

Arrangements for dealing with standards complaints under the Localism Act 2011

1 Context

These “Arrangements” set out how you may make a complaint that an elected or co-opted member of this authority or of a Town or Parish Council within the District of Newark and Sherwood 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 the authority or of a Town or Parish Council within the authority’s area, or of a Committee or Sub-Committee of the authority, has failed to comply with that authority’s Code of Conduct can be investigated and decisions made on such allegations.

Such arrangements must provide for the authority to appoint at least one Independent Person, whose views must be sought by the authority before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the authority at any other stage, or by a member or a member or co-opted member of a Town or Parish Council against whom an allegation has been made.

2 The Code of Conduct

The Council has adopted a [Code of Conduct](#) for members.

Town and Parish Councils are also required to adopt a Code of Conduct. If you wish to inspect a Parish Council’s Code of Conduct, you should inspect any website operated by the Town or Parish Council and request the Parish Clerk to allow you to inspect the Parish Council’s Code of Conduct.

3 Making a complaint

If you wish to make a complaint, please write or email to –

Monitoring Officer
Newark and Sherwood District Council
Castle House
Great North Road
Newark
Notts NG24 1BY

Or –

Monitoringofficer@newark-sherwooddc.gov.uk

The Monitoring Officer is a senior officer of the authority 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.

In order to ensure that we have all the information which we need to be able to process your complaint, please complete and send us the [complaint form](#), which is also available on request from Reception at the Council's main office.

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. If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form, in which case we will not disclose your name and address to the member against whom you make the complaint, without your prior consent. The authority does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

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

4 Will your complaint be investigated?

The Monitoring Officer will review every complaint received and, after consultation with the Independent Person, take a decision as to whether it merits formal investigation. This decision will normally be taken within 14 days of receipt of your complaint. Where the Monitoring Officer has taken a decision, he/she will inform you 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 you for such information, and may request information from the member against whom your complaint is directed. Where your complaint relates to a Town or Parish Councillor, the Monitoring Officer may also inform the Town or Parish Council of your complaint and seek the views of the Town or Parish Council before deciding whether the complaint merits formal investigation.

In appropriate cases, the Monitoring Officer 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 other remedial action by the authority. Where the member or the authority make a reasonable offer of local resolution, but you are not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

If your 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.

In some cases at his or her discretion, the Monitoring Officer may refer the complaint to the Audit and Governance Committee to decide whether or not it should be investigated or other action taken.

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 another senior officer of the authority, an officer of another authority or an external investigator. The Investigating Officer will decide

whether he/she needs to meet or speak to you to understand the nature of your complaint and so that you can explain your 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 you have complained and provide him/her with a copy of your complaint, and ask the member to provide his/her explanation of events, and to identify what documents he needs to see and who he needs to interview. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the member might prejudice the investigation, the Monitoring Officer can delete your 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 you and to the member concerned, to give you both an opportunity to identify any matter in that draft report which you disagree with or which you consider requires more consideration.

Having received and taken account of any comments which you 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/she is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the member concerned and to the Town or Parish Council, where your complaint relates to a Town or Parish Councillor, notifying you that he/she is satisfied that no further action is required, and give you both a copy of the Investigating Officer's final report. Normally this action will be taken in consultation with the independent person. 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.

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 either send the matter for local hearing before the Hearings Panel or, after consulting the Independent Person, 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 you as complainant and seek to agree what you consider 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, and/or other remedial action by the authority. If the member complies with the suggested resolution, the

Monitoring Officer will report the matter to the Audit and Governance Committee (and the Town or Parish Council where appropriate) for information, but will take no further action. However, if you tell the Monitoring Officer that any suggested resolution would not be adequate, the Monitoring Officer may (but does not have to) refer the matter for a local hearing.

7.2 Local Hearing

If the Monitoring Officer considers that local resolution is not appropriate, or you are not satisfied by the proposed resolution (unless the Monitoring Officer considers that you are acting unreasonably, 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 the Hearings Panel 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.

The Council has agreed a procedure for local hearings, which is attached as Appendix B to these arrangements.

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 Chair of the Hearings Panel 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 you as the complainant to attend and give evidence to the Hearings Panel. The member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Hearings Panel as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

The Hearings Panel, 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 Hearings Panel concludes that the member did fail to comply with the Code of Conduct, the Chair will inform the member of this finding and the Hearings Panel will then consider what action, if any, the Hearings Panel should take as a result of the member's failure to comply with the Code of Conduct. In doing this, the Hearings Panel will give the member an opportunity to make representations to the Panel and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

8 What action can the Hearings Panel take where a member has failed to comply with the Code of Conduct?

The Council has delegated to the Hearings Panel 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 Hearings Panel may –

8.1 Censure or reprimand the member;

- 8.2 Publish its findings in respect of the member's conduct;
- 8.3 Report its findings to Council or to the Town or Parish Council for information;
- 8.4 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;
- 8.5 Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 8.6 Recommend to Council that the member be replaced as Executive Leader;
- 8.7 Instruct the Monitoring Officer to or recommend that the Town or Parish Council arrange training for the member;
- 8.8 Remove or recommend to the Town or Parish Council that the member be removed from all outside appointments to which he/she has been appointed or nominated by the authority or by the Town or Parish Council;
- 8.9 Withdraw or recommend to the Town or Parish Council that it withdraws facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
- 8.10 Exclude or recommend that the Town or 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.

The Hearings Panel has no power to suspend or disqualify the member or to withdraw member's allowances or special responsibility allowances.

9 What happens at the end of the hearing?

At the end of the hearing, the Chair will state the decision of the Hearings Panel as to whether the member failed to comply with the Code of Conduct and as to any actions which the Hearings Panel resolves to take.

As soon as reasonably practicable thereafter, the Monitoring Officer will prepare a formal decision notice in consultation with the Chair of the Hearings Panel, and send a copy to you, to the member (and to the Town and Parish Council if appropriate), make that decision notice available for public inspection and report the decision to the next convenient meeting of the Council.

10 Who are the Hearings Panel?

The Hearings Panel is a Sub-Committee of the Audit and Governance Committee.

The Independent Person is invited to attend all meetings of the Hearings Panel and his/her views are sought and taken into consideration before the Hearings Panel 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.

11 Who is the Independent Person?

The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the members of Council.

12 Revision of these arrangements

The Council may by resolution agree to amend these arrangements, and has delegated to the Chair of the Hearings Panel 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.

13 Appeals

There is no right of appeal for you as complainant or for the member against a decision of the Monitoring Officer or of the Hearings Panel

If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.

Standards Complaints

Procedure at the Hearing

1. Interpretation

- 1.1 'Member' means the Member of the authority who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise. It also includes the Member's nominated representative. It also includes any Town and Parish Councillor who is the subject of an allegation being considered by the Standards Committee.
- 1.2 'Investigator' means the Monitoring Officer or other Investigating Officer, and his or her nominated representative.
- 1.3 'Committee' means the Standards Committee or the Hearing Panel to which it has delegated the conduct of the hearing.
- 1.4 'Legal Advisor' means the officer responsible for providing legal advice to the Standards Committee. This may be the Monitoring Officer, another appropriately qualified officer of the authority or someone appointed for this purpose from outside the authority.
- 1.5 'The Chairman' for the purposes of this part of the procedure means the person appointed to preside at the hearing.

2. Purpose of Hearing

The purpose of the hearing is to test the robustness of the Investigating Officer's Report, by examining the reasoning contained within the report and the quality of the evidence relied upon. This calls for an inquisitorial approach by the Standards Committee, based on seeking information in order to identify potential flaws in the report and to clarify issues. The Chairman of the Standards Committee will control the procedure and evidence presented at the hearing, including the questioning of witnesses.

3. Modification of Procedure

- 3.1 The Chairman may agree to vary this procedure in any particular instance where he/she is of the opinion that such a variation is necessary in the interests of fairness.

4. Chairing the Hearing

- 4.1 The Standards Committee or Hearing Panel established to consider the matter will elect a chairman to preside as the first item of business.

5. Representation

5.1 The Member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the Committee, another person.

6. Legal Advice

6.1 The Committee may take legal advice from its legal advisor at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Committee in private session should be shared with the Member against whom the complaint is made and the Investigator.

7. Setting the Scene

7.1 At the start of the hearing, the Chairman shall introduce each of the members of the Committee and shall then explain the procedure which the Committee will follow in the conduct of the hearing.

8. Preliminary Procedural Issues

8.1 The Committee will then deal with the following preliminary procedural matters in the following order:-

(a) Disclosures of interest

The Chairman will ask members of the Committee to disclose the existence and nature of any disclosable pecuniary interests or other relevant interests which they have in the matter, and to withdraw from consideration of the matter if so required.

(b) Quorum

The Chairman shall confirm that the Committee is quorate.

(c) Hearing Procedure

The Chairman shall confirm that all present understand the procedure which the Committee will follow in determining the matter.

(d) Proceeding in the absence of the Member

If the Member is not present at the start of the hearing:

(i) the Chairman shall ask the Legal Advisor whether the Member has indicated his/her intention not to attend the hearing

- (ii) the Committee shall then consider any reasons which the Member has provided for not attending the hearing and shall decide whether it is satisfied that there is sufficient reason for such failure to attend
- (iii) if the Committee is satisfied with such reasons, it shall adjourn the hearing to another date
- (iv) if the Committee is not satisfied with such reasons, or if the Member has not given any such reasons, the Committee shall decide whether to consider the matter and make a determination in the absence of the Member or to adjourn the hearing to another date

(e) Exclusion of Press and Public

The Chairman shall ask the Member, the Investigator and the Legal Advisor to the Committee whether they wish to ask the Committee to exclude the press or public from all or any part of the hearing. If any of them so request, the Chairman shall ask them to put forward reasons for so doing and ask for responses from the others. The Legal Advisor shall be given the opportunity to advise the Committee. The Committee shall then determine whether to exclude the press and public from all or any part of the hearing.

NOTE: The hearing will be held in public apart from the following two situations:-

- (a) where “confidential information” is to be revealed, the Committee must hold such parts of a meeting in private. Confidential information is information provided by a Government department under the condition that it must not be revealed and information that cannot be revealed under any legislation or by a Court order
- (b) where “exempt information” is to be revealed, the Committee may exercise their discretion in deciding whether or not to exclude the public. The categories of exempt information are set out in Schedule 12A of the Local Government Act 1972 and Regulations.

9. Making Findings of Fact

- 9.1 After dealing with any preliminary issues, the Committee should then move on to consider whether or not there are any significant disagreements about the facts contained in the Investigator’s report.
- 9.2 If there is no disagreement about the facts, the Committee can move on to the next stage of the hearing.

- 9.3 If there is a disagreement, the Investigator, if present, should be invited to make any necessary representations to support the relevant findings of fact in the report. With the Committee's permission, the Investigator may call any necessary supporting witnesses to give evidence. The Committee may give the Member an opportunity to challenge any evidence put forward by any witness called by the Investigator.
- 9.4 The Member should then have the opportunity to make representations to support his or her version of the facts and, with the Committee's permission, to call any necessary witnesses to give evidence.
- 9.5 At any time, the Committee may question any of the people involved or any of the witnesses, and may allow the Investigator to challenge any evidence put forward by witnesses called by the Member.

NOTE: If the Member disagrees with most of the facts, it may make sense for the Investigator to start by making representations on all the relevant facts, instead of discussing each fact individually.

- 9.6 If the Member disagrees with any relevant fact in the Investigator's report, without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the hearing. If the Investigator is not present, the Committee will consider whether or not it would be in the public interest to continue in his or her absence. After considering the Member's explanation for not raising the issue at an earlier stage, the Committee may then:-

- (a) continue with the hearing, relying on the information in the Investigator's report
- (b) allow the Member to make representations about the issue, and invite the Investigator to respond and call any witnesses, as necessary; or
- (c) postpone the hearing to arrange for appropriate witnesses to be present, or for the Investigator to be present if he or she is not already

- 9.7 The Chairman shall invite the Legal Advisor to comment on any issues of fact which require further clarification before the Committee goes into private session.
- 9.8 The Legal Advisor shall inform the Committee of the Independent Persons comments.
- 9.9 The Committee will usually move to another room to consider the representations and evidence in private.
- 9.10 On their return, the Chairman will announce the Committee's findings of fact.

10. Did the Member Fail to Follow the Code?

- 10.1 The Committee then needs to consider whether or not, based on the facts it has found, the Member has failed to follow the Code of Conduct.
- 10.2 The Member should be invited to give relevant reasons why the Committee should not decide that he or she has failed to follow the Code.
- 10.3 The Committee should then consider any verbal or written representations from the Investigator.
- 10.4 The Committee may, at any time, question anyone involved on any point they raise in their representations.
- 10.5 The Member should be invited to make any final relevant points.
- 10.6 The Chairman shall invite the Legal Advisor to comment on any matter which requires further clarification.
- 10.7 The Committee will then move to another room in private session to consider the representations.
- 10.8 On their return, the Chairman will announce the Committee's decision as to whether or not the Member has failed to follow the Code of Conduct.

NOTE: The Committee may decide to combine stages 9 and 10 above if it is expedient to do so.

11. If the Member has not Failed to Follow the Code of Conduct

- 11.1 If the Committee decides that the Member has not failed to follow the Code of Conduct, the Committee can move on to consider whether it should make any recommendations to the authority.

12. If the Member has Failed to Follow the Code

- 12.1 If the Committee decides that the Member has failed to follow the Code of Conduct, it will consider any verbal or written representations from the Investigator and the Member as to:-
 - (a) whether or not the Committee should impose a sanction; and
 - (b) What form any sanction should take (Appendix A refers)
- 12.2 The Committee may question the Investigator and Member, and take legal advice, to make sure they have the information they need in order to make an informed decision.
- 12.3 The Committee will then move to another room, in private session, to consider whether or not to impose a sanction on the Member and, if so, what the sanction should be.

- 12.4 On their return, the Chairman will announce the Committee's decision.
- 12.5 If the Member the subject of the complaint is a town and parish councillor, the committee may only make recommendations on sanctions to the relevant Town and Parish Council.

NOTE: If it is expedient to do so the Committee may combine stages 9, 10 and 12.

13. Recommendations to the Authority

- 13.1 After considering any verbal or written representations from the Investigator, the Committee will consider whether or not it should make any recommendations to the authority, with a view to promoting high standards of conduct among members.

14. The Written Decision

- 14.1 The Committee will announce its decision verbally on the day of the hearing. It will issue a full written decision as soon as practicable after the end of the hearing.

15. The Close of the Hearing

- 15.1 The Chairman will thank all those present who have contributed to the conduct of the hearing and formally close the hearing.

APPENDIX A

SANCTIONS AVAILABLE TO THE COMMITTEE

- Censure (naming and shaming)
- Reporting its findings to Council [*or to the Town/Parish Council*] for information;
- Recommending to the member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) (including Town/Parish Councils where appropriate) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- Recommending to the Leader of the Council that the member be removed from any position of responsibility;
- Instructing the Monitoring Officer to [*or recommend that the Town/Parish Council*] arrange training for the member;

- Removing *[or recommend to the Town/Parish Council that the member be removed]* from all outside appointments to which he/she has been appointed or nominated by the authority *[or by the Parish Council]*;
- Withdrawing *[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; or
- Excluding *[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.

NOTE: In the case of an investigation relating to a town or parish councillor, the Committee will make recommendations on sanctions to the relevant Town or Parish Council.

APPENDIX B

PROCEDURE FOR CONDUCTING HEARINGS – SUMMARY VERSION

1. Chairman opens hearing:
 - (i) Introduces the Members of the Hearing Panel and the other parties present (Member against whom complaint made, Investigating Officer and other officers).
 - (ii) Explains procedure as follows: *“The Investigation Officer will give a summary of their report and their conclusions. The Member who is the subject of the investigation can then ask questions of the Investigating Officer. The Panel may also wish to ask questions. The Subject Member will then present their case. The Investigating Officer may wish to ask questions of the Subject Member. The Panel may also wish to ask further questions. At the end of this process the Panel will ask the parties to leave whilst they consider their conclusions on the facts and on whether there has been a breach of the code. The parties will then be asked to return and to make representations on what sanctions should be imposed if we decide that there has been a breach”.*

2. Chairman asks Members of the Panel if they have any interests to declare.
3. Chairman invites Investigating Officer to present summary of their report.
4. Chairman invites Subject Member to question Investigating Officer.
5. Chairman invites Members of Panel to question Investigating Officer.
6. Chairman invites Subject Member to present their case.
7. Chairman invites Investigating Officer to question Member.
8. Chairman invites Members of Panel to question Member.
9. Chairman asks parties to leave room so that Panel can retire in private to:
 - (a) Reach its conclusions on the facts;
 - (b) Decide if there has been a breach of the code.
10. Parties are invited to come back to the room.
11. Chairman advises parties of conclusions reached.
12. Chairman (where appropriate if there is a breach) invites firstly Investigating Officer then Subject Member to give their views on what sanction should be imposed. Chairman may seek legal advice.
13. Chairman asked parties to leave room whilst Panel sits in private to decide on appropriate sanctions.
14. Parties invited to return.
15. Chairman advises parties of decision. Informs parties that it will be confirmed in writing in the next few days.
16. Chairman closes hearing and thanks everybody for their attendance.