

DONCASTER METROPOLITAN BOROUGH COUNCIL ARRANGEMENTS FOR HANDLING COMPLAINTS REGARDING ALLEGATIONS OF MEMBER MISCONDUCT

1. Introduction

- 1.1 These arrangements are made under Section 28 of the Localism Act 2011. They set out how you may make a complaint if you believe that an elected Member (Councillor) or co-opted member of Doncaster Metropolitan Borough Council or of any Parish/Town Council within the Borough has failed to comply with that Council's Code of Conduct for Members.
- 1.2 A copy of Doncaster Council's Code of Conduct can be downloaded from the Council's [website](#) by accessing 'Code of Conduct for Members' or is available upon request from the Monitoring Officer (MO). Parish and Town Councils are also required to adopt a Code of Conduct. If you wish to inspect a Parish or Town Council's Code of Conduct, you should contact the respective Parish Clerk who will be able to assist you. A list of contact details for Parish Councils can be accessed via Doncaster Council's [website](#). Alternatively, contact the Governance Team - Tel. 01302 736709/736716.

2. Making a Complaint

- 2.1 If you wish to make a complaint about alleged Member misconduct, please contact the Council's MO by email at:

TheMonitoringOfficer@doncaster.gov.uk

Or by writing to the address below:

The Monitoring Officer
Civic Office
Waterdale
Doncaster
DN1 3BU

- 2.2 The MO is a senior officer of the Council who has statutory responsibility for maintaining the register of members' interests and who is responsible for administering the system in respect of complaints of Member misconduct.
- 2.3 **In order to ensure that we have all the information we need to be able to process your complaint, please complete and send us the complaint form,** which can be downloaded from the Council's [website](#). Alternatively, a copy of the complaint form can be requested from the Governance Team - Tel. 01302 736709/736716 or email Democratic.Services@doncaster.gov.uk.

- 2.4 Please 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.
- 2.5 The MO will acknowledge receipt of a complaint within 5 working days of receiving it.
- 2.6 The MO will determine whether the complaint falls within his/her jurisdiction, i.e. that it relates to the conduct of a Councillor and a possible breach of the Code of Conduct. If the complaint does not meet these criteria, the MO will inform the Complainant accordingly. If it does, the MO will send a copy of the complaint to:
- the Councillor(s) being complained about, unless the MO considers that this may prejudice any investigation or a request for anonymity has been made by the Complainant (and approved by the MO);
 - The Independent Person (IP) (a person appointed under the Localism Act 2011 by the Council to assist the MO in dealing with complaints against Members)
 - The Parish Clerk (if the complaint concerns a Parish Councillor)
- 2.7 If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form. The MO will consider the merits of protecting your identity. The Council does not normally investigate anonymous complaints unless there is a clear public interest in doing so.
- 2.8 If the MO declines your request for anonymity you will be given the option of withdrawing your complaint as an alternative to your complaint going forward with your identity being disclosed. The MO will take a balanced view whether the public interest in taking action on a complaint will outweigh the complainant's wish to have his or her identity withheld from the Councillor who is the subject of the complaint.

3. Criteria for accepting complaints

- 3.1 Your complaint must be about conduct that occurred while the Member complained about was in Office. Conduct of an individual before they were elected, co-opted or appointed to the authority, or after they have resigned or otherwise ceased to be a Member, cannot be considered by the MO.
- 3.2 The complaint must relate to conduct that occurred when the named Member was acting in his/her official capacity. For example, Doncaster Council's Code of Conduct only applies to Councillors in the following circumstances:-
- a. at meetings of the Council, its Committees and Sub-Committees and its Cabinet
 - b. when acting as a representative of the authority
 - c. in taking any decision as a Cabinet member or Ward Councillor
 - d. in discharging their functions as a Ward Councillor
 - e. at briefing meetings with Officers

- f. at site visits
- g. when corresponding with the authority other than in a private capacity.

The Code applies to all forms of communication and interaction, including:-

- at face-to-face meetings
- at online or telephone meetings
- in written communication
- in verbal communication
- in non-verbal communication
- in electronic and social media communication, posts, statements and comments.

What you can complain about

3.3 The types of behaviour covered by the Code of Conduct include:-

- Failing to treat others with respect
- Bullying any person
- Intimidating any person involved in an investigation or proceedings about someone's misconduct
- Doing something to prevent those who work for the authority from being unbiased
- Failing to respect the confidentiality of information received as a Member
- Damaging the reputation of the Member's authority or office
- Using their position as a Member improperly, to their own or someone else's advantage or disadvantage
- Misuse of public resources
- Failure to register Disclosable Pecuniary Interests, as defined in the Code of Conduct for Members
- Failure to declare Disclosable Pecuniary Interests at a meeting (if not already on the Member's Register of Interests) or other interests at meetings
- Failure to notify the Monitoring Officer of any gifts or hospitality received in their role as a Member, worth over £50.

The types of complaint which the MO will not investigate:

- a. Any complaint considered to be malicious, vexatious, relatively minor, or tit-for-tat [Note: a vexatious complaint is a groundless complaint made with an adverse primary intent to cause distress, detriment or harassment to the subject];
- b. Cases where the same, or substantially similar, complaint has already been the subject of an investigation or enquiry, or where the complaint concerns an alleged incident that occurred more than 3 months ago (unless there are exceptional circumstances);
- c. The complaint concerns acts carried out in a Member's private life;
- d. The complaint is about dissatisfaction with a Council decision or service.

- e. Complaints which are not received in accordance with this policy i.e. not using the Council's Code of Conduct Complaint form.
- 3.4 If the MO receives a number of complaints from different complainants about the same matter, he/she will endeavour to deal with these in a manner that is a practical use of time and resources.
- 3.5 Not every complaint that falls within the jurisdiction of the Monitoring Officer will be referred for investigation or other action. The Monitoring Officer must decide whether this is appropriate, having regard to issues such as the public purse. In consultation with the IP, he/she will make this decision taking all relevant factors into account.

4. Assessment of complaints

- 4.1 The MO will determine whether your complaint falls within the scope of the Members' Code of Conduct. If the complaint does relate to the Code of Conduct, the MO will assess the complaint in consultation with the IP.

Role of the IP

- 4.2 The IP is a person who has been appointed under the Localism Act 2011, by a majority of all the Councillors on the Borough Council. The IP must be consulted and have their views taken into account before the Council makes a finding as to whether a Member has failed to comply with the Code of Conduct or decides on action to be taken in respect of that Member. The views of the Independent Person may also be sought at any other stages of the complaints process, or by a Member, Co-opted Member or Parish and Town Council Member against whom an allegation has been made. Note: The IPs do not represent and are not advisors to the Councillor who is the subject of the complaint, but they can assist in providing factual information on the complaints process. The Independent Person must remain completely impartial and objective and cannot take sides. Their role is to assess complaints and form a view on them.
- 4.3 There is no right for the complainant to seek the views of the IP and no such contact will be permitted.
- 4.4 Having consulted with the IP, the MO will take a decision as to whether the complaint merits formal investigation, or whether an alternative course of action (if any) should be taken. The MO will aim to do this within **20** working days of receipt of your complaint and you will then be notified in writing of his decision.
- 4.5 The MO (in consultation with the IP) may decide:-
 - that no further action should be taken regarding the allegation.
 - to seek to resolve the complaint informally
 - to forward the complaint to the relevant Group Leader/Political Group for informal resolution (or Parish/Town Council if applicable), having first discussed the complaint with the subject member

- to arrange for an investigation to be undertaken in relation to the circumstances of the allegation that has been made.
- 4.6 If your complaint identifies criminal conduct or breach of other regulation by any person, the MO has the power to call in the Police and other regulatory agencies.

Local resolution

- 4.7 Where possible, the MO will seek to resolve a complaint informally, without the need for a formal investigation. Informal resolution may involve the Councillor who is complained against accepting that their conduct was unacceptable and offering an apology, or other remedial action recommended by the MO, including:-
- taking such steps as he/she thinks appropriate to prevent a future breach of the Code, such as training, mediation, guidance, introducing or amending policies/protocols of the Council if relevant to the complaint;
 - asking the Party Whips to address the issue raised within their political groups or with an individual Member.
- 4.8 Where the Councillor being complained about offers to make an apology or engage in other remedial measures to achieve a local resolution, but the complainant is not willing to accept that offer, the Monitoring Officer will take account of this in deciding what further action, if any, should be taken.
- 4.9 The MO's decision will be communicated to the person(s) making the complaint, the Member who is the subject of the allegation and the Clerk of the Parish Council if the complaint is about the behaviour of a Parish Councillor, and reported to the Council's Audit Committee for monitoring purposes.
- 4.10 There is no right of appeal against the MO's decision.
- 4.11 Any queries relating to how a complaint is being handled should be directed to the MO (see contact details in paragraph 2.1).

5. Investigation of complaints

- 5.1 If the MO decides that a Complaint merits formal investigation, he/she will, after consultation with the IP, appoint an Investigating Officer (IO) who may be another senior officer of the Council, an officer of another Council or an appropriately experienced external investigator.
- 5.2 The IO will decide whether they need to meet or speak to the complainant to understand the nature of the complaint and so that the complainant can explain their understanding of events and suggest what documents the IO needs to see, and who they need to interview.

- 5.3 The IO would normally write to the Councillor who is the subject of the complaint and ask them to provide their explanation of events, and to identify what documents (if any) are relevant to the investigation and who he/she needs to interview. In exceptional cases, the IO may delay notifying the Councillor until the investigation has progressed sufficiently.
- 5.4 At the end of the investigation, the IO will produce a draft report and will send copies of that draft report, in confidence, to the complainant and to the Councillor concerned, to give them both an opportunity to identify any matter in that draft report which they disagree with or which they believe requires more consideration.
- 5.5 Having received and taken account of any comments on the draft report, the IO will send their final report to the MO.

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

- 6.1 The MO will review the IO's report in consultation with the IP and, if satisfied that the IO's report is sufficient, will send a copy of the IO's final report to the complainant, the Councillor concerned and the Parish Clerk (if appropriate) and notify them that he/she is satisfied that no further action is required.
- 6.2 If the MO is not satisfied that the investigation has been conducted properly, he may ask the IO to reconsider their report.
- 6.3 The outcome of such investigations will be reported to the Council's Audit Committee and the relevant Parish Council (if appropriate) for information.

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

- 7.1 Where the investigation finds evidence of failure to comply with the Code of Conduct, the MO in consultation with the IP will review the IO's report and will then either send the matter for local hearing before the Council's Audit Committee Hearings Sub-Committee or seek local resolution.

Local Resolution

- 7.2 The MO may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he will consult with the IP and with the complainant and seek to agree what they consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. (See paragraph 4.7 for examples of possible local resolution measures). If the Councillor complies with the suggested resolution, the MO will report the matter to the Audit Committee and Parish Council (where relevant) for information, but will take no further action.

Local Hearing by the Audit Committee Hearings Sub-Committee

- 7.3 If the MO considers that local resolution is not appropriate or the Councillor concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the MO will report the Investigating Officer's findings to the Audit Committee Hearings Sub-Committee which will conduct a local hearing before deciding whether the Councillor has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Councillor.
- 7.4 The Hearings Sub-Committee is a Sub-Committee of the Council's Audit Committee, whose membership comprises Borough Councillors and Independent Members.
- 7.5 The MO will conduct a 'Pre-Hearing process', requiring the Councillor to provide a written response to the IO's report in order to identify in advance what is likely to be agreed and what is likely to be in contention at the hearing, and the Chair of the Hearings Sub-Committee may issue directions as to the manner in which the hearing will be conducted.
- 7.6 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 Councillor has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask the complainant to attend and give evidence (to call witnesses and to make representations to the hearing). The Councillor will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the hearing as to why he/she considers that he/she did not fail to comply with the Code of Conduct.
- 7.7 The Hearings Sub-Committee, with the benefit of any advice from the IP, may conclude that the Councillor did not fail to comply with the Code of Conduct, and so dismiss the complaint.
- 7.8 If the Hearings Sub-Committee concludes that the member did fail to comply with the Code of Conduct, the Chair will inform the Councillor of this finding and the Hearings Sub-Committee will then consider, in conjunction with any views expressed by the IP, what action, if any, should be taken as a result of the Councillor's failure to comply with the Code of Conduct. In doing this, the Sub-Committee will give the Councillor an opportunity to make representations to the Sub-Committee before coming to its conclusion.
- 8. What action can the Hearings Sub-Committee take where a Member has failed to comply with the Code of Conduct?**

8.1 The Council has delegated to the Audit Committee and its Hearings Sub-Committee such of its powers to take action in respect of individual Councillors as may be necessary to promote and maintain high standards of conduct. Accordingly, the Sub-Committee may choose to apply any of the following sanctions:-

- (1) Censure or reprimand the Councillor;
- (2) Publish its findings in respect of the Councillor's conduct;
- (3) Report its findings to Council [or to the respective Parish/Town Council if appropriate], for information;
- (4) Recommend to the Councillor's Group Leader (or in the case of ungrouped Councillors, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- (5) Recommend to the Elected Mayor that the Councillor be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- (6) Instruct the Monitoring Officer to *[or recommend that the Parish/Town Council]* arrange training for the Councillor;
- (7) Remove *[or recommend to the Parish/Town Council that it removes]* the Councillor from all outside appointments to which he/she has been appointed or nominated by the Council *[or by the Parish/Town Council]*;
- (8) Withdraw *[or recommend to the Parish/Town Council that it withdraws]* facilities provided to the Councillor by the Council, such as a computer, website and/or email and Internet access; or
- (9) Exclude *[or recommend that the Parish Council exclude]* the Councillor from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

The Hearings Sub-Committee has no power to suspend or disqualify the Councillor or to withdraw Members' or Special Responsibility Allowances.

9. What happens after the Hearing?

- 9.1 At the end of the hearing, the Chair will announce the decision of the Sub-Committee as to whether the Member failed to comply with the Code of Conduct and as to any actions which the Sub-Committee resolves to take.
- 9.2 As soon as reasonably practicable thereafter, the MO shall prepare a formal decision notice in consultation with the Chair of the Sub-Committee and the IP, and send a copy to the complainant, the subject member (Councillor) and the Parish Clerk (if appropriate). The decision notice will be made available for

public inspection on the Council's website and the outcome of the Hearing will also be reported to the next available meeting of the Audit Committee.

10. Appeals

- 10.1 There is no right of appeal for the complainant or for the subject member (Councillor) against a decision of either the MO or the Audit Committee Hearings Sub-Committee.
- 10.2 If you feel that the Council has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.