as potential witnesses in that investigation.

Before reaching a decision, the Monitoring Officer may request further information from the complainant and the Subject Councillor or obtain information which is readily available such as minutes of Council meetings. If the complaint relates to a Parish/Town Councillor, the Monitoring Officer may consult the Parish/Town Council. This will extend the timescale for dealing with the complaint.

The Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. If the Subject Councillor makes a reasonable offer to settle the complaint informally, but the Complainant is not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

The Monitoring Officer will normally reach an assessment within 20 working days of receipt of the complaint, however, in some instances this may take longer. The Monitoring Officer will always, however, seek to assess complaints as soon as possible.

If the Monitoring Officer decides not to investigate the complaint, he/she will explain why. That will be the end of the matter.

The Monitoring Officer may decide that the complaint merits formal investigation.

## **5. How is the investigation conducted?**

If the Monitoring Officer decides that a complaint merits investigation, he/she will investigate, instruct the Deputy Monitoring Officer to investigate the matter or, by exception, appoint an Investigating Officer, who may be another officer of the Council, an officer of another authority or an external investigator to conduct the investigation on his/her behalf.

The Monitoring Officer, Deputy Monitoring Officer or Investigating Officer will consult with the Council's Independent Person as part of the investigation.

The Monitoring Officer, Deputy Monitoring Officer or Investigating Officer will usually need to speak to the complainant to discuss the complaint and may need to see relevant documents or interview other witnesses.

The Monitoring Officer, Deputy Monitoring Officer or Investigating Officer will also normally contact the Subject Councillor and provide them with the same opportunity to identify sources of evidence and witnesses.

At the end of his/her investigation, the Monitoring Officer, Deputy Monitoring Officer or Investigating Officer will produce a draft report and send it, in confidence, to the complainant and to the Subject Councillor, for comment.

The Monitoring Officer, Deputy Monitoring Officer or Investigating Officer will consider any comments the complainant and/or the Subject Councillor make before confirming a final report.

## **6. What happens if the investigation concludes that there is no evidence of a failure to comply with the Code of Conduct?**

The Monitoring Officer will review the report and, if he/she is satisfied with the quality of the investigation undertaken and that the investigation report is sufficient, the complainant and the Subject Councillor will be informed in writing of the outcome confirming that no further action is required. A copy of the final report will be provided to the Subject Councillor at that time, which will remain confidential. If the case concerns a Parish/Town Councillor the Monitoring Officer will make arrangements for a copy of the report to be sent to the Parish/Town Council concerned via the relevant Clerk. That will be the end of the matter.

If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/she may ask the Deputy Monitoring Officer or Investigating Officer to reconsider his/her report.

In considering the Deputy Monitoring Officer or Investigating Officer's report, the Monitoring Officer may again consult with an Independent Person(s) if he/she considers it appropriate to do so.

The Monitoring Officer may consider that there are "learning points" which should be shared with the Subject Councillor or other Members of the Council.

## **7. What happens if the investigation concludes that there is evidence of a failure to comply with the Code of Conduct?**

The Monitoring Officer will review the report and after again consulting with the Independent Person(s) will either seek local resolution or send the matter for a hearing via a Review Panel or, where the Monitoring Officer and Independent Person(s) agree that a Review Panel is not necessary, a direct referral to Full Council.

### **Local Resolution**

If the Monitoring Officer thinks that the complaint can reasonably be resolved without the need for a hearing he/she will consult with the Independent Person(s) and with the complainant and seek to agree a fair resolution. It is important though that any resolution also helps to ensure higher standards of conduct for the future. Possible local resolutions may include the Subject Councillor accepting that his/her conduct was unacceptable and offering an

apology. If the Subject Councillor complies with the suggested resolution, the Monitoring Officer will take no further action. That will be the end of the matter.

### **Review Panel**

If the complaint is not resolved through local resolution then the Monitoring Officer will refer the report to a Review Panel to determine whether or not the Code of Conduct was breached.

The Review Panel will comprise a minimum of three elected members of the Council's Licensing Committee. The Independent Person(s) will also be in attendance.

This is not a Court process but, in order to be fair to everyone, formalities are followed so that a proper decision can be reached. Each party, such as the complainant, Subject Councillor and any key witness which the Monitoring Officer agrees is relevant will be invited to attend and contribute to the hearing.

The Review Panel may conclude that the Subject Councillor did not fail to comply with the Code of Conduct, and so dismiss the complaint. That will be an end to the matter.

In exceptional circumstances where the Monitoring Officer and Independent Person(s) agree that a Review Panel would not add any value to an investigation, the case will be referred directly to Full Council for consideration.

### **8. What action can the Review Panel take when a Councillor has failed to comply with the Code of Conduct?**

If the Review Panel concludes that the Subject Councillor did fail to comply with the Code of Conduct, the Monitoring Officer will inform the Subject Councillor of this finding and the Panel will then consider what action, if any, should be taken as a result of the failure to comply with the Code of Conduct.

Sanctions may include:

- Censure of the Subject Councillor.
- Removal of the Subject Councillor from any or all Committee or Sub-Committees of the Council, if appropriate.
- That the Political Group Leaders be recommended to remove the Subject Councillor from any or all Committee or Sub-Committees of the Council, if appropriate.
- Removal of the Subject Councillor from any position they hold which involves receipt of a Special Responsibility Allowance, such as Chairman or Vice-Chairman of a Committee, if appropriate.
- That the Political Group Leaders be recommended to remove the Subject Councillor from any position they hold which involves receipt of

a Special Responsibility Allowance, such as Chairman or Vice-Chairman of a Committee, if appropriate.

- That it recommends to the Leader of the Council that the Subject Councillor be removed from Cabinet and associated Cabinet portfolio responsibilities, if appropriate.
- That the Subject Councillor be replaced as Leader of the Council, if appropriate.
- Training for the Subject Councillor.
- Publication of its findings in respect of the Subject Councillor's conduct.

**The Monitoring Officer, Review Panel or Council itself have no power to suspend or disqualify the Member or to withdraw or suspend allowances.** It is only the above sanctions that they are able to impose.

Within 10 working days the Monitoring Officer will prepare a formal decision notice and send a copy to the complainant, to the Subject Councillor (and to the Parish/Town Council if appropriate).

## 9. Timescales

The timescales quoted below are indicative. They are not guaranteed and are included here to illustrate the likely duration of the complaints process. Actual timescales may be significantly shorter or longer depending on the complexity and content of the complaint.

Stage in complaints process	Indicative timescales
Acknowledge receipt of complaint or dismissal of invalid complaints	within <b>5</b> working days of receipt of complaint
Assessment stage decision	Issued to Subject Councillor and complainant within <b>25</b> working days of receipt of complaint
Investigation	A formal investigation normally takes around <b>8 - 12 weeks</b>
Review Panel	within <b>25</b> working days of completion of the final investigation report – which includes: <ul style="list-style-type: none"><li>• 10 working days to prepare hearing papers and hold any pre-hearing meetings</li><li>• 10 working days for the Subject Councillor to submit a response to the Investigation report and hearing papers</li></ul>

	<ul style="list-style-type: none"> <li>• 5 working days for agenda publication</li> </ul>
Review Panel Decision	Issued to Subject Councillor and Complainant and published within <b>10</b> working days of the Review Panel

## **10. Appeals**

There is no right of appeal for the Complainant or for the Subject Councillor against a decision of the Monitoring Officer or of the Review Panel.

## **11. Document Retention**

The documentation relating to a complaint will be retained for six years from the conclusion of the complaint, irrespective of the outcome of the complaint, other than documentation submitted to the meeting of Full Council which will feature in the agenda pack and minutes of the relevant meeting.