

## **Procedure for dealing with complaints against Councillors who are alleged to have breached the Councillor Code of Conduct**

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

- 1.1 The Localism Act 2011 requires all Local Authorities to adopt a Code of Conduct setting out the standards of behaviour expected from their Councillors.
- 1.2 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.
- 1.3 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 available on the relevant Parish/Town Council website.
- 1.4 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.
- 1.5 These arrangements set out:
  - a) 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
  - b) How the Council will deal with such complaints
- 1.6 This document sets out the Council's arrangements for this purpose.

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

- 2.1 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

- 2.2 The following information will be required from anyone wishing to make a formal complaint against the conduct of a Councillor:

- name, address and other contact details (email address or telephone number)
- in which capacity they are complaining (member of the public, Councillor, Officer or any other capacity)
- name of the Councillor the complaint is about and the authority or authorities they belong to
- details of the alleged misconduct including, where possible, dates, witness details and other supporting information
- which aspect of the Councillor Code of Conduct the Councillor is alleged to have breached

2.3 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.

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

2.5 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.

2.6 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.

2.7 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.

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

3.1 A complaint against a Councillor will progress through the following stages:

- acknowledgement of the complaint
- reporting of complaint to Subject Councillor
- assessment of complaint by the Monitoring Officer, in liaison with Independent Person
- assessment decision by the Monitoring Officer
- if necessary, formal investigation of the complaint
- consideration of complaint and final decision of outcome by the Standards Committee, a Hearing Review Panel or a meeting of Full Council

- 3.2 Upon receipt of a complaint the Monitoring Officer will:
- Acknowledge the complaint within five working days
  - Inform the Subject Councillor that a complaint has been received against them within five working days and invite their comments, unless there is justification for not doing so
- 3.3 The Monitoring Officer is entitled to dismiss the complaint at the outset if:
- The Subject Councillor is no longer a Councillor or is seriously ill
  - The complaint is made anonymously, unless there are exceptional circumstances which the Monitoring Officer agrees are legitimate
  - The same, or substantially the same, issue has been the subject of a previous Code of Conduct allegation against an individual Councillor 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 an 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 six months prior to the date of the complaint and, in the opinion of the Monitoring Officer, (in consultation with the Independent Person) is not serious enough to justify formal consideration
- 3.4 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.
- 3.5 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. Assessment of complaint**

### First Assessment Stage

- 4.1 The first stage of the assessment process will consist of a jurisdictional test which assesses whether:
- The complaint is against one or more named Councillors of South Kesteven District Council or of a Parish or Town Council the authority is responsible for

- The named Councillor was in office at the time of the alleged conduct
- The complaint relates to matters where the Councillor was acting as a Councillor or representative of the authority and it is not a private matter
- The complaint, if proven, would be a breach of the Code of Conduct under which the Councillor was operating at the time of the alleged misconduct

4.2 If the complaint fails one or more of these tests it cannot be investigated as a breach of the Code of Conduct and no further action will be taken in respect of the complaint.

### Second Assessment Stage

4.3 The second stage of the assessment process will review the complaint against the following criteria to establish if there are valid grounds to refer the complaint for formal investigation:

<b>Sufficient Evidence</b>	The Monitoring Officer must be satisfied that there is sufficient evidence to demonstrate a potential breach of the Code
<b>Alternative Action</b>	The Monitoring Officer must be satisfied that there are no alternative, more appropriate, remedies that should be explored first  The Monitoring Officer will explore the possibility of an informal resolution between the respective parties and consider whether any offer from the Subject Councillor to settle the complaint informally is reasonable
<b>Robust Political Debate</b>	Where the complaint is by a Councillor against another Councillor, a greater allowance for robust political debate may be given, bearing in mind the right to freedom of speech
<b>Seriousness</b>	The Monitoring Officer will consider whether the complaint is considered malicious, vexatious, politically motivated or 'tit-for-tat'
<b>Public Interest</b>	The Monitoring Officer will consider whether it would be in the public interest to refer the complaint for investigation or other action and whether it is serious enough to warrant any available sanctions

4.4 As part of the assessment of the complaint, the Monitoring Officer may request further information from the complainant, the Subject Councillor and any witnesses or obtain information which is readily available. The Monitoring Officer will consult with the Independent Person prior to making their decision.

### Assessment Decision

4.5 The Monitoring Officer will normally reach an assessment decision within 15 working days of receipt of the complaint, however, in some instances this may take longer if they are reliant on the receipt of further information. The Monitoring Officer will always, however, seek to assess complaints as soon as possible.

4.6 A Decision Notice setting out the Monitoring Officers decision will be produced, setting out the following:

- A summary of the complaint
- The part(s) of the Councillor Code of Conduct alleged to have been breached
- A summary of any response from the Subject Councillor
- A summary of any witness statements or additional information relied upon during the assessment
- A summary of the Independent Person's considerations
- An overview of the Monitoring Officer's decision
- A record of any further action required

4.7 The Monitoring Officer's decision will either be to:

- Take no further action
- Agree that the complaint can be resolved through informal resolution
- Refer the complaint for formal investigation

4.8 If the Subject Councillor of a complaint is a Parish or Town Councillor a copy of the Decision Notice will be sent to the Parish or Town Clerk, unless the decision is to take no further action.

4.9 If the Monitoring Officer decides not to investigate the complaint, the reasons for the decision will be set out in the Decision Notice. There will be no right of appeal regarding the Monitoring Officer's assessment decision, which will have been made in consultation with the Council's Independent Person.

## **5. Formal investigation**

5.1 The Decision Notice from the assessment stage will highlight which aspect(s) of the original complaint will be subject to formal investigation.

- 5.2 Having established the scope of the investigation the Monitoring Officer, or a person appointed as an Investigating Officer, will inform:
- The Subject Councillor
  - The complainant
  - The Council's Independent Person
  - The relevant Town or Parish Council should the Subject Councillor be a Town or Parish Councillor
- 5.3 The Monitoring Officer/Investigating Officer will undertake the investigation in accordance with the following key principles:
- Proportionality – the investigation will be proportionate to the seriousness or complexity of the matter under investigation
  - Fairness – the Subject Councillor should know what they are accused of and have the opportunity to make comments on the investigation
  - Transparency – as far as practical and having regard to an individual's right to confidentiality, investigations should be carried out as transparently as possible with all parties being kept up to date with progress on the case
  - Impartiality – an investigator should not approach an investigation with pre-conceived ideas and should avoid being involved where they have a conflict of interest
- 5.4 The formal investigation is a process the Monitoring Officer/Investigating Officer follows to gather as much information about the allegation as possible, which can then be used as evidence. This could be documentary evidence, but it may also be necessary for the Monitoring Officer to conduct interviews with the Subject Councillor, complainant and key witnesses to gain as much evidence as is deemed necessary to inform their investigation.
- 5.5 During the course of the investigation it may be necessary to reappraise if an investigation remains the right course of action, for example:
- The evidence uncovered suggests a case is less serious than was originally apparent and that a different decision might therefore have been made regarding whether to investigate, or not
  - Having examined the matter in greater detail it becomes apparent as part of the investigation that the matter under investigation was not carried out by the Subject Councillor in their capacity as a Councillor or representative of the authority but rather in a private capacity
  - Something is uncovered which is potentially more serious and may require referral to the Police
  - The Subject Councillor has died, is seriously ill or has resigned from the Council and it is considered inappropriate to continue with the investigation

- The Subject Councillor indicates that they wish to make a formal apology which the Monitoring Officer/Investigating Officer considers should draw a line under the matter

### Draft Report

- 5.6 The Monitoring Officer/Investigating Officer will produce a draft report of their findings and share this with the Independent Person so that they can be satisfied that the investigation is of an acceptable standard and meet the scope of the aspects of the complaint under investigation.
- 5.7 The Monitoring Officer/Investigating Officer, once satisfied, will send the draft report to the Subject Councillor and complainant with a deadline for providing any comments as to its content.
- 5.8 The report should be treated as an explanation of all the essential elements of the case and a justification for why the Monitoring Officer/Investigating Officer have concluded there has been a breach, or not. The report will cover:
- Agreed facts
  - Any disputed facts together with the view of the Monitoring Officer/Investigating Officer as to which version is more likely
  - Whether those facts amount to a breach of the Code, or not
  - Reasons for reaching that conclusion
- 5.9 The draft report will be treated as private and confidential by all recipients.
- 5.10 Where criticism is made of a third party, such as a witness, who will not otherwise have the opportunity to comment on the draft report, the Monitoring Officer/Investigating Officer will ensure that the third party has an opportunity to comment on that proposed criticism before the report is published.
- 5.11 The Monitoring Officer/Investigating Officer is under no obligation to accept any comments made but where they do not accept comments they should provide a written explanation as to why. By exception, it may be necessary to issue a second draft of the report if there have been significant changes.

### Final Report

- 5.12 The final report will be issued by the Monitoring Officer and must be sent to:
- The Subject Councillor
  - The complainant
  - The relevant Independent Person
  - The relevant Parish or Town Council of which the subject Councillor is a Member

- 5.13 The report must make one of the following findings on a balance of probabilities:
- That there have been one or more failures to comply with the Code of Conduct
  - That there has not been a failure to comply with the Code of Conduct

#### Findings of Investigation

- 5.14 If the Monitoring Officer considers that there has been no breach of the Code of Conduct, that will usually be the end of the matter.
- 5.15 If the Monitoring Officer considers that there has been a breach of the Code of Conduct, they will decide the appropriate course of action to take in consultation with the Independent Person and notify relevant parties. This could include:
- Seeking an informal resolution
  - Taking no further action on the basis of it being a technical breach which would not lead to any sanction
  - Referring the matter to a Hearing

#### Publication of the Final Report

- 5.16 The Final Report will not be published if the matter has been referred to a Hearing as it will be dealt with as part of the Hearing process.
- 5.17 Where the Monitoring Officer has concluded that there is no breach, that no further action is required or the matter has been resolved in some other way the report will not be published. A statement explaining the outcome and Monitoring Officer's reasoning will be published. A summary of the report will be presented to the Standards Committee, for information purposes only.

## **6. Formal Hearing**

- 6.1 A formal Hearing should, wherever possible, take place within three months of the date on which the Monitoring Officer/Investigating Officer's report was completed. Where that is not possible, the Monitoring Officer will notify the relevant parties of the reason for the delay and provide an estimated timescale.
- 6.2 The Hearing will not take place sooner than 14 days after the investigation report has been issued, unless the Subject Councillor agrees. This is to allow them sufficient time to prepare their defence and consider any witnesses they may wish to call.

- 6.3 The Hearing can be facilitated by the Council's Standards Committee, or a Sub-Committee of the Standards Committee called the Hearing Review Panel. The Monitoring Officer, in consultation with the Independent Person and Chairman and Vice-Chairman of the Standards Committee, will determine which is most appropriate.
- 6.4 If a Hearing Review Panel is selected for facilitating the Hearing, its membership will be drawn from the Standards Committee on a politically proportionate basis, unless any conflicts of interests or other circumstances prevent this being achieved. The Chairman and Vice-Chairman of the Standards Committee will agree upon the final membership of the Hearing Review Panel.
- 6.5 Once a date has been set for the Hearing, the Monitoring Officer will notify:
- The Subject Councillor
  - The Investigating Officer if the Monitoring Officer themselves did not undertake the investigation
  - The Independent Person
  - The complainant
  - The clerk of any Parish or Town Council if the complaint relates to a Parish or Town Councillor
- 6.6 The Monitoring Officer will also outline the Hearing procedure, the Subject Councillor's rights and they will additionally ask for a written response from the Subject Councillor to confirm whether they:
- Want to be represented at the Hearing by counsel, a solicitor or any other person they wish
  - Disagree with any of the findings of fact in the investigation report, including reasons for any of these disagreements
  - Want to give evidence to the Hearing either verbally or in writing
  - Want to call relevant witnesses to give evidence to the Hearing
  - Want to request any part of the Hearing be held in private
  - Want to request any part of the investigation report or other relevant documents be withheld from the public
- 6.7 The Monitoring Officer will give consideration as to any witnesses they wish to call for the Hearing or, if they did not undertake the investigation themselves, seek confirmation from the Investigating Officer.
- 6.8 Pre-hearings will be held between the Monitoring Officer and Members of the Standards Committee/Hearing Review Panel as and when deemed necessary and appropriate. The pre-meeting will not be held in public and will not be used to debate the merits of the case, but will be used to:
- Consider whether any findings of fact in the investigation report are in dispute and, if so, how relevant they will be to the Hearing

- Consider any additional evidence considered necessary for the Hearing
  - Identify any witnesses that should be invited to the Hearing if not already identified
  - Decide whether witnesses called by the Monitoring Officer/Investigating Officer and the Subject Councillor are relevant
  - Consider whether any parts of the Hearing should be held in private or any parts of the investigation report or other documents should be withheld from the public prior to the Hearing
  - Identify any potential conflicts of interest
- 6.9 The pre-meeting does not necessarily have to be held as a meeting, with some of the information able to be confirmed through correspondence.
- 6.10 The Standards Committee/Hearing Review Panel will comply with Council Procedure Rules, Access to Information Procedure Rules and Articles relating to the Standards Committee for the purpose of facilitating the Hearing as set out in the Council's Constitution.
- 6.11 The Hearing is not a court of law and will not hear evidence under oath, but it will decide factual evidence on the balance of probabilities.
- 6.12 The procedure to be followed at Hearings is set out at **Appendix 1** to this Protocol.

## **7. Sanctions**

- 7.1 The Standards Committee or Hearing Review Panel can impose the following sanctions should a breach of the Code of Conduct have occurred:
- Present a report of its findings in respect of the Subject Councillor's conduct to Full Council (or relevant Parish or Town Council)
  - Issue a formal Censure Notice (or recommend the same action to the relevant Parish or Town Council)
  - Recommend to the Subject Councillor's political group leader, or a recommendation to Full Council, that they be removed from any or all Committees and other bodies to which they are appointed (or recommend the same action to the relevant Parish and Town Council)
  - Recommend to the Subject Councillor's political group leader that they be removed from positions of responsibility (or recommend the same action to the relevant Parish or Town Council)
  - Instruct the Monitoring Officer to arrange training for the Subject Councillor (or recommend that the relevant Parish or Town Council arrange for suitable training to be held for the Subject Councillor)
  - Recommend to Full Council that the Subject Councillor be removed from all outside appointments to which they have been appointed or nominated by the Authority (or recommend the same action to the relevant Parish or Town Council)

- Recommend to Full Council that facilities provided to the Subject Councillor by the Authority be withdrawn for a specified period, such as a computer/tablet, website, email account, social media account (or recommend the same action to the relevant Parish or Town Council)
- Recommend to Full Council that the Subject Councillor be excluded from the Authority's Officer or other premises for a specified period, with the exception of meeting rooms as necessary for attending the Council's meetings or other approved duties and/or restricts contact with Officers to named Officers only (or recommend the same action to the relevant Parish or Town Council)
- Recommend to Full Council that the Subject Councillor be removed from their role as Leader of the Council, if relevant
- Recommend to the appropriate official of a political group that the Subject Councillor be removed as Political Group Leader or other position of responsibility within the Political Group, if relevant

7.2 The Council, its Monitoring Officer, the Standards Committee or a Review Panel have no power to suspend or disqualify a Councillor who is found to have breached the Councillor Code of Conduct, or withdraw or suspend allowances. It is only the above sanctions that they are able to impose.

#### Final Decision of Standards Committee or Hearing Review Panel

7.3 A Decision Notice setting out the Standards Committee/Hearing Review Panel's decision will be produced and published.

7.4 If the Standards Committee or Hearing Review Panel finds that the Subject Councillor did not fail to follow the authority's Councillor Code of Conduct and that there was no breach, the Decision Notice will state this and provide reasons for this finding.

7.5 If the Standards Committee or Hearing Review Panel finds that the Subject Councillor failed to follow the Councillor Code of Conduct and that there was a breach, but no further action is required, the Decision Notice will:

- State that the Councillor failed to follow the authority's Councillor Code of Conduct and that there was a breach but no further action needs to be taken
- Outline what happened
- Provide reasons for the decision not to take any action

7.6 If the Standards Committee or Hearing Review Panel finds that a Councillor failed to follow the Code, there was a breach and a sanction was imposed, the Decision Notice will:

- State that the Councillor failed to follow the authority's Councillor Code of Conduct and that there was a breach
- Outline what happened
- Explain what sanction has been imposed

- Provide reasons for the decision

## **8. Appeals**

- 8.1 There is no right of appeal for the complainant or for the Subject Councillor against a decision of the Monitoring Officer, the Standards Committee or the Hearing Review Panel in relation to any decision they make at the relevant stage of the above process.
- 8.2 Any complaint relating to the incorrect implementation of this procedure should be reported to the Chief Executive in accordance with the Council's Protocol for Relationships between Members and Officers.

## **9. Local Government Association Guidance**

- 9.1 This procedure will be followed in conjunction with the latest guidance published by the Local Government Association in respect of dealing with complaints against Councillors.
- 9.2 In the event that this procedure conflicts with any aspect of the Local Governance Association guidance, the Local Government Association's latest guidance will take precedence.

**Procedure to be followed at Formal Hearings**

**1. Preliminary Procedural Issues**

- a) Introductions
- b) Election of Chairman (if Hearing Review Panel)
- c) Declarations of Interests
- d) To consider any requests for the exclusion of the Press and Public

**2. Monitoring Officer, Investigating Officer or their representative**

- a) Monitoring Officer, Investigating Officer or their representative to present the report and call such witnesses as they consider necessary, and make representations to substantiate their conclusions within the report.
- b) The Standards Committee/Hearing Review Panel to raise any issues or clarify any matters with the Monitoring Officer or Investigating Officer's report and to question and clarify matters with any of the witnesses called (if any).
- c) The Subject Councillor to raise any issues or clarify any matters with the Monitoring Officer or Investigating Officer's report and to question and clarify matters with any of the witnesses called (if any).

**3. Subject Councillor or their representative**

- a) The Subject Councillor to respond to the investigation report and call such witnesses as they consider necessary (if any) and make representations.
- b) The Monitoring Officer, Investigating Officer or their representative to raise any issues and to question or clarify any matters with the Subject Councillor and to question or clarify any matters with any of the witnesses called (if any).
- c) The Standards Committee/Hearing Review Panel to raise any issues, question or clarify any matters with the Subject Councillor.

#### **4. Independent Person**

- a) The Independent Person to provide their views.
- b) The subject Councillor to seek any points of clarification from the Independent Person or ask any questions.
- c) The Monitoring Officer, Investigating Officer or their representative to seek any points of clarification from the Independent Person or ask any questions.
- d) The Standards Committee/Hearing Review Panel to seek any points of clarification from the Independent Person or ask any questions.

#### **5. Standards Committee/Hearing Review Panel Deliberations**

- a) The Review Panel to retire, along with the representative from Democratic Services/designated Legal Advisor to the Panel to determine whether there has been a breach of the Code of Conduct.
- b) The Standards Committee/Review Panel to resume the Hearing to report the decision:
  - If further information or clarification is required, this will be reported and a decision taken as to whether an adjournment or postponement is necessary
  - If no breach of the Code of Conduct, the Hearing ends
  - If there has been a breach of the Code of Conduct, the Hearing will continue

#### **6. Breach of the Code of Conduct**

- a) Monitoring Officer, Investigating Officer or their representative to outline possible sanctions.
- b) The Subject Councillor to respond with any mitigation.
- c) The Independent Person to provide their views on appropriate sanctions.
- d) The Review Panel determines appropriate sanctions.

#### **7. End of Hearing**

A Decision Notice to be produced and published to all parties within 5 working days.