

Documents which support the Constitution

Part D

Surrey Heath Borough Council Members' Code of Conduct

Arrangements for dealing with allegations of misconduct under Section 28 Localism Act 2011

Context

1. These arrangements describe how the public can make a complaint that a Member of Surrey Heath Borough Council "the Council" has failed to comply with the Council's Member Code of Conduct, and sets out how the Council will deal with allegations of a failure to comply with the Council's Code of Conduct.
2. Under Section 28(6) and (7) of the Localism Act 2011, the Council must have in place "arrangements" under which allegations that a Member of the authority (i.e. a councillor or a co-opted member) has failed to comply with that Council's Code of Conduct which may be investigated and decisions made on such allegations.
3. The arrangements under the Localism Act must provide for the Council to appoint at least one Independent Person, whose views must be sought by the Council before it takes a decision on an allegation and whose views can be sought by the Council at any other stage, or by a Member against whom an allegation has been made.
4. References to Monitoring Officer in this Document include any Deputy Monitoring Officer appointed by the Monitoring Officer.
5. Any timescales referred to in this Document may be extended by the Monitoring Officer depending on circumstances and reasons for delay.

Principles of these arrangements

6. The arrangements for dealing with allegations of a failure to comply with the Council's Code of Conduct will abide by the following principles
 - (a) they should reassure the public that complaints will be dealt with swiftly, properly and transparently;
 - (b) they should be simple, clear and follow the rules of natural justice;
 - (c) they should not be overly bureaucratic i.e. they should follow the law and not build in unnecessary additional measures;
 - (d) they should allow the Monitoring Officer to dismiss complaints which are vexatious, frivolous, without merit, outside the scope of the Code of Conduct or politically motivated;
 - (e) they should allow the Monitoring Officer in conjunction with the Independent Person to take decisions on whether a Councillor should be investigated;
 - (f) that following investigation, the Standards Sub Committee may decide whether that Councillor should be held in breach of the Code or, in the alternative, the Monitoring Officer may consider a local resolution; and
 - (g) they should allow for the Monitoring Officer to be accountable for such decisions in (e).

The Code of Conduct

7. The Council has adopted a Member Code of Conduct, which is available on the Council's website. The Council has tasked the Monitoring Officer to keep the Code of Conduct and the operation of these arrangements under review.

Making a complaint

8. Any person may make a complaint, in writing, to-
The Monitoring Officer
Surrey Heath Borough Council
Surrey Heath House
Knoll Road
Camberley
Surrey, GU15 3HD

Email: monitoring.officer@surreyheath.gov.uk

9. The Council will only process complaints which are in writing. The name and address of the complainant must be given and only in very exceptional circumstances will the Council investigate anonymous complaints.
10. The Monitoring Officer will acknowledge receipt of a complaint within 5 working days of receiving it, and will keep the complainant informed of the progress of the complaint at appropriate junctures.

Role of the Monitoring Officer

11. The Monitoring Officer's job is to oversee the complaints process, to liaise with the Independent Person and where appropriate to refer cases to an Investigator and then potentially a Standards Sub Committee of the Audit & Standards Committee.
12. The Monitoring Officer is accountable to the Audit & Standards Committee for this function.

Independent Person

13. The Council has appointed an Independent Person(s).
14. The Independent Person is not (and has not within the last five years from 1 July 2012) been a Member or an Officer of the Council.
15. The Monitoring Officer will consult the Independent Person on action to be taken under these arrangements at all relevant stages of the complaints process as directed by this Document.
16. A Member who is the subject of a complaint is also entitled to refer to the Independent Person for advice during the course of a complaint. Where possible, the Monitoring Officer will refer the Member to a second independent person to help avoid a conflict of interest for the independent person liaising with the Monitoring Officer.

17. The Independent Person receives expenses for undertaking this role but no other remuneration unless the Audit & Standards Committee recommends otherwise.

Assessment of complaints

18. The Monitoring Officer will review every complaint received and, consult with the Independent Person where required or at any other times the Monitoring Officer considers appropriate.
19. The Monitoring Officer will inform the subject Member about the complaint and inform the Member that advice can be taken from the Independent Person.
20. The Monitoring Officer has power to reject complaints which are vexatious, frivolous, without merit, outside the scope of the Code of Conduct or malicious or in some other way an abuse of process. Where the Monitoring Officer has taken a decision that a complaint falls into one of these categories, he/she will inform the complainant of his decision and the reasons for that decision. There is no appeal from this decision. However, the Monitoring Officer, in his annual report to the Audit & Standards Committee, may provide information on the numbers and nature of the complaints he/she has rejected on this basis.
21. Where the Monitoring Officer requires additional information in order to come to a decision (about a vexatious etc. complaint) or a recommendation (about any complaint) he/she may seek such information from the complainant, the subject Member and other relevant persons such as a Parish Clerk but he/she will not commence an investigation prior to liaising with the Independent Person. For the avoidance of doubt, the Monitoring Officer may seek evidence and information to the extent required to demonstrate that there is merit to a complaint and whether the Monitoring Officer can accept an informal resolution; such actions do not constitute an investigation.
22. In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. The Monitoring Officer may consult with the Independent Person where this outcome seems appropriate. Such informal resolution may involve the Member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action. The Monitoring Officer will have due regard to the following when considering whether a complaint can be resolved informally or requires formal investigation.
 - (a) The seriousness of the allegations
 - (b) The conduct and cooperation of the subject Member during the assessment
 - (c) The impact of the alleged misconduct
 - (d) The intentions of the subject Member regarding the alleged misconduct
 - (e) The complexity of evidence
 - (f) Whether there is conflicting evidence and such evidence is material
23. If the Monitoring Officer decides that the complaint concerns a service, policy or decision of the Council then he may refer it to the normal complaints procedure.
24. The Council has produced a flowchart for the assessment and investigation of misconduct complaints at Annex A. The Monitoring Officer will refer to this when making a decision to refer a matter for investigation. Where there is any conflict or

uncertainty between the flowchart and this Document, then this Document shall prevail.

25. If the Monitoring Officer decides that a complaint merits formal investigation, he/she /she will appoint one or more Investigating Officers, depending on the complexity of the complaint, either from within the Council, from a neighbouring authority or from an external investigator. For each appointment, the Monitoring Officer will give due consideration to the nature and complexity of the issues and the skill sets required for the investigation.
26. If the Monitoring Officer decides not to investigate the complaint, he /she will write to the complainant outlining the reasons why. This decision is final and will be reported as part of the Monitoring Officer's annual report to the Audit & Standards Committee.
27. During the investigation phase the Monitoring Officer will keep all parties informed of the progress of the case. It is expected that the complaint will be confidential during this phase. Only in very exceptional circumstances will the name of the complainant be withheld from the subject member. The Monitoring Officer will consider carefully any requests for anonymity from the complainant. In particular, if the Monitoring Officer considers that disclosing the name of the complainant to the subject Member would cause genuine harm or distress to the complainant, or prejudice the complaint process, the complainant's name should be withheld. An example might be a serious complaint about bullying or harassment.

The investigation

28. The Investigating Officer will complete the investigation in accordance with any policy or guidelines that the Council shall adopt.
29. The investigation shall be carried out in a prompt manner.
30. At the end of the investigation, the Investigating Officer(s) will produce a draft report and will send copies of that draft report, in confidence, to the complainant and to the subject Member, to give both an opportunity to identify any factual matter in that draft report which is disputed or requires further investigation within 10 days of the report being issued.
31. Having received and taken account of any comments on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer as soon as is practicable.
32. The Monitoring Officer will consult with the Independent Person on the outcomes or recommendations of the investigation.
33. If following consultation, the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer(s) to reconsider his/her report.
34. The Monitoring Officer will review the Investigating Officer's report in light of the Independent Person's advice and, if he/she is satisfied that the Investigating Officer's report is sufficient and that no further investigations are required, the Monitoring Officer will write to the complainant and to the subject Member concerned with a copy of the final report.

Findings of “No-breach”

35. If the Monitoring Officer finds that there has been no breach of the Code of Conduct then he/she will write to the complainant and the subject Member and dismiss the complaint. The decision is final and there is no appeal. The Monitoring Officer will include this decision in his/her annual report to the Audit & Standards Committee.

Findings of “Breach”

36. If the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct then the Monitoring Officer will consult with the Independent Person, the subject Member and the complainant to see if any form of local resolution is possible.

Local Resolution

37. 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 all the parties and seek to agree a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the subject Member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action.
38. If the subject Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Audit & Standards Committee for information, but will take no further action. Such reports should be open to public scrutiny.

Standards Sub Committee of the Audit & Standards Committee

39. If the Monitoring Officer considers that local resolution is not appropriate, or the Member or complainant 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 Standards Sub 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.
40. The Monitoring Officer will carry out a pre-hearing process which will be conducted by way of written correspondence or in complex cases by way of interview. As part of the pre hearing process the subject Member will be invited 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.
41. The Access to Information Rules will apply to meetings of the Sub Committee as it would apply to any other meeting of the Council. The Monitoring Officer will advise the Committee whether the press and public should be excluded during any part of the hearing process. In order to give confidence to the public it is expected that the meeting of the Committee will take place in public unless there are exceptional circumstances which dictate otherwise.
42. At the hearing, the Investigating Officer(s) will present his/her report, call such witnesses as he/she considers necessary and make representations to

substantiate his/her conclusion that the subject Member has failed to comply with the Code of Conduct. The subject Member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Committee as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

43. The Independent Person may be invited to attend the hearing to advise the Committee but is not required to attend.
44. If the Committee concludes that the subject Member did not fail to comply with the Code of Conduct, then they will dismiss the complaint.
45. If the Committee concludes that the subject Member did fail to comply with the Code of Conduct, the Chairman will inform the Member of this finding and the Committee will then consider what action, if any, should be taken as a result of the Member's failure to comply with the Code of Conduct.

Powers of a Standards Sub Committee

46. In considering its response, the Sub Committee will give the Member an opportunity to make representations, but will then decide what action, if any, to take in respect of the matter. The powers of the Sub Committee are:
 - (a) To formally request the Member to apologise either privately or in public.
 - (b) To formally request the Member to attend training.
 - (c) To censure the Member.
 - (d) To send a report to Council to censure the Member.
 - (e) To require the Monitoring Officer to publish a report in the newspaper or on the Council's website about the Member's conduct.
 - (f) To withdraw privileges provided by the Council such as computer equipment, internet or email access.
 - (g) To formally inform to the Member's Group Leader of the outcome.
 - (h) To recommend to the Member's Group Leader that the Member be removed from a Committee or other body.
 - (i) Where appropriate, to limit the Member's access to only designated Officers.
 - (j) Or a combination of any of the above.
47. As a matter of law, the Sub Committee does not have the power to suspend or disqualify the Member or to withdraw allowances to which members are entitled.

Appeals

48. There is no right of appeal for the complainant or for the Member against a decision of a Sub Committee.

Post hearing

49. At the end of the hearing, the Chairman will state the decision of the Standards Sub Committee as to whether the Member failed to comply with the Code of Conduct and as to any actions which the Committee resolves to take.
50. As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chairman of the Committee, and send a copy to all the parties, and if required, make that decision notice available for public inspection.

Revision of these arrangements

51. The Council may by resolution agree to amend these arrangements, and has delegated to the Monitoring Officer 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.