

**PROCESS/PROCEDURE FOR DEALING WITH COMPLAINTS MADE ABOUT
ELECTED AND CO-OPTED MEMBERS OF EAST RIDING OF YORKSHIRE
COUNCIL/TOWN AND PARISH COUNCILS IN THE EAST RIDING OF
YORKSHIRE LOCAL AUTHORITY AREA**

NB These procedures are written in accordance with the requirement under Section 28(6) of the Localism Act 2011, which obliges East Riding of Yorkshire Council - a relevant authority - to have in place arrangements under which allegations about a Member's conduct can be investigated and arrangements under which decisions on allegations about a Member's conduct can be made.

1 Complaints

How to submit a complaint

1.1 Complaints submitted about the conduct of elected and co-opted Members of East Riding of Yorkshire Council, or any town and parish council in the East Riding Local Authority area, should be made in writing and addressed to the Monitoring Officer of East Riding of Yorkshire Council, County Hall, Cross Street, Beverley, HU17 9BA, or can be emailed to standards@eastriding.gov.uk

1.2 Complaint forms are available on the Council's website and can be posted out, on request.

1.3 A complaint, in any event, should detail:-

- Complainant's name, address and contact details.
- Complainant's status.
- Who the complaint is about and the authority/authorities they belong to.
- Details of the alleged misconduct - including, where possible, dates, witness details and other supporting information.

Scope of complaint

1.4 A complaint can only be considered if it concerns the conduct of a Member. Complaints about members of staff (including parish/town council clerks) and decisions taken by the Council or a parish or town Council cannot be considered.

1.5 For a matter to be considered by the Sub-Committee it must fall within the authority's legal jurisdiction. Therefore if any of the following are clear from the complaint the allegation will not be put before the Assessment Sub-Committee for consideration:-

- The person the subject of the complaint was not a Member of East Riding of Yorkshire Council or a town/parish council within the East Riding of Yorkshire Local Authority area at the time the alleged conduct occurred.
- If a Code of Conduct was not in operation at the time the alleged conduct took place.

- 1.6 Complaints which fall into the following categories will also not be put before the Assessment Sub-Committee for consideration:-
- (a) Where it is clear from the complaint that the Member the subject of the complaint was not acting in an official capacity at the time the alleged conduct occurred.
 - (b) Where the conduct complained of is a continuation of a situation/set of circumstances relating to the same Council, which the Assessment Sub-Committee has previously considered and has determined not to take any action on.
 - (c) Where the individual the subject of the complaint is not a Member at the time the complaint is submitted.
 - (d) Where the complaint is made anonymously, it will not be put before the Assessment Sub-Committee unless it relates to an exceptionally serious or significant matter.
 - (e) The Monitoring Officer is also given delegated authority to consider the age and seriousness of the complaint in determining whether it should be submitted to the Assessment Sub-Committee; where the complaint is so trivial or lacking in detail that it would not be an efficient use of resources to submit it for the Assessment Sub-Committee's consideration it will not go forward.
 - (f) Where a breach of the Code of Conduct has seemingly been disclosed but the breach is minor in nature and would not warrant an investigation.
 - (g) Where the conduct complained of repeats a complaint that has already been submitted about the same Member and which the Assessment Sub-Committee has already made a decision on.
- 1.7 In the event that a complaint is filtered out in accordance with paragraph 1.6(f) above, a complainant will be permitted to seek reconsideration of the decision by providing additional information within 5 working days of the date of the Monitoring Officer's letter. In such a circumstance, if the additional information submitted is likely to be deemed to merit an investigation being undertaken, the complaint will at that stage be referred to the Assessment Sub-Committee for consideration.
- 1.8 A report will be submitted to the Standards Committee on an annual basis to detail the number of complaints submitted which have not been put before the Standards Committee Assessment Sub-Committee and the reason why.
- 1.9 The Standards Committee will also receive, on an annual basis, a report detailing the number of complaints received over the period 1 May to 30 April which will give a brief description of each complaint, the decision of the Assessment Sub-Committee and, if applicable, the decision of the Standards Committee/a Hearing Committee, including any sanction recommended and applied. An extract from this report will also be published separately on the Council's website under the data transparency section.
- 2 Receipt of Complaint**
- 2.1 The complainant will be notified that their complaint has been received.
- 2.2 Arrangements will be made to convene a Standards Committee Assessment Sub-Committee for consideration of the complaint within 25 working days of receiving it.
- 2.3 Complaints addressed to the Monitoring Officer which do not fall within the Committee's legal jurisdiction, which are clearly not about Member conduct or which fall within any of the categories set out in paragraphs 1.4 - 1.6 above will not be passed to the Assessment Sub-Committee.

- 2.4 Upon receipt of a complaint, a copy of it will be provided to either the Independent Person or the Reserve Independent Person to obtain their view as to whether or not the complaint should be investigated, referred for other action or whether no action should be taken. The opinion of the Independent/Reserve Independent Person will be incorporated into the report submitted to the Assessment Sub-Committee for Members' deliberation and determination. The Independent/Reserve Independent Person's opinion will also be recorded in the Decision Notice produced following the Assessment Sub-Committee meeting.

3 Standards Committee Assessment Sub-Committee

- 3.1 The Standards Committee Assessment Sub-Committee will consist of five Members - three East Riding of Yorkshire Council elected Members (from at least two political groups from the membership of the Standards Committee), one parish/town council representative and one independent Member, to be determined on a meeting by meeting basis by the Director of Corporate Resources, with the Chairmanship rotating around the ERYC Members on the Standards Committee on the same allocation as the full Committee.
- 3.2 The Monitoring Officer will circulate with the agenda papers for the meeting a pre-assessment report for each complaint made, which will contain a brief overview of the complaint, including any further information submitted/obtained to assist the Sub-Committee with its decision (relevant minutes, register of interests etc.), relevant paragraphs of the Code of Conduct, the view of the Independent or Reserve Independent Person as to the proposed action to be taken and a recommendation.
- 3.3 For a matter to be considered by the Sub-Committee it must fall within the Authority's legal jurisdiction. Therefore, the pre-assessment report will also confirm:-
- That the person the subject of the complaint was a Member of East Riding of Yorkshire Council or a town/parish council within the East Riding of Yorkshire Local Authority area at the time the alleged conduct occurred.
 - That a Code of Conduct was in operation at the time the alleged conduct took place.
- 3.4 The Chairman of the Sub-Committee will actively seek the views of the independent Member and parish council representative before a decision is taken on the complaint by the voting Members.

4 Assessment Sub-Committee - Possible Decisions

- 4.1 The Sub-Committee, being satisfied that the Authority has the legal jurisdiction to consider the complaint, will then use the agreed assessment criteria to reach a decision on the action, if any, to be taken.
- 4.2 The Sub-Committee must also be satisfied that the conduct complained of, if proven, could amount to a breach of the Code of Conduct. Again, if this is not the case, the complaint cannot be investigated.

4.3 The Assessment Sub-Committee can make the following decisions:-

- That the matter be referred to the Monitoring Officer for investigation.
- That the matter be referred to the Monitoring Officer for 'other action'.
- That no further action be taken, either because:-
 - No breach of the Code of Conduct has been evidenced, or
 - It is felt, based on the information submitted, that investigation of the complaint would not be merited.

NB There is no right of appeal to the decision that no further action be taken on the complaint.

4.4 The decision of the Sub-Committee will be sent to the complainant, the subject Member and the clerk to the appropriate town/parish council, in the form of a decision notice, within five working days of the Assessment Sub-Committee meeting.

5 Referral for Investigation

5.1 Where complaints are referred to the Monitoring Officer for investigation, the Monitoring Officer will appoint a member of staff to undertake the investigation, who will contact the parties concerned. The investigating officer will attempt to complete the investigation within six months of the complaint being referred by the Assessment Sub-Committee.

5.2 The investigating officer and Monitoring Officer can make one of two findings, namely:-

- That no breach of the Code of Conduct is disclosed/no further action be taken.
- That the conduct complained of potentially discloses a breach of the Code of Conduct.

5.3 Where it is concluded that no breach of the Code of Conduct has been disclosed or that no further action should be taken, a report will be submitted to the Standards Committee, which will determine whether or not it agrees with the Monitoring Officer's finding. If it does agree with the recommendation the matter ends and no further action will be taken. If it does not agree with the recommendation the matter will progress to a hearing.

5.4 Where it is recommended by the Monitoring Officer that no breach of the Code of Conduct has been disclosed and/or that no further action should be taken and a report is submitted to the Standards Committee, the Councillor the subject of a complaint/investigation, the complainant and the relevant town or parish council clerk will be advised in advance of the meeting as to when that the final report is to be considered by the Committee and will be provided with a copy of the final report. The Councillor the subject of the complaint, the complainant and the clerk to the relevant town or parish council are at liberty to attend the meeting to observe, should they wish to do so, subject to the exclusion of the press and public, as may be deemed appropriate, in accordance with Schedule 12A of the Local Government Act 1972.

- 5.5 Following a Standards Committee meeting, the Councillor the subject of the complaint/investigation, the complainant and the relevant town or parish council clerk will be written to again to confirm the Committee's decision and a copy of the minutes will be provided to them, which will include a brief summary of the complaint, the provisions of the Code engaged by the allegations, the view of the Independent Person, the decision and reasoning of the Committee. The minutes will be published on the Council's website.
- 5.6 Where it is concluded that the conduct complained of potentially discloses a breach of the Code of Conduct a hearing of the Standards Committee will be arranged. At the hearing the Standards Committee can make one of three determinations:-
- That there has been no breach of the Code of Conduct.
 - That there has been a breach of the Code of Conduct but that it is not necessary to make a recommendation as to suggested action to be taken by the appropriate Council.
 - That there has been a breach of the Code of Conduct and that, in the circumstances, it would wish to make a recommendation to the appropriate Council as to suggested action to be taken.
- 5.7 A Standards Committee Hearing will consist of five Members - three East Riding of Yorkshire Council Members (from at least two political groups from the membership of the Standards Committee), one parish council representative and one independent Member, to be selected on a meeting by meeting basis by the Director of Corporate Resources, with the Chairmanship rotating between the ERYC Members on the Standards Committee on the same allocation as the full Committee.
- 5.8 Where it is concluded that the conduct complained of potentially discloses a breach of the Code of Conduct, a Hearing Committee will be arranged to consider the complaint/investigation within three months of conclusion of the investigation.
- 5.9 Hearings will be conducted in accordance with the Standards Committee's adopted Hearings Procedures.
- 5.10 Where between being referred for investigation and the investigation concluding the individual who is the subject of a complaint ceases to be a Member, the Monitoring Officer may submit a report to the Standards Committee Assessment Sub-Committee to seek its approval to discontinue the investigation, and to resolve that no further action be taken. The Standards Committee Assessment Sub-Committee may agree to this, or may resolve that there is merit in the investigation continuing.
- 5.11 In such instances, the Councillor the subject of the complaint/investigation and the complainant will be advised in advance of the meeting that the Monitoring Officer will be submitting such a request to the Assessment Sub-Committee and will be asked for their comments on the proposal, which will also be reported to the Assessment Sub-Committee. Following the meeting, the Councillor the subject of the complaint/investigation, the complainant and the relevant town or parish council clerk will be notified of the decision of the Assessment Sub-Committee and will be provided with a copy of the minutes.

6 Referral for 'Other Action'

- 6.1 It is accepted that it may not always be in the interests of good governance to undertake or complete an investigation into an allegation of misconduct, therefore the Assessment Sub-Committee has the option of determining whether 'other action' would be more appropriate.
- 6.2 Examples of 'other action' will include:-
- Arranging for the subject Member(s)/Council concerned to undertake training.
 - Arranging for the subject Member and complainant to engage in a process of conciliation/mediation.
 - Instituting changes to the procedures of the Council if they have given rise to the complaint.
 - Writing to the subject Member to remind them of the provisions of the Code of Conduct.
 - Writing to the subject Member to remind them of the requirement to register their interests and/or to keep their Register of Interests up to date.
- 6.3 The action does not have to be limited to the subject Member or Members.
- 6.4 Generally, there are two indicators of 'other action'; the first is where the authority to which the subject Member belongs appears to have a poor understanding of the Code and/or authority procedures; the second is where there has been a breakdown in relationships. Further guidance on matters which may lead to referral for 'other action' is contained in the assessment criteria.
- 6.5 Complaints referred to the Monitoring Officer for 'other action' will not be referred back to the Standards Committee Assessment Sub-Committee if the action is ultimately perceived to have failed.
- 6.6 It is emphasised that 'other action' is an alternative to investigation and therefore, in such cases, the Sub-Committee makes no finding on whether the subject Member failed to comply with the Code of Conduct.
- 6.7 If the parties are unwilling to comply/participate or the Councillor the subject of the complaint ceases to be a Member before the 'other action' takes place the Monitoring Officer has discretion to conclude, without reference back to the Assessment Sub-Committee, that it would not be an efficient use of resources to pursue the 'other action' and/or complaint further. The Monitoring Officer will refer the complaint back to the Assessment Sub-Committee for a decision to investigate it should that be deemed the most appropriate course of action.
- 6.8 The Monitoring Officer will attempt to ensure that the 'other action' is undertaken within six months of the Assessment Sub-Committee's decision to refer the complaint for this.
- 6.9 Following the 'other action' being undertaken/attempted, a report will be submitted on an annual basis to the Standards Committee detailing the outcomes achieved.

7 Role and Appointment of the Independent Person

- 7.1 The Council is required to appoint at least one Independent Person, whose views must be sought and taken into account by the Authority before a decision is made on an allegation that it has decided to investigate.
- 7.2 East Riding of Yorkshire Council will appoint one Independent Person for a three year period, with up to two reserves, also appointed for a three year period.
- 7.3 The views of the Independent Person can also be sought by a Member whose behaviour is the subject of an allegation that is being investigated. The contact between the Independent Person and the Councillor the subject of the investigation will be managed through Democratic Services.
- 7.4 The Independent Person will be sent a copy of the investigating officer's report and investigation file following comments being obtained from the subject Member and the complainant on the draft report. The comments of the Independent Person will be incorporated into the final report for submission to the Standards Committee/Standards Committee Hearing.
- 7.5 The Independent Person will be invited to attend the Standards Committee/Standards Committee Hearing to present their views and be available to answer questions.
- 7.6 As per paragraph 2.4 above, additionally, upon receipt of a complaint, a copy of it will be provided to either the Independent Person or the Reserve Independent Person to obtain their view as to whether or not the complaint should be investigated, referred for other action or whether no action should be taken. The opinion of the Independent/Reserve Independent Person will be incorporated into the report submitted to the Assessment Sub-Committee for Members' deliberation and determination. The Independent/Reserve Independent Person's opinion will also be recorded in the Decision Notice produced following the Assessment Sub-Committee meeting.
- 7.7 An individual cannot be an Independent Person if they are:-
- (a) a Member, Co-opted Member or Officer of East Riding of Yorkshire Council;
 - (b) a Member, Co-opted Member or Officer of a Parish Council within the East Riding of Yorkshire, or
 - (c) a relative [as defined by the Localism Act 2011], or close friend, of a person within (a) or (b) above.
- 7.8 An individual cannot be an Independent Person if at any time during the five years ending with the appointment the person was:-
- (a) a Member, Co-opted Member or officer of East Riding of Yorkshire Council, or
 - (b) a Member, Co-opted Member or officer of a town or parish council within the East Riding of Yorkshire.

7.9 An individual can only be appointed as an Independent Person if:-

- the vacancy has been advertised;
- the individual has submitted an application to fill the vacancy, and
- the appointment has been approved by a majority of the Members of the Council.

8 Access to Meetings and Decision Making

8.1 As Committees/Sub-Committees of the Council, the Standards Committee, Assessment Sub-Committee and Hearing Committees are all subject to the Access to Information requirements.

8.2 The Assessment Sub-Committee will, however, be considering potentially unfounded and damaging complaints, which it may not be appropriate to consider in public. As such, the complaints and reports submitted to this Sub-Committee are likely to be excluded from public circulation and marked as not for publication in accordance with Paragraphs 1 and 2 of Part 1 of Schedule 12A of the Local Government Act 1972. A subsequent meeting may authorise public circulation.

8.3 Standards Committee Assessment Sub-Committee agendas will refer to the Member(s) concerned only by the initial of their surname.

8.4 A written summary of the complaint and decision will be produced following a meeting of the Assessment Sub-Committee.

8.5 The written summary will take the form of a decision notice and will include:-

- The main points considered.
- The opinion of the Independent Person.
- The decision of the Sub-Committee.
- The reasons for the decision taken.

8.6 The notice will generally give the name of the subject Member unless it would not be in the public interest or would prejudice an investigation.

8.7 The notice will be available for inspection for six years and will be sent to any town/parish council concerned, as well as the complainant and the subject Member.

8.8 The Sub-Committee may decide not to give a written summary to the subject Member when a referral decision has been made. In such cases, the subject Member will be provided with the decision notice during the investigation process. Copies will then be sent to the clerk to the relevant town/parish council and produced for public inspection.

9 Withdrawing Complaints

9.1 The Monitoring Officer will not put a complaint before the Assessment Sub-Committee where the complainant seeks to withdraw it before the Assessment Sub-Committee meets to make an initial decision on it.

9.2 Where a complainant wishes to withdraw their complaint once an investigation has commenced, the Assessment Sub-Committee is required to decide whether or not to grant the request.

9.3 The Sub-Committee will consider:-

- Whether the public interest in taking action outweighs the complainant's desire to withdraw it.
- Whether action can be taken without the complainant's participation.
- The underlying reason for the request - whether any pressure has been exerted on the complainant/whether an apology has already been received etc.

10 Multiple Complaints

10.1 Complaints from different people about the same matter may be considered at the same meeting, with one report submitted, which draws all of the information together and highlights any different/contradictory information and offers a recommendation.

10.2 A decision will be made on each complaint and the notification procedure followed for each complaint.

11 Vexatious and Persistent Complaints

11.1 Where the Monitoring Officer considers that the same complaint made by the same person has already been dealt with and there is no new evidence to support the complaint, there is no requirement for the complaint to be considered by the Assessment Sub-Committee.

11.2 Consideration will be given to all allegations made however, to ensure that there is nothing new within the complaint which requires action to be taken.

11.3 Anyone can make a complaint about the conduct of a Member.

12 Confidentiality Requests

12.1 The Council will notify the subject Member, in the decision notice issued after a meeting of the Assessment Sub-Committee, who has complained about them.

12.2 In exceptional circumstances and at the discretion of the Sub-Committee, however, a complainant's identity may be withheld.

12.3 For such a request to be granted the Sub-Committee will consider the following:-

- Whether the complainant believes they will be at risk of physical harm and there is evidence to support this.
- Whether the complainant is an officer of the Council concerned who fears for the consequences of their employment.
- Whether the complainant suffers from a serious health condition and there are medical risks associated with their identity being disclosed.
- Whether it is possible to investigate the complaint without disclosing the complainant's identity.

12.4 In the event that the Sub-Committee refuse a request for confidentiality, it may offer the complainant the option to withdraw the complaint.

13 Anonymous Complaints

13.1 An anonymous complaint will only be accepted if it relates to an exceptionally serious or significant matter.

13.2 An anonymous complaint will only be referred for investigation/other action if it includes documentary evidence or photographic evidence indicating an exceptionally serious or significant matter.

14 Case History

14.1 Documents relating to complaints that the Assessment Sub-Committee decided not to investigate will be kept for at least 12 months following the meeting.

14.2 Documents relating to complaints referred for investigation/other action will be kept for a period of six years. Agendas and minutes for meetings can be accessed via the Council's website.

14.3 The Council, in accordance with requirements placed on it, will also keep a record of cases that allows a search to be undertaken easily by complainant name, Member name and Authority.

15 Publicising the Complaints System

15.1 The Council is required to publish a notice detailing the new Code of Conduct adopted. The Council will include in this notice details of where Code of Conduct complaints should be sent. This notice will be placed in the East Riding Mail/Hull Daily Mail.

15.2 Details of the procedures to be followed in relation to any written allegation received about a Member will be published on the Council's website.

16 Application of Legislation/Guidance

16.1 The process and procedures adopted are, at all times, subject to the Localism Act 2011 and Local Government Act 1972 and Statutory Instruments issued under the Act.

17 Failure to Comply with a Council's Code of Conduct - Whether or Not the Finding is made following an Investigation on behalf of the Monitoring Officer [Section 28(11) Localism Act 2011]

17.1 The Standards Committee will receive a report from the Monitoring Officer if a Member's conduct has failed to comply with the Authority's Code of Conduct as a consequence of being found guilty of an offence as set out in paragraph 34 of the Localism Act 2011.

17.2 In such a circumstance the Standards Committee may make a recommendation to the appropriate council as to whether, and what, action should be taken by the council in relation to the Member.

18 Localism Act 2011 - Offences

- 18.1 A Member will commit a criminal offence if they fail to disclose (ie in their register of interest or declare at a meeting) their pecuniary interests or participate in a discussion or vote on a matter in which they have a pecuniary interest.
- 18.2 The investigation of criminal offences is a matter for the Police. As such, allegations that a Councillor has failed to comply with the provisions of the Localism Act with regard to pecuniary interests can be reported to the Police by complainants as an alternative or in addition to complaints made to the Standards Committee.
- 18.3 There is no requirement placing a responsibility on Members or officers to report such allegations to the Police.

19 Standards Investigations - Conflicts of Interest

- 19.1 Where an investigation is to be undertaken into a Senior Member, in order to address any conflicts of interest, consideration should be given to the investigation being overseen and managed by a Monitoring Officer from a different authority.