

Arrangements for dealing with standards allegations under the Localism Act 2011

Noted by Buckland Parish Council on 14th May 2018

1 Context

These “Arrangements” set out how someone may make a complaint that an elected or co-opted member of Mole Valley District Council (“the Council”) or any Parish Council within Mole Valley has failed to comply with the authority’s Code of Conduct and sets out how the authority will deal with allegations of a failure to comply with the authority’s Code of Conduct.

Under Section 28(6) and (7) of the Localism Act 2011, the Council must have in place “arrangements” under which allegations that a member or co-opted member of any of the authorities or of a Committee or Sub-Committee of the authorities, has failed to comply with that authority’s Code of Conduct can be investigated and decisions made on such allegations.

The Council have arranged to appoint three Independent Persons, one of whose views must be sought by the Monitoring Officer or the Standards sub-committee before the Council takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought at any other stage.

A member against whom an allegation has been made can also consult the independent person at any stage of a complaint (a member can obtain the contact details of the Independent Person(s) from the Monitoring Officer).

(Members may, if they wish, seek support on any matter from one of the officers in the Senior Leadership Team. If a member wishes to do so, they should contact the Chief Executive in the first instance.

2 The Code of Conduct

The Council has adopted a Code of Conduct for members and is available for inspection on the Council’s website and on request from Reception at the Council Offices, Pippbrook, Dorking.

The Code of Conduct of any Parish Council within Mole Valley is available for inspection on their website or by arrangement with the Parish Clerk.

3 Making a complaint

If someone wishes to make a complaint, they should write to or email:–

The Monitoring Officer
Mole Valley District Council
Pippbrook
Reigate Road
Dorking
Surrey RH4 1SJ

Email: Legal@molevalley.gov.uk

The Monitoring Officer has statutory responsibility for maintaining the Register of Members' Interests and is responsible for administering the system in respect of complaints of member misconduct.

A complainant should provide us with their name and a contact address or email address, so that we can acknowledge receipt of their complaint and keep them informed of its progress. In normal circumstances the Member against whom the complaint has been made will be advised of the complaint and the person making the complaint. Only in very exceptional circumstances will the name or address of the complainant be kept confidential.

The Council does not investigate anonymous complaints unless there is a clear public interest in doing so.

The Monitoring Officer will acknowledge receipt of the complaint within 5 working days of receiving it and will keep the complainant informed of the progress of the complaint.

The complainant and Member are required to keep the issue of the complaint and any information gathered during an investigation confidential, unless and until the Complaints Sub-Committee has made a decision on the complaint.

4 Will a complaint be investigated?

The Monitoring Officer will review every complaint received and take a decision as to whether it merits formal investigation. The Monitoring Officer may consult the Independent Person before taking this decision. Except in trivial cases or where the conduct of the member is not regarded as being in breach of the Code of Conduct, if the Monitoring Officer is minded to decide that the complaint does not require any further action or does not merit formal investigation, he/she will consult the Chairman of the Standards Committee before making his/her decision. This decision will normally be taken within 10 working days of receipt of the complaint. Where the Monitoring Officer has taken a decision, he/she will inform the complainant and the member concerned of his/her decision and the reasons for that decision.

Where he/she requires additional information in order to come to a decision, he/she may come back to the complainant for such information and may request information from the member against whom the complaint is directed, including exploring with the complainant and the member concerned what they consider to be a reasonable informal resolution of the complaint. Where the complaint relates to a Parish Councillor, the Monitoring Officer may also inform the Parish Council of the complaint and seek the views of the Parish Council before deciding whether the complaint merits formal investigation. Complainants are required to respond to requests for information within 10 working days and, unless there are specific reasons for non-compliance with this requirement which are acceptable to the Monitoring Officer, complaints will not be pursued.

In appropriate cases, the Monitoring Officer may decide that because of the trivial nature of the complaint (or other mitigating factor) that no further action is required, or he/she may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the member accepting that his/her conduct was unacceptable and offering an apology or some other appropriate action, or by accepting remedial action by the authority. Where the member of the authority makes a reasonable offer of local resolution, 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 instead. The Monitoring Officer will consult the Chairman of the Standards Committee and the Independent Person before making this decision.

If after consultation with the Chairman of the Standards Committee, the Monitoring Officer considers that the member against whom the complaint was made has made a reasonable offer to resolve the complaint, the complaint will be considered to be resolved once the member concerned has satisfactorily completed what he/she offered, and the complainant shall be notified accordingly.

Where the member against whom a complaint is made only admits part of the alleged complaint, the Monitoring Officer will decide after consulting the Chairman of the Standards Committee whether his/her offer to resolve the matter informally is reasonable in the circumstances.

Where the behaviour of the member against whom the complaint is directed is considered not to be a breach of the Code of Conduct at the time of the alleged behaviour, the member was not acting in his/her role as a councillor, or there is some doubt as to whether he/she was acting as a councillor then, following consultation with the Chairman of the Standards Committee, the complaint may be passed to the relevant leader of the group or political party of the member concerned to be resolved in such circumstances, the complainant will be informed that the complaint is not considered to be a breach of the Code of Conduct and of the action, if any, the Monitoring Officer has decided to take.

If the complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police and other regulatory agencies.

The Monitoring Officer may reject a complaint if, following consultation with the Chairman of the Standards Committee, it is considered by the Monitoring Officer to be vexatious, frivolous or politically motivated.

The Monitoring Officer may at any time, after consulting the Chairman of the Standards Committee, refer a complaint to the Standards Sub-Committee for a determination on any issue and the Sub-Committee may deal with the complaint in any way it considers appropriate (provided that where a complaint has been formally investigated, the Sub-Committee must consult the Independent Person before making a decision).

5 How is the investigation conducted?

If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer, who may be either an officer of another authority or an external investigator. The Investigating Officer will be asked to provide to the Member and the complainant, as soon as practicable, an indicative timescale for the investigation. The Investigating Officer will decide whether he/she needs 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 Investigating Officer needs to see, and who the Investigating Officer needs to interview.

The Investigating Officer would normally write to the member against whom the complaint has been made and provide him/her with a copy of the complaint and 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 very exceptional cases, where it is appropriate to keep the complainant's identity confidential or where disclosure of details of the complaint to the member might prejudice the investigation, the Monitoring Officer can delete the complainant's 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 send copies of that draft report, in confidence, to the complainant and to the member concerned, to give them both an opportunity to correct any inaccuracies relating to the evidence they have provided. Unless there is a specific reason for non-compliance which is acceptable to the Monitoring Officer, both the complainant and member are required to respond within 10 working days.

Having received and taken account of any comments that they may make on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer.

6 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 is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will, after consulting the Independent Person and the Chairman of the Standards Committee and taking into account their views, write to the complainant and to the member concerned and to the Parish Council, where the complaint relates to a Parish Councillor, notifying them that he/she is satisfied that no further action is required, and give them all 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.

Should the Investigating Officer conclude after reconsideration of his/her report that there is no evidence of a failure to comply with the Code of Conduct, the Monitoring Officer, after consulting the Independent Person and the Chairman of the Standards Committee, will write to all parties as set out above notifying them that no further action is required.

7 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 after consulting the Independent Person and the Chairman of the Standards Committee either send the matter for local hearing before the Sub-Committee or seek local resolution.

7.1 Local Resolution

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

7.2 Local Hearing

If the Monitoring Officer, following consultation with the Independent Person and the Chairman of the Standards Committee, considers that local resolution is not appropriate, or the complainant is not satisfied by the proposed resolution, or the member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigating Officer's report to a Complaints Sub-Committee of the Standards Committee which will 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 member.

Essentially, the Monitoring Officer will conduct a “pre-hearing process”, requiring the 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 Chairman of the Sub-Committee 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 the complainant to attend and give evidence to the Sub-Committee. The Member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Sub-Committee as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

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

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

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

- 8.1 Publish its findings in respect of the member’s conduct;
- 8.2 Report its findings to Council or to the Parish Council for information;
- 8.3 Recommend to the Member’s Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 8.4 Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 8.5 Instruct the Monitoring Officer to arrange training for the Member;
- 8.6 Remove the Member from all outside appointments to which he/she has been appointed or nominated by the authority;
- 8.7 Withdraw facilities provided to the Member by the Council, such as website and/or email and Internet access; or
- 8.8 Exclude the Member from the Council’s Offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.
- 8.9 Where the member who has failed to comply with the Code of Conduct is a parish councillor, then any of the actions recommended by the Sub-Committee referred to in 8.5 to 8.8 above shall be directed to the Parish Council.

The Sub-Committee has no power to suspend or disqualify the member or to withdraw members’ or special responsibility allowances.

9 What happens at the end of the hearing?

At the end of the hearing, the Chairman will state 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.

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chairman of the Sub-Committee, and send a copy to the complainant, to the member and (if applicable) to the Parish Council, make that decision notice and the Investigating Officer's report, suitably redacted, available for public inspection and report the decision to the next convenient meeting of the Council.

10 What is the 'Complaints' Sub-Committee?

The Sub-Committee is a Sub-Committee of the Council's Standards Committee. The Independent Person is invited to attend all meetings of the Sub-Committee and his/her views must be sought and taken into consideration (where a complaint has been formally investigated) before the Sub-Committee 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. For the avoidance of doubt, if the Independent Person is unable to attend a meeting of the Sub-Committee, which is due to make a decision on allegation which has been formally investigated, the Sub-Committee may consider the views of the Independent Person in writing.

11 Other meetings of the 'Complaints' Sub-Committee?

Where a complaint is referred to the Sub-Committee by the Monitoring Officer in the circumstances mentioned at the end of section 4 above, the Sub-Committee may deal with the complaint in any way it considers appropriate.

12 Who is the Independent Person?

The Independent Persons are persons who have applied for the post following advertisement of a vacancy for the post, and are appointed by a majority of all the Members of Council.

A person cannot be "independent" if he/she –

- 12.1 Is, or has been within the past 5 years, a member, co-opted member or officer of the Council; or
- 12.2 Is, or has been within the past 5 years, a member, co-opted member or officer of any Parish Council in Mole Valley; or
- 12.3 Is a relative or close friend, of a person within paragraph 11.1 or 11.2 above. For this purpose, "relative" means –
 - (a) Spouse or civil partner;
 - (b) Living with the other person as husband and wife or as if they were civil partners;
 - (c) Grandparent of the other person;
 - (d) A lineal descendent of a grandparent of the other person;
 - (e) A parent, sibling or child of a person within paragraphs 11.3(a) or 11.3(b);
 - (f) A spouse or civil partner of a person within paragraphs 11.3(c), 11.3(d) or 11.3(e); or
 - (g) Living with a person within paragraphs 11.3(c), 11.3(d) or 11.3(e) as husband and wife or as if they were civil partners.

13 Revision of these arrangements

The Council may resolve to amend these arrangements.

The Chairman of the Sub-Committee has 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.

14 Appeals

There is no right of appeal for the complainant or for the member against a decision of the Monitoring Officer or of the Sub-Committee.

If a complainant feels that the authority has failed to deal with their complaint properly, they may make a complaint to the Local Government Ombudsman.

15 Annual Report

The Monitoring Officer shall submit an annual report to the first meeting of the Standards Committee in the new Municipal Year setting out details of all complaints received, including those where no breach was found.