

PRESTON CITY COUNCIL

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

1. Introduction

- 1.1 These “arrangements” set out how you may make a complaint that an elected or co-opted Member of this Authority (or of a Parish Council within its area) has failed to comply with the relevant Authority’s Code of Conduct and sets out how this Authority will deal with allegations of a failure to comply with the relevant Authority’s Code of Conduct.
- 1.2 Under Section 28(6) and (7) of the Localism Act 2011, the Council must have in place “arrangements” under which allegations that a Member or a co-opted Member of the Authority (or of a Parish Council within its area) has failed to comply with that Authority’s Code of Conduct can be investigated and decisions made on such allegations.
- 1.3 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 to investigate and whose views may be sought by the Authority at any other stage, or by a Member (or a Member or co-opted Member of a Parish Council) against whom an allegation has been made.
- 1.4 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.”
- 1.5 No Member or officer will participate in any stage of the arrangements if he or she has, or may have, any personal conflict of interest in the matter.

2. The Code of Conduct

- 2.1 The Authority has adopted a Code of Conduct for Members, which is attached as Appendix 1 to these arrangements and is available for inspection on the Authority’s website and on request from reception, at the Town Hall.
- 2.2 Each Parish Council is 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 Parish Council or request the Parish Clerk to allow you to inspect the Parish Council’s Code of Conduct.

3. Making a complaint

- 3.1 A complaint must be made in writing by post or email on the template attached to:

The Monitoring Officer
Preston City Council
Town Hall
Lancaster Road
Preston
PR1 2RL

OR

c.parmenter@preston.gov.uk

- 3.2 The Monitoring Officer will acknowledge receipt of the complaint within 5 working days of receiving it and, at the same time, write to the Subject Member (and in the case of a complaint about a Parish Councillor to the Clerk of the Parish Council as well providing a summary of the complaint made against them, including the name of the Complainant. Where the Complainant has requested confidentiality their details will not be disclosed until their request for confidentiality has been considered by the Monitoring Officer / Complaints Panel.
- 3.3 The Subject Member will be offered the opportunity to discuss the complaint with an Independent Person who will not have been involved in any consultation with the Monitoring Officer.
- 3.4 The Council will not consider anonymous complaints, unless there is a clear public interest in doing so.

4. Complaint Initial Assessment

- 4.1 The Monitoring Officer will review the complaint and, after consultation with the Independent Person, take a decision (a Complaint Initial Assessment) as to whether it merits investigation, or another course of action. This decision will normally be taken within 20 working days of receipt of a complaint.
- 4.2 If the complaint is about the Leader or Deputy Leader of the Council or is one made by the Chief Executive, then the Complaint Initial Assessment shall be undertaken by the Complaints Panel, in consultation with the Monitoring Officer and the Independent Person. This decision will normally be taken within 20 working days of the receipt of a complaint.
- 4.3 A complaint will be rejected if it fails to meet one or more of the following tests:
- a) The complaint is against one or more named Members or co-opted Members of the Council or a Parish Council within its district;

- b) The Subject Member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time;
- c) The complaint, if proven, would be a breach of the Code of Conduct under which the Subject Member was operating at the time of the alleged misconduct.
- d) The complaint is anonymous (unless the Monitoring Officer determines that it is in the public interest to consider it).

4.4 On the assumption that the complaint passes the tests at 4.3 above, the complaint will be assessed. The following criteria will be considered when deciding whether a complaint should be accepted for investigation, dealt with informally, or to take no action on the matter.

- a) Has a substantially similar allegation previously been made by the Complainant to Standards for England, or the Standards Committee, or the complaint has been the subject of an investigation by another regulatory authority?
- b) Is the complaint about something that happened so long ago that those involved are unlikely to remember it clearly enough to provide credible evidence, or where the lapse of time means there would be little benefit or point in taking action now?
- c) Does the allegation disclose a potential breach of the Code of Conduct, but the complaint is not serious enough to merit any action and / or:
 - (i) the resources needed to investigate and determine the complaint are wholly disproportionate to the allegations?
 - (ii) whether, in all the circumstances, there is no overriding public benefit in carrying out an investigation?
- d) Does the complaint appear to be malicious, vexatious, politically motivated or tit-for-tat?
- e) Does the complaint suggest that there is a wider problem throughout the authority?
- f) Is it apparent that the subject of the allegation is relatively inexperienced as a Member, or has admitted making an error and the matter would not warrant a more serious sanction?
- g) Would training or conciliation be the appropriate response?
- h) In all the circumstances what is a reasonable method of disposal for the complaint?

5. Additional Information

- 5.1 The Monitoring Officer / Complaints Panel may require additional information to come to a decision and may request information from the Complainant and / or Subject Member. Where the complaint relates to a Parish Councillor, the Monitoring Officer may also inform the Clerk of the Parish Council of the complaint and seek the views of the Clerk of the Parish Council before deciding whether the complaint merits formal investigation, other action or no action. In appropriate cases, the Monitoring Officer / Complaints Panel may seek to resolve the complaint informally, without the need for an investigation. Such informal resolution may involve the Subject Member accepting that his/her conduct was unacceptable and offering an apology, or taking other steps. Where the Subject Member (in appropriate cases) makes a reasonable offer of informal resolution, but it is rejected by the Complainant, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

6. Possible Outcomes from the Complaint Initial Assessment

- 6.1 The complaint may be rejected because it fails to meet one or more of the tests at 4.3 a–d above.
- 6.2 The complaint progresses to investigation.
- 6.3 The complaint, whilst it discloses a potential breach of the Code of Conduct, is not serious enough to merit any action, therefore no further action.
- 6.4 The complaint is settled by way of informal resolution following negotiation between the Monitoring Officer and the parties (eg apology / withdrawal of complaint etc).
- 6.5 The complaint does not progress any further, but other courses of action are recommended eg mediation; training as being reasonable methods of disposal of the complaint (other action).

7. Police Referral

- 7.1 If the complaint identifies criminal conduct or breach of other regulations by any person, the Monitoring Officer is authorised to report this to the Police or other prosecuting or regulatory authorities.

8. Confidentiality

- 8.1 If a Complainant has asked for their identity to be withheld, this request will be considered by the Monitoring Officer / Complaints Panel at the Complaint Initial Assessment stage.

- 8.2 As a matter of fairness and natural justice, the Subject Member has a right to know who has made the complaint against them. However, In exceptional circumstances, the Monitoring Officer / Complaints Panel may withhold the Complainant's identity if on request from the Complainant, or otherwise, if they are satisfied that the Complainant has reasonable grounds for believing that they or any witness relevant to the complaint may be at risk of physical harm, or his or her employment may be jeopardised if their identity is disclosed, or where there are medical risks (supported by medical evidence) associated with the Complainant's identity being disclosed or any other special circumstances.
- 8.3 If the Monitoring Officer / Complaints Panel decide to refuse a request by a Complainant for confidentiality, they will offer the Complainant the option to withdraw the complaint, rather than proceed with his or her identity being disclosed. The Monitoring Officer / Complaints Panel will balance whether the public interest in taking action on a complaint will outweigh the Complainant's wish to have his or her identity withheld from the Subject Member.
- 8.4 In the event that a Complainant withdraws their complaint the Monitoring Officer may, following consultation with the Independent Person, decide to continue to deal with the complaint where the complaint is serious.

9. Investigation

- 9.1 The Monitoring Officer will appoint an Investigating Officer where a complaint merits formal investigation. The Investigating Officer may be a Council officer, an officer of another Council, or an external investigator.
- 9.2 The Investigating Officer will follow guidance issued by the Monitoring Officer on the investigation of complaints. The guidance will follow the principles of proportionality and the cost-effective use of the Authority's resources and shall be interpreted in line with these principles.
- 9.3 The Investigating Officer will ensure that the Subject Member receives a copy of the complaint – subject to the Monitoring Officer decision on Confidentiality.
- 9.4 At the end of their investigation, the Investigating Officer will produce a draft report and will send copies of that draft report to the Complainant and to the Subject Member, for comments. The Investigating Officer will take such comments into account, before issuing their final report to the Monitoring Officer.

10. Investigating Findings

10.1 Investigating Officer finding of insufficient evidence of failure to comply with the Code of Conduct

- 10.1.1 The Monitoring Officer will review the Investigating Officer's report and, if she is satisfied that the Investigating Officer's report is satisfactory,

will make a Confirmation Decision to confirm the finding of no failure to comply with the Code of Conduct.

10.1.2 The Monitoring Officer will write to the Complainant and the Subject Member (and to the Clerk of the Parish Council, where the complaint relates to a Parish Councillor), with a copy of the Confirmation Decision and the Investigating Officer's final report.

10.1.3 If the Monitoring Officer is not satisfied that the investigation has been conducted satisfactorily, the Investigating Officer may be asked to reconsider their report and conclusion.

10.2 Investigating Officer finding of sufficient evidence of failure to comply with the Code of Conduct

10.2.1 The Monitoring Officer will review the Investigating Officer's report and will then consult with the Independent Person and, either send the matter for Local Hearing before the Hearings Panel or, refer for Local Resolution.

11. Local Resolution

11.1 If the Monitoring Officer in consultation with the Independent Person considers that the matter can reasonably be resolved without the need for a hearing, they will consult with the Subject Member and the Complainant and seek to agree a fair resolution. Such resolution may include the Subject Member accepting that their conduct was unacceptable and offering an apology, and/or other remedial action. If the Subject Member accepts the suggested resolution, the Monitoring Officer will report the outcome to the Standards Committee and the Clerk to the Parish Council (if appropriate) for information, but will take no further action. If the Complainant or the Subject Member refuses Local Resolution in principle or to engage with the agreed outcome, the Monitoring Officer will refer the matter for a Local Hearing without further reference to the Complainant or the Subject Member.

12. Local Hearing

12.1 Where, in the opinion of the Monitoring Officer and in consultation with the Independent Person Local Resolution is not appropriate or the Complainant and/or Subject Member refuse to co-operate, 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 Subject Member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Subject Member.

12.2 Local Hearings will be conducted in accordance with the Authority's procedures.

13. Constitution of the Hearings Panel

- 13.1 The Hearings Panel is a Sub-Committee of the Council's Standards Committee. The Council has decided that it will comprise 3 Members of the Standards Committee. Where the complaint is about a Parish Member, the Hearings Panel will include at least 1 of the Parish Members co-opted to the Standards Committee.
- 13.2 In addition, the Independent Person is required to attend all meetings of the Hearings Panel and their views must be sought and taken into consideration before the Hearings Panel takes any decision on whether the Subject 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.

14. The Independent Person

- 14.1 The Independent Person must be a person who has applied for the post following advertisement of a vacancy for the post, and appointed by a positive vote from a majority of all the Members of Council at a meeting of the Full Council.
- 14.2 A person is not eligible for appointment if they:
- a) Are, or have been within the past 5 years, a Member, co-opted Member or officer of the Council;
 - b) Are or have been within the past 5 years, a Member, co-opted Member or officer of a parish council within the City, or
 - c) Are a relative or close friend, of a person within paragraph a) or b) above. For this purpose, "relative" means:
 - (i) Spouse or civil partner;
 - (ii) Living with the other person as husband and wife or as if they were civil partners;
 - (iii) Grandparent of the other person;
 - (iv) A lineal descendent of a grandparent of the other person;
 - (v) A parent, sibling or child of a person within paragraphs (i) or (ii);
 - (vi) A spouse or civil partner of a person within paragraphs (iii), (iv) or (v);
 - (vii) Living with a person within paragraphs (iii), (iv) or (v) as husband and wife or as if they were civil partners.

15. Sanctions available to the Hearing Panel where a Member has failed to comply with the Code of Conduct

15.1 Where a Hearings Panel find that a Subject 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 Subject Members as may be necessary to promote and maintain high standards of conduct. Accordingly the Hearings Panel may:

- a) Publish its findings in respect of the Subject Member's conduct;
- b) Report its findings to Council (or to the Parish Council) for information;
- c) Recommend to Council that the Subject Member be censured;
- d) Recommend to the Subject Member's Group Leader (or in the case of ungrouped Subject Members, recommend to Council) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- e) Recommend to the Leader of the Council that the Subject Member be removed from the Executive, or removed from their Portfolio responsibilities;
- f) Instruct the Monitoring Officer to (or recommend that the Parish Council) arrange training for the Subject Member;
- g) Recommend to Council (or recommend to the Parish Council) that the Subject Member be removed from all outside body appointments to which they have been appointed or nominated by the Council (or by the Parish Council);
- h) Withdraw (or recommend to the Parish Council that it withdraws) facilities provided to the Subject Member by the Council, such as a computer, website and/or email and Internet access; or
- i) Exclude (or recommend that the Parish Council exclude) the Subject 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.

16. Appeals

16.1 Subject to Judicial Review, or a decision of the Local Government Ombudsman, there is no right of appeal against a decision of the Monitoring Officer / Complaints Panel or of the Hearings Panel.