

The Monitoring Officer and complaints about district, town or parish councillors

1 What is the role of the Monitoring Officer?

The Monitoring Officer is a senior officer of North Devon District Council (hereafter the **District 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 member misconduct. This is for elected and co-opted members of the District Council and those of town and parish councils in the area of the District Council (see further under "Context" below). The Monitoring Officer at the District Council is Simon Fuller in the post of Senior Solicitor and Monitoring Officer.

The Monitoring Officer is also responsible for:

- a) the discharge of duties regarding reports set out in sections 5 and 5A of the Local Government and Housing Act 1989 where it appears to them the District Council has done, or is about to do, anything which would contravene the law or which would constitute maladministration; and
- b) reviewing and keeping the District Council's Constitution up to date.

Please be aware that these duties (a) and (b) above are in respect of the District Council only and not in respect of town and parish councils.

Where you have a complaint about maladministration or lawfulness of the actions of a town or parish council you must raise this with the town or parish council itself via the clerk or its chairperson. Where you feel they have not satisfactorily dealt with the issue you should seek to raise the matter with them via their formal complaints process (where they do not publish one you should make enquiries of their Clerk and/or their Chairperson). The Monitoring Officer has no powers to deal with issues of maladministration or lawfulness on the part of town or parish councils nor in terms of the constitution/standing orders of a town or parish council.

2 Context

This guidance sets out how you may make a complaint that an elected or co-opted member of the District Council or of a town or parish council within its area has failed to comply with that local authority's Code of Conduct, and sets out how we will deal with allegations of a failure to comply with that local authority's Code of Conduct.

Under section 28(6) and (7) of the Localism Act 2011, local authorities must have in place 'arrangements' under which allegations that a member or co-opted member of the District Council or of a town or parish council within the North Devon District, or of a Committee or Sub-Committee of the relevant local authority, has failed to comply with that local authority's Code of Conduct can be investigated and decisions made on such allegations.

Such arrangements must provide for the District Council to appoint at least one Independent Person, whose views must be sought by the District Council before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the District Council at any other stage, or by a member or a member or co-opted member of a town or parish council against whom an allegation has been made. In this regard the District Council has appointed Rob Jeanes to the role of Independent Person (see further at paragraph 15 below).

3 The Code of Conduct

The District Council has adopted a Code of Conduct for members within its Constitution, see Part 5 at the following link:

<https://www.northdevon.gov.uk/council/councillors-and-committees/constitution-for-north-devon-council>

Each town and parish council is also required to adopt a Code of Conduct. If you wish to inspect a town or parish council's Code of Conduct, you should inspect any website operated by the town or parish council and/or request the parish clerk to allow you to inspect the town or parish council's Code of Conduct.

4 Making a complaint

In order to ensure that we have all the information we need to be able to process your complaint, please complete the form as linked below:

https://my.northdevon.gov.uk/service/Complaints_against_District_Town_and_Parish_Councillors

Potential Complainants are encouraged to explore whether the matter can be resolved without the need to submit a formal complaint under this process and also encouraged to think about the outcomes and/or remedy they are seeking.

Complaints submitted online will be automatically acknowledged immediately. If submitted by any other means, we will acknowledge your complaint within five working days.

Reasonable adjustments can be made to assist anyone who has a disability that prevents a complaint being made online. Please contact the Monitoring Officer, at monitoringofficer@northdevon.gov.uk or North Devon Council, PO Box 379, Barnstaple, EX32 2GR.

5 Complaint confidentiality

When we receive a complaint, the Member who is being complained about will, in normal circumstances, be told who has complained about them.

Confidentiality may be permitted where the Monitoring Officer is satisfied that there are very good grounds for withholding the Complainant's identity. If you ask for your identity to be kept confidential, the Monitoring Officer will consider your request before telling the subject Member that a complaint has been made. Anonymous complaints will not therefore be accepted for consideration unless they are exceptionally serious or significant.

Where a Complainant asks for their identity to be kept confidential, the Monitoring Officer will consider the request before informing the subject Member that a complaint has been made.

If the Monitoring Officer doesn't think it is appropriate to grant a request for confidentiality the Complainant will be offered the opportunity to withdraw the complaint rather than proceed with it. In a case where confidentiality is granted, the Monitoring Officer will decide how the complaint should be taken forward.

6 Pre-Assessment

The first stage of the Code of Conduct complaints process is the carrying out of pre-assessment. This consists of two stages, namely 'can we deal with this complaint?' and 'should we deal with this complaint?'

- 6.1 The first of these is a jurisdictional test and would assess whether the complaint is:
- 6.1.1 against one or more named councillors of the District Council or of a parish or town council the District Council is responsible for;
 - 6.1.2 the named councillor was in office at the time of the alleged conduct;
 - 6.1.3 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;
 - 6.1.4 the complaint, if proven, would be a breach of the Code under which the councillor was operating at the time of the alleged misconduct.

If your complaint fails one or more of these tests it cannot be investigated as a breach of the Code, and you will be informed that no further action will be taken in respect of the complaint. If there is any doubt, however, the allegation will proceed to the second stage.

6.2 The second stage includes considering your complaint against the following criteria:

6.2.1 Does the complaint contain sufficient evidence to demonstrate a potential breach of the Code?

6.2.2 Are there alternative, more appropriate, remedies that should be explored first?

6.2.3 Where the complaint is by one councillor against another, a greater allowance for robust political debate (but not personal abuse) may be given, bearing in mind the right to freedom of expression;

6.2.4 Is the complaint in the view of the authority malicious, politically motivated, or 'tit for tat'?

6.2.5 Whether an investigation would not be in the public interest or the matter, even if proven, would not be serious enough to warrant any sanction

6.2.6 Whether a substantially similar complaint has previously been considered and no new material evidence has been submitted within the current administration;

6.2.7 Whether a substantially similar complaint has been submitted and accepted;

6.2.8 Does the complaint relate to conduct in the distant past? This would include consideration of any reason why there had been a delay in making the complaint;

6.2.9 Was the behaviour that is the subject of the complaint already dealt with? For example, through an apology at the relevant meeting;

6.2.10 Does the complaint actually relate to dissatisfaction with a local authority decision rather than the specific conduct of an individual?

6.2.11 Is it about someone who is no longer a councillor or who is seriously ill?

All of the above is only indicative and may be subjective and the District Council will always need to take into account the public interest in taking further action on a complaint with the ultimate question being:

Has the complainant submitted enough information to satisfy the District Council that the complaint should be referred for investigation or other action?

If the answer is no, it will be made clear to you that there is insufficient evidence to make a decision so unless, or until, further information is received, the Council will take no further action on the complaint. It is your responsibility to provide sufficient evidence to allow your complaint to be considered, if you are unable to do so within 10 working days of the District Council's pre-assessment response the file will be closed.

7 Initial Assessment

If, after the pre-assessment it is considered that a complaint is valid, the District Council will carry out an initial assessment. The Monitoring Officer will usually confirm the outcome of the initial assessment with you within 15 working days of the complaint being lodged.

During the Initial Assessment the subject Member will be notified of your complaint and (subject to the section on confidentiality above) your identity. They will be reminded to treat the information in the complaint appropriately and with respect to your right to raise the complaint with the Monitoring Officer and in line with the obligation to comply with enquiries made pursuant to Code of Conduct. The subject Member will be given 10 working days to respond to or comment on your complaint. If they do not respond or refuse to respond the Initial Assessment will be concluded without their input.

Where your complaint relates to a town or parish councillor, the Monitoring Officer may also inform the parish clerk of your complaint and seek the views of the parish clerk.

The District Council may reach one of the three following decisions on an allegation at Initial Assessment stage:

- 7.1 no further action should be taken on the allegation;
- 7.2 the matter should be dealt with through a process of informal resolution in the first instance (see section on informal resolution) or;
- 7.3 the matter should be referred for a formal investigation (see section on investigations).

If the District Council decides to take no action over a complaint, then as soon as possible after making the decision we will notify you and the subject Member of the decision and set out clearly the reasons for that decision, including the views of the independent person (where sought). There is no right of appeal against a decision not to take any further action.

If the District Council decides that the complaint should be referred for formal investigation or informal resolution, we will notify the complainant and subject Member, stating what the allegation was and what further action is being taken. Likewise the parish clerk will be notified of complaints made in relation to a town or parish councillor. Complaints that have been accepted as anonymous may need reconsideration at this point.

8 Informal resolution

In appropriate cases, following seeking the opinion of the Independent Person, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Matters which might be appropriate for informal resolution may include:

- 8.1 the same particular breach of the Code by many members, indicating poor understanding of the Code and the authority's procedures;
- 8.2 a general breakdown of relationships, including those between members and officers, as evidenced by a pattern of allegations of minor disrespect, harassment or bullying to such an extent that it becomes difficult to conduct the business of the authority;
- 8.3 misunderstanding of procedures or protocols;
- 8.4 misleading, unclear or misunderstood advice from officers;
- 8.5 lack of experience or training;
- 8.6 interpersonal conflict;
- 8.7 allegations and retaliatory allegations from the same members;
- 8.8 allegations about how formal meetings are conducted;
- 8.9 allegations that may be symptomatic of governance problems within the authority, which are more significant than the allegations in themselves.

Depending on the situation informal resolution may be directed at the subject Member or at the authority more generally. Informal resolution may involve a request to the subject Member to apologise for remarks made, a recommendation that the authority instigate mediation or reconciliation and/or

that the subject Member takes part in, and/or the authority puts in place, appropriate training (e.g. in the Code of Conduct, in chairing a meeting, in planning etc).

When deciding to seek the a complaint be dealt with by informal resolution it is important to note that no decision has been made about whether the subject Member(s) failed to comply with the Code of Conduct. This is because it is felt that it is in the public interest that informal resolution is the appropriate response rather than instigating a full investigation.

When informal resolution has been completed we will notify the subject Member, you (the complainant), the Independent Person and the relevant town or parish council if the subject Member is a town or parish councillor. A report may also be taken to the District Council's Governance Committee to give an overview of how informal resolution is being used.

Appropriate timescales will be attached to a decision to seek informal resolution. If informal resolution is not complied with or otherwise fails further consideration will be given whether it is now in the public interest to instigate a full investigation.

9 Investigations

If the Monitoring Officer decides that, based on the public interest, a complaint merits formal investigation, they will appoint an Investigating Officer, who may be (pending a conflict of interests test) the Monitoring Officer themselves, a Deputy Monitoring Officer, another senior officer of the District Council, an officer of another authority or an external investigator.

An investigation must follow the base principles of proportionality, fairness, transparency and impartiality.

At the start of an investigation clarity will be provided by the Investigating Officer as to precisely what is being investigated and which parts of the Code of Conduct are being investigated against (albeit this can be expanded as the investigation progresses). This scope is then notified to you, the subject Member, the Independent Person and the relevant town or parish council if the subject member is a town or parish councillor.

The Investigating Officer will decide whether he/she 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 the Investigating Officer needs to see, and who the Investigating Officer needs to interview.

The Investigating Officer would normally write to the member against whom you have complained and provide him/her with a copy of your complaint, ask

the member to provide his/her explanation of events, and to identify what documents he/she needs to see and who he/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.

At the end of his/her investigation, the Investigating Officer will produce a draft report and will, if they are not the Monitoring Officer, send a copy of that draft report to the Monitoring Officer to comment. After this the Investigating Officer will send copies of their 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.

Having received and taken account of any comments that you may make on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer (if they are not Monitoring Officer).

The Investigating Officer's report must make one of the following findings on the balance of probabilities (1) that there have been one or more failures to comply with the Code of Conduct or (2) that there has not been a failure to comply with the Code.

10 What happens if the investigating officer concludes that there is no evidence of a failure to comply with the code of conduct?

The Monitoring Officer will review the Investigating Officer's report and, if he/she is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the member concerned and to the parish or town council, where your complaint relates to a Parish or Town Councillor, notifying you that he/she is satisfied that no further action is required, and give you both a copy of the Investigating Officer's final report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider his/her report.

11 What happens if the investigating officer concludes that there is evidence of a failure to comply with the code of conduct?

The Monitoring Officer will review the Investigating Officer's report and will then either send the matter for local hearing before a special meeting of the Governance Committee or, after consulting the Independent Person, seek informal resolution (see paragraph 8 above).

11.1 Local hearing

If the Monitoring Officer considers that a local hearing is necessary then they will report the Investigating Officer's report to the Governance Committee, which will consider whether or not to conduct a local 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 subject Member.

The District Council has agreed a procedure for local hearings as below:

[LINK TO HEARINGS PROCEDURE]

Essentially, the Monitoring Officer will conduct a 'pre-hearing process', requiring the subject Member to give his/her response to the Investigating Officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing, and the Chair of the Hearings Panel may issue directions as to the manner in which the hearing will be conducted. At the hearing, the Investigating Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask you as the complainant to attend and give evidence to the Hearings Panel. The subject Member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Hearings Panel as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

The Hearings Panel may, with the benefit of any advice from the Independent Person, conclude that the subject Member did not fail to comply with the Code of Conduct, and so dismiss the complaint. If the Hearings Panel concludes that the member did fail to comply with the Code of Conduct, the Chair will inform the subject Member of this finding and the Hearings Panel will then consider what action, if any, the Hearings Panel should take as a result of the subject Member's failure to comply with the Code of Conduct. In doing this, the Hearings Panel will give the subject Member an opportunity to make representations to the Panel and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

12 What action can the hearings panel take where a member has failed to comply with the Code of Conduct?

The District Council has delegated to the Governance Committee (and so the Hearings Panel) 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 Hearings Panel may:

12.1 censure or reprimand the member;

- 12.2 publish its findings in respect of the member's conduct;
- 12.3 report its findings to Full Council or to the town or parish council for information;
- 12.4 recommend to the member's Group Leader (or in the case of un-grouped members, recommend to Full Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the District Council or relevant town or parish council;
- 12.5 recommend to the Leader of the District Council that the member be removed from particular Lead Member responsibilities;
- 12.6 recommend to Council that the member be replaced as the Leader;
- 12.7 instruct the Monitoring Officer to or recommend that the parish or town council, arrange training for the member;
- 12.8 remove or recommend to the town or parish Council that the member be removed from all outside appointments to which he/she has been appointed or nominated by the authority or by the town or parish council;
- 12.9 withdraw, or recommend to the town or parish council that it withdraws, facilities provided to the member by the relevant council, such as a computer, website and/or email and Internet access; or
- 12.10 exclude, or recommend that the town or parish council exclude, the member from the relevant council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings

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

13 What happens at the end of the hearing?

At the end of the hearing, the Chair will state the decision of the Hearings Panel as to whether the member failed to comply with the Code of Conduct and as to any actions which the Hearings Panel resolves to take.

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Hearings Panel, and send a copy to you, to the member and to the town or parish council (where appropriate), make that decision notice available for public inspection and report the decision to the next convenient meeting of the Council.

14 Who are the hearings panel?

The Hearings Panel is a sub-committee of the Council's Governance Committee. The Governance Committee has decided that it will comprise three members of the Council and that it will comprise members drawn from at least two different political parties. Subject to those requirements, it is appointed on the basis of availability and suitability as applicable to the hearing being carried out.

The Independent Person is invited to attend all meetings of the Hearings Panel and his/her views are sought and taken into consideration before the Hearings Panel takes any decision on whether the member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

15 Who is the independent person?

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

A person cannot be 'independent' if he/she:

- 15.1 is, or has been within the past five years, a member, co-opted member or officer of the authority, with the exception that former Independent Members of Standards Committees can be appointed as Independent Persons;
- 15.2 is or has been within the past five years, a member, co-opted member or officer of a parish council within the authority's area, or
- 15.3 is a relative, or close friend, of a person within paragraph 15.1 or 15.2 above. For this purpose, 'relative' means:
 - 15.3.1 spouse or civil partner;
 - 15.3.2 living with the other person as husband and wife or as if they were civil partners;
 - 15.3.3 grandparent of the other person;
 - 15.3.4 a lineal descendant of a grandparent of the other person;
 - 15.3.5 a parent, sibling or child of a person within paragraphs 15.3.1 or 15.3.2;
 - 15.3.6 a spouse or civil partner of a person within paragraphs 15.3.3, 15.3.4 or 15.3.5; or

15.3.7 living with a person within paragraphs 15.3.3, 15.3.4 or 15.3.5 as husband and wife or as if they were civil partners.

16 Revision of these arrangements

The Governance Committee has delegated authority to amend these arrangements, and has delegated to the Chair of the Hearings Panel the right to depart from these arrangements where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

17 Appeals

There is no right of appeal for you as complainant or for the member against a decision of the Monitoring Officer or of the Hearings Panel.

If you feel that the District Council has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.