

ARRANGEMENTS FOR DEALING WITH COMPLAINTS ABOUT THE CODE OF CONDUCT FOR MEMBERS

Introduction

This procedure applies when a complaint is received that a Herefordshire member, town/parish member or co-opted member, has or may have failed to comply with the adopted code of conduct for members at the time of the alleged breach.

A complaint is confidential and remains so until the complaint is resolved.

Making a complaint

The person making the complaint will be referred to as “the complainant” and the person against whom the complaint is made will be referred to as the “subject member”.

A complaint **must** be made using the standard complaint form (available on the council’s website via the following link):

https://www.herefordshire.gov.uk/info/200148/your_council/61/get_involved/7

The complaint must be submitted in writing by post or email to:-

Information Access Team, Herefordshire Council, Plough Lane, PO Box 4, Hereford HR4 0XH

accesstoinformation@herefordshire.gov.uk

Pre-qualification

The information access team will normally acknowledge on receipt of the complaint within five working days and advise if the complaint will be passed for initial assessment by the monitoring officer or rejected.

The information access team may reject a claim if:

- It is against one or more named members or co-opted members of the council or a town/parish council outside the council’s area;
- The subject member was not in office at the time of the alleged misconduct/or at the time of the complaint;
- The complaint is made anonymously.

Initial Assessment

The monitoring officer will review the complaint and decide whether it should be rejected, merits further consideration, or another course of action.

The monitoring officer will seek the views of the independent person to aid consideration and may also request further information.

This decision will normally be taken within 15 working days of receipt of a complaint.

A complaint will be rejected by the monitoring officer if:

- a) If the complaint is the same or substantially the same as a complaint previously dealt with
- b) If the period since the alleged behaviour is so significant that it is considered to be inequitable, unreasonable or otherwise not in the public interest to pursue
- c) If the complaint is trivial
- d) If the complaint discloses such a minor or technical breach of the Code that it is not in the public interest to pursue
- e) If the complaint is covered by the relevant Council's persistent and vexatious complaints policy and is not considered to disclose sufficiently serious potential breaches of the Code to merit further consideration
- f) If the member against whom the allegation has been made has remedied or made reasonable endeavours to remedy the matter and the complaint does not disclose sufficiently serious potential breaches of the Code to merit further consideration
- g) If the complaint is about a person who is no longer a member of a relevant council and there are no overriding public interest reasons to merit further consideration

If a complaint is rejected, there will be no right of appeal.

If the complaint is rejected the complainant will be advised of the decision. The subject member will not normally be advised that a complaint has been made or of the rejection.

If the complaint is not rejected, the monitoring officer will then go on to apply the following criteria in deciding whether a complaint should be dealt with by another course of action, by monitoring officer resolution or by formal investigation:

- i. Whether the allegation discloses a potential breach of the code of conduct, but the complaint is not serious enough to merit any recommendation other than an apology;
- ii. The resources needed to investigate and determine the complaint are wholly disproportionate to the allegations;
- iii. Whether, in all the circumstances, there is no overriding public interest in carrying out an investigation;
- iv. whether the complaint suggests that there is a wider problem throughout the authority;
- v. whether training or mediation would be the appropriate response;
- vi. whether a substantially similar allegation has previously been made by the complainant;

The decision as to how to proceed will be made by the monitoring officer after seeking the views of the independent persons and shall be final. There shall be no right of appeal.

Monitoring officer resolution

Wherever possible, the monitoring officer will resolve complaints.

The subject member will be asked, within 25 working days of receipt, to make written representations to the monitoring officer which must be taken into account when deciding how the complaint will be dealt with.

If the monitoring officer considers, after consultation with the independent person, that there has been a breach of the code and the matter could reasonably be resolved without the need for a formal investigation, a fair resolution shall be suggested.

Such resolution may include:

- advising the subject member about matters of conduct
- arranging training for the subject member
- advising the subject member that an apology might be appropriate
- suggesting a mediation meeting between the subject member and the complainant

The monitoring officer will report with full reasons (within 10 working days from receipt of information from the subject member) the outcome of the complaint to the complainant, subject member, and if a parish or town councillor to the clerk to the town/parish council (if appropriate), or where the subject member is a member of Herefordshire Council, the relevant group leader(s) will be informed. Where a complaint is upheld, a decision notice will be published on the council's website.

The monitoring officer will seek confirmation that the suggested resolution has been complied with.

The resolution of the complaint by the monitoring officer will be published in the statistics of complaints to Herefordshire council's audit and governance committee annually. The number of complaints against parish councils will be included in the annual report on code of conduct. The names of the councillors and the councils will be included within the annual report together with the degree of successful compliance with the resolution recommended where there has been a breach of the code of conduct.

If the monitoring officer is unable to resolve the complaint then the complaint will be referred to the standards panel for consideration and determination.

Appeals

A subject member who has been found in breach of the code under Monitoring officer resolution may appeal the decision. The subject member may appeal on the following grounds:

- new information is available

- there was procedural unfairness
- the sanction is disproportionate

Where a subject member has been found not to have breached the code, the complainant may appeal:

- where substantial information / evidence which has not been previously considered as part of the complaint is provided.
- there was procedural unfairness

Any appeal must be submitted in writing within 14 working days of the outcome letter.

Formal investigation

Where, in the opinion of the monitoring officer, following consultation with the independent person, a formal investigation is required, the monitoring officer will appoint an investigating officer to investigate the complaint, gather further evidence and prepare a report.

The monitoring officer will review the investigating officer's report, consult the independent person and will then either:

- resolve the complaint under monitoring officer resolution;
- refer the report to a standards panel for decision;
<http://councillors.herefordshire.gov.uk/ieListMeetings.aspx?CId=812&Year=0>
- or suggest another course of action.

Where the subject member is a member of Herefordshire Council, the relevant group leader(s) will be informed of the investigation and the subsequent outcome.

Compliance with sanctions

The decision notices will set out the deadline by any sanction needs to be complied with. In the event of non compliance by the due date, the matter will be referred to the standards panel.

EXPLANATORY NOTES

What is bullying and / or harassment

Those making a complaint usually define what they mean by bullying or harassment – something has happened to them that is unwelcome, unwarranted and causes a detrimental effect.

There are many definitions of bullying and harassment. Bullying (in accordance with the ACAS bullying and harassment at work guidance, June 2014) may be characterised as: offensive; intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient.

Harassment as defined in the Equality Act 2010 is unwarranted conduct related to a relevant protected characteristic which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.

Where a complaint is from a parish council clerk against a councillor, the complaint should be made by the chairperson or parish council as a whole.

Conflict of Interest

Where the monitoring officer has a conflict of interest in determining a complaint, the deputy monitoring officer or a monitoring officer from another authority shall be asked to resolve the complaint.

Confidentiality

As a matter of fairness and natural justice, the subject member should usually be told who has complained about them and receive details of the complaint. However, in exceptional circumstances, the monitoring officer may withhold the complainant's identity if on request from the complainant, they are satisfied that the complainant has evidence and reasonable grounds for believing that they or any witness relevant to the complaint may be at risk of actual harm, or their employment may be jeopardised if their identity is disclosed.

If the monitoring officer decides to anonymise the complaint details from the subject member this will be kept under review.

If the monitoring officer decides to refuse a request by a complainant for confidentiality, they will offer the complainant the option to withdraw the complaint, rather than proceed with their identity being disclosed.

The subject member's response is confidential.

Additional Information

The monitoring officer may require additional information at any stage of the process to come to a decision and may request information from the complainant, subject member and where the complaint relates to town / parish councillor, the clerk of the town/parish council. Such requests will remind those involved of the requirement to keep the matter confidential.

Another course of action

This is not defined but may include mediation, training, other alternative arrangements or where another process or procedure more appropriately applies a referral to that process.

The non-disclosure of a schedule one disclosable pecuniary interest without a reasonable excuse is a criminal offence and could lead to a referral to the Police rather than the matter being dealt with under this procedure. The process for referring such matters to the police will be:

- 1) In the event that the Monitoring Officer receives a complaint regarding a potential disclosable pecuniary interest offence the following steps will be taken:
 - The subject member may be asked for comments or a meeting may be arranged.
 - The independent persons will be provided with the information and a decision made as to whether or not the matter should be referred to the police as an alternative course of action and not dealt with under the code of conduct arrangements.
 - A referral will only be made where the monitoring officer is of the opinion that the member has no reasonable excuse.

Investigation officer

The investigating officer may be a council officer, an officer of another council, or an external investigator.

Independent person

Where possible an independent person may be available to support the subject member through the process where the independent member has not otherwise been involved in the matter.

Standards panel

The parties will be informed of the hearing date and the arrangements in preparation for the meeting. The only witnesses permitted are people referred to in the evidence, and not, for example, character witnesses.

The meeting is held in private as they relate to an individual; although the panel's decisions will be published.

What actions might be taken on the recommendations in the panel's reports?

This list is not exhaustive:

- Publish its findings in respect of the member's conduct;
- Report its findings to council (or to the town/parish council) for information;
- Recommend to council that the member be censured;
- Recommend to the member's group leader (or in the case of un-grouped members, recommend to council) that he/she be removed from any or all committees or sub-committees of the council;
- Recommend to the leader of the council that the member be removed from the cabinet, or removed from their portfolio responsibilities;
- Recommend that the subject member be replace as executive leader;

- Instruct the monitoring officer to (or recommend that the town/parish council) arrange training for the member;
- Recommend to council (or recommend to the town/parish council) that the member should not be appointed and/or be removed from all outside body appointments to which they have been appointed or nominated by the council (or by the town/parish council);
- Withdraw (or recommend to the town/parish council that it withdraws) facilities provided to the member by the council, such as a computer, website and / or email and internet access;
- Exclude (or recommend that the town/parish council 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.
- Require an apology in suitable terms to the standards panel.

This procedure comes into force on 1 November 2019. It will apply to all new complaints received after this date.