

# **Essex County Council**

**Procedure for the  
Investigation and Hearing of  
Complaints against Members**

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## CHAPTER ONE

### 1 INTRODUCTION

- 1.1 The Localism Act 2011 requires Essex County Council to have a code of conduct for members and to establish processes for considering allegations that a councillor has not complied with the code.
- 1.2 This document sets out the process to be followed when an allegation is made.
- 1.3 Any reference to the Monitoring Officer includes a reference to a person authorised to act on behalf of the Monitoring Officer.

### 2 INITIAL ASSESSMENT

- 2.1 The Monitoring Officer will decide whether a complaint
- Can be investigated?
  - Should be investigated?
- 2.2 A complaint **can** only be investigated if all the following apply:
- the person complained about is currently a member of ECC;
  - they were a member at the time of the alleged conduct;
  - they were acting as a member at the time of the alleged conduct; and
  - the conduct complained of could, if proven, arguably be a breach of the code.
- 2.3 In deciding whether a complaint **should** be investigated we will consider whether any of the following apply to the alleged breach:
- It appears to be a politically motivated complaint
  - It is more appropriately considered as a complaint about
    - a decision made by or on behalf of the Council; or
    - a complaint about ECC's services.
  - Investigation would be disproportionate or not in the public interest
  - The complainant is unable to provide any evidence in support of the allegation.
  - It relates to matters which took place a long time ago, making investigation difficult or disproportionate.
  - The complaint duplicates another one which has already been dealt with and there is no reason to believe that this complaint would result in a different outcome
- 2.4 After considering this the Monitoring Officer will write to the complainant either
- confirming that the matter will be investigated; or

- explaining why it is proposed that the allegation should not be investigated and giving the complainant a period, normally at least 14 days, to respond to the provisional decision.
- 2.5 If it is proposed not to be investigated, the Monitoring Officer will refer the complaint, and the complainant's response to an Independent Person for their views. In this document 'Independent Person' means a person appointed by the Council under the Localism Act 2011.
- 2.6 Subject to paragraph 2.7, a final decision on investigation will be made by the Monitoring Officer following consideration of
- the views expressed by the Complainant;
  - the views expressed by the Independent Person;
  - the views expressed by the Chairman of the Audit, Governance and Standards Committee (who must be consulted if the Monitoring Officer does not propose to take a decision which aligns with the view expressed by the Independent Person).
- 2.7 The Monitoring Officer may ask the Audit, Governance and Standards Committee to decide whether a complaint should be investigated. This may happen, for example, where the Monitoring Officer feels unable to act for some reason. If the decision on whether or not to investigate is referred to the Audit, Governance and Standards Committee for a decision then the procedure in Annex 1 will apply and the view of an independent person will be sought and presented to the Committee.
- 2.8 The Member and the Complainant will be informed about the decision. In any case where no further action is taken, the Monitoring Officer may wish to have an informal discussion with the Member concerned to advise on reducing the risk of complaints in future.

### **3 INVESTIGATIONS**

- 3.1 Where a complaint is to be investigated, the Monitoring Officer has delegated power to investigate.
- 3.2 The Monitoring Officer will either carry out the investigation personally or may appoint another officer to carry out the investigation. In this document 'Investigator' refers to the person who is carrying out the investigation.
- 3.3 When conducting an investigation, the Investigator may make inquiries of any person he or she thinks necessary. However, there is no legal obligation for that person to respond.
- 3.4 The investigation must be undertaken fairly. In particular:
- (a) The member concerned must be given enough information to enable them to respond to the allegation.

- (b) Information supplied by any person should be recorded in writing, in the form of a statement if appropriate.
  - (c) Further information should be sought from the complainant if necessary to consider a relevant point made by a complaint.
- 3.5 On completion of an investigation, the Investigator must produce a draft report which should include draft findings.
- 3.6 The draft report must be sent to the councillor concerned and the complainant, on a confidential basis, giving them 14 days in which to comment.
- 3.7 The Investigator must then produce a final report which sets out whether the Investigator has found there to be one or more breaches of the code of conduct. If it was not possible to make a finding, then the Investigator should make that clear in their report.
- 3.8 The Investigator must send their final report to:
  - (a) The Complainant.
  - (b) The Councillor concerned.
  - (c) An Independent Person
  - (d) The Monitoring Officer (if the Monitoring Officer has not investigated personally).
- 3.9 The Independent Person shall be given seven days to provide advice on the draft report, or such longer period as is reasonable in the circumstances.
- 3.10 The Monitoring Officer will consider the report of the Investigator and the advice of the Independent Person and shall reach a view on whether he or she feels there has been a breach of the code of conduct. If necessary, the Monitoring Officer may ask for further investigations to be conducted before reaching a view. The Independent Person must be consulted again if further investigations result in more information being available or a change in the conclusion of the report.
- 3.11 The Monitoring Officer will refer the matter to a Standards Sub-committee for a hearing if they conclude that there has been a breach of the code of conduct.
- 3.12 If the Monitoring Officer concludes that there has not been a breach of the code of conduct then they may either:
  - (a) Close the complaint without referring the matter to the Hearings Sub-Committee; or
  - (b) Refer the matter to the Standards Sub-committee for a hearing.
- 3.13 In any case where no further action is taken, the Monitoring Officer may wish to have an informal discussion with the member concerned to advise on reducing the risk of complaints in future..
- 3.14 If the decision is that the matter should proceed to a Hearing then the process in Annex 2 should be followed.

## **Annex 1 – Procedure to be followed by the Audit, Governance and Standards Committee when it considers whether a complaint should be investigated**

- 1.1 The Committee will normally meet within 10 working days of decision to refer the decision to the Committee.
- 1.2 The meeting will normally be held in private because it is likely to involve disclosure of personal data which is likely to be unfair when there has been no investigation or conclusion.
- 1.3 At the start of the meeting the Chairman shall invite the Monitoring Officer to explain that the Committee is required to decide whether, with respect to each allegation:
  - (a) the Monitoring Officer should arrange for an investigation; or
  - (b) the Monitoring Officer should make any other arrangements in relation to the member concerned, for example, mediation, apology, training or an alternative measure to address the issue that has arisen; or
  - (c) no action should be taken.
- 1.4 The committee shall take into account the criteria set out in paragraph 2.2 and 2.3 of this document and the views of an independent person.
- 1.5 The Monitoring Officer will prepare a written summary of the Committee's decision.
- 1.6 The decision notice will be sent to the relevant parties within 5 working days and will be made available for public inspection, unless it is not in the public interest to do so or is likely to prejudice any subsequent investigation.

## **Annex 2 – Standards Sub-committee Procedure**

### **1. Before the Hearing**

#### **Date of Hearing**

- 1.1 A meeting of the Standards Sub-Committee will be convened by ECC's Head of Democracy and Transparency in consultation with the Chairman of the Audit, Governance and Standards Committee which shall normally take place within three months after the final report was sent to the Monitoring Officer.
- 1.2 Any objection to the proposed Hearing date must be notified in writing to the Monitoring Officer as soon as possible. The Head of Democracy and Transparency will act reasonably in considering any requests for an alternative Hearing date but is not obliged to re-schedule the Hearing, having particular regard to the requirement to convene a Hearing within three months. The Monitoring Officer will consult with the Chairman before re-scheduling the meeting.

#### **Pre-Hearing Questionnaire**

- 1.3 Prior to the Hearing, the Monitoring Officer may ask the Member to complete a Pre-Hearing Questionnaire in respect of the findings in the report and other issues relevant to the Hearing. If a Questionnaire is sent it will ask some or all of the following questions:
  - Do you agree with the Investigator's findings of fact? If not, please set out which findings you disagree with
  - Do you agree you have breached the code of conduct as set out? If so, would you be willing to make an apology to the complainant? Would you be willing to undergo training if necessary in order to avoid a further breach occurring in future?
  - Will you be attending the Hearing or do you intend to submit only written representations?
  - Will you be represented by a solicitor or barrister or other person at the Hearing? If so, please confirm who and whether that person is connected to the matter in any way.
  - Do you wish to call any witnesses? If so, please provide the name and contact details for those witnesses and a brief description of the evidence each witness will give.
  - Do you intend to ask the Sub-Committee to consider any documentary or other written evidence not already provided? If so, please provide copies when responding to this questionnaire.
  - Do you wish to have any documents withheld from the public and, if so, please give your reasons for this request?

- Is there any reason why you would like the Committee to depart from its usual practice of holding hearings in public.;
- Do either you, or your witnesses or representative have any special access requirements or other special requirements?

1.4 The Member will be asked to respond to the Questionnaire within 14 days from the date the Questionnaire was sent.

### **The Investigator**

1.5 The Monitoring Officer shall ask the Investigator to comment on:

- the response to the Questionnaire provided by the Member (if any) and whether the Investigator is able to accept any of the points raised in it.
- whether the Investigator would like to call any witnesses and, if so, to provide the name and contact details for those witnesses and a brief description of the evidence they will give if different to the summary of their evidence in the Investigator's report.
- whether the Investigator will be asking the Sub-Committee to consider any documentary or other written evidence not already provided (other than the report of the investigation) and, if so, to provide copies.
- whether he or she thinks the Hearing should be held in private and, if so, the reasons why.
- whether he or she would wish to have any documents withheld from the public and, if so, why.
- any comments or questions on the proposed procedure.
- Whether the Investigator or any witnesses the Investigator intends to call have any special access requirements or other special requirements

### **Pre-Hearing Summary**

1.6 The Monitoring Officer will write to the investigator and the member with a Pre-Hearing Summary setting out:

- the name of the Authority
- the name of the Member
- the name of the Complainant (unless in the Monitoring Officer considers that there are special circumstances which mean that the name of the Complainant should not be revealed)
- the name of the Investigator
- the name of the Chairman of the Sub-committee that will hear the matter

- the date, time and place of the Hearing
- a summary of the allegation
- the findings of fact of the Investigator
- the findings of fact which are not agreed by the Member, if any, the reasons for that disagreement and the comments from the Investigator on those reasons
- a list of persons expected to attend the meeting, including any witnesses who have been invited to attend
- whether the Sub-committee is likely to be asked to limit the number of witnesses who may be called
- whether the person named by the Member as his or her representative (if not a solicitor or barrister) is likely to be permitted to act as the Member's representative
- a list of documents to be considered by the Sub-Committee, including any written representations which the Member has asked to be placed before the Sub-committee (copies of the documents will be enclosed if possible but in any event will be sent to the parties prior to the Hearing)
- a list of any documents that have been or will be withheld from the public
- whether the Hearing is likely to take place in private
- whether there are anticipated to be any departures from the procedure set out in this Procedure Note which have not already been notified to the Parties.

### **Disputes on the Pre-Hearing Summary**

- 1.7 If, having received the Pre-Hearing Summary, the Member and/or the investigator disagrees with any part of it they shall forthwith give notice of the disputed issues to the Monitoring Officer and should then seek to resolve the disputed issues through the Monitoring Officer prior to the Hearing. If necessary, the Member or the complainant can contact the Monitoring Officer to arrange a convenient time to meet the Monitoring Officer to discuss the issues. Any unresolved issues will be dealt with as a preliminary matter at the Hearing. Failure to notify the Monitoring Officer of any issues of dispute or any failure to attempt to resolve those issues with the Monitoring Officer prior to the Hearing may mean that the Sub-committee may decline to listen to the Member or the complainant on the disputed issues at the Hearing.

### **Agenda for the meeting**

- 1.8 The agenda for the meeting shall include
- The investigator's report
  - The advice of the independent person

- A note of the procedure to be followed
- Any further material submitted by the member or the investigator which reasonably relates to the issues to be considered at the hearing.
- The pre-hearing summary if available when the agenda is finalised.

## **2 At the Hearing**

- 2.1 The Sub-committee's quorum is three. Substitute Sub-committee members may be appointed where the original member cannot attend a scheduled Hearing. Sub-committee decisions will be made by simple majority with the Chairman having a casting vote in the case of equality.
- 2.2 The standard of proof to be applied is the balance of probabilities in any findings against the Member.
- 2.3 The Sub-committee may take advice from the Monitoring Officer at any time during the Hearing or while they are considering the outcome. This advice may be taken in private.
- 2.4 The Member may be represented or accompanied by a solicitor, counsel or, with the permission of the Sub-committee, another person.

### **Absent Member**

- 2.5 If the Member is not present at the time the Hearing is due to start the Sub-Committee may delay the start or adjourn if they consider this is appropriate, having considered any representations received.

### **Chairman to deal with preliminary matters**

- 2.6 At the start of the Hearing, the Chairman will deal with the following preliminary matters:
- Introductions of all persons present.
  - Declarations of interest.
  - Whether the parties have received a note of the procedure to be followed at the Hearing.
  - An explanation of the procedure to be followed (the Chairman may invite the Monitoring Officer to explain the procedure) and whether the procedure that will be followed is different to the procedure described in this Procedure Note (again, the Chairman may invite the Monitoring Officer to address this issue). Any questions on the procedure will also be dealt with.
  - Whether there are any outstanding issues or disagreements on the Pre-Hearing Summary and whether they have already been raised by the Member with the Monitoring Officer prior to the Hearing and whether there was any attempt at resolving them.
  - (if relevant) whether the Member is entitled to be represented by the person nominated by him or her (if not a barrister or solicitor).

- whether all or any part of the Hearing should be conducted in private (if this has been requested by any party)
- whether a limit should be placed on the number of witnesses which the Member or the Investigator will be entitled to call and if so, how many. This may be, for example, if the Sub-committee considers that witnesses will simply repeat earlier evidence or if their evidence is not relevant.
- any other preliminary matter

### **Explanation of Pre-Hearing Summary**

- 2.7 The Chairman may ask the Monitoring Officer to present the Pre-Hearing Summary and the views of the independent person.

### **Findings of Fact**

- 2.8 The Chairman will ask the Monitoring Officer to explain the findings of fact and those in respect of which the Member has given notice of dispute, if any.
- 2.9 If there is no dispute on the findings of fact the Chairman will, subject to the following paragraphs, move on to address whether there has been a breach of the Code of Conduct and in so doing will move onto the next stage in the process (section 4).
- 2.10 If there are any disputes on the findings of fact which have been notified to the Monitoring Officer, the Chairman will invite the Member or his or her representative to briefly outline the findings of fact which he or she disagrees with.
- 2.11 The Member may only raise any dispute on the findings of fact if this was raised in the response to the questionnaire or if the Sub-committee agree that there are exceptional reasons why this could not have been done. If the Sub-committee do give permission, then it may be necessary to adjourn the hearing.
- 2.12 Once the Member or his or her representative has briefly outlined the findings of fact with which the Member disagrees, the Investigator will be invited to make submissions to support the relevant finding(s) of fact in the report which are disagreed and may, with the Sub-committee's permission, call any necessary supporting witnesses to give evidence.
- 2.13 The Chairman may give the Member an opportunity to challenge any evidence put forward by any witness called by the Investigator. All challenges will be put through the Chairman of the Sub-Committee.
- 2.14 The Chairman will then give the Member an opportunity to make submissions to support his or her version of the facts and, with the Chairman's permission, to call witnesses to give relevant evidence.
- 2.15 The Chairman may give the Investigator an opportunity to challenge any of the evidence put forward by the Member or witnesses called by the Member or his representative. All challenges will be put through the Chairman of the Sub-Committee

2.16 At any time the members of the Sub-Committee and the Monitoring Officer may, with the permission of the Chairman, question any of the people involved or any of the witnesses.

### **3. Deliberations on Findings of Fact**

3.1 The Sub-Committee will retire to deliberate in private with assistance from the Monitoring Officer or other officer in order to decide on the findings of fact.

3.2 The Sub-Committee will then reconvene and the Chairman will announce the Sub-committee's findings of fact.

### **4. Establishing whether there was a Breach of the Code of Conduct**

4.1 Once the Chairman has announced the findings of fact, the Sub-Committee will go on to consider whether or not, based on the facts, the Member has breached the Code of Conduct.

4.2 The Chairman will invite the Member to make submissions on the reasons why, if any, he or she does not consider there to have been a breach of the Code of Conduct.

4.3 The Chairman will then invite the Investigator to respond to the Member's submission, and to identify which sections of the code, they consider that the Member has breached.

4.4 Members of the Sub-committee and the Monitoring Officer may at any time, but with permission of the Chairman, question anyone involved on any point raised in their submissions.

4.5 The Chairman will then invite the Member to make any final relevant points.

4.6 The Sub-committee will then retire to consider the submissions in private with assistance from the Monitoring Officer.

4.7 Once the Sub-committee has made its decision, the Chairman will announce the Sub-Committee's decision as to whether or not the Member has breached the Code of Conduct.

4.8 In reaching its decision the Sub-committee shall make one of the following findings:

- (a) that the Member had not failed to comply with the Code of Conduct;
- (b) that the Member had failed to comply with the Code of Conduct but that no action needs to be taken in respect of the matters which were considered by the Sub-Committee;
- (c) that the Member had failed to comply with the Code of Conduct and that a sanction should be imposed.

#### **Where there is a Finding of No Breach of Code or No Further Action**

4.9 If the Sub-committee finds no evidence of any breach of the Code of Conduct or if it finds that there is a breach but no further action is required to be taken, then no further action shall be taken save that the Chairman may set out any recommendations which the Sub-Committee considers should be made to the authority or to all or any of its members with a view to promoting high

standards of conduct. The Chairman will seek the views of the Member, the Investigator and the Monitoring Officer before the Sub-committee makes any such recommendations.

#### **Deliberations following Finding of Breach of Code**

- 4.10 If the Sub-committee finds that the Member did breach the Code of Conduct, the Chairman will invite the Monitoring Officer to explain to those present what sanctions are available to the Sub-committee. The Monitoring Officer may where appropriate describe what sanctions have been imposed by Sub-committees at previous Hearings and any sanctions imposed specifically in relation to the Member concerned. Examples of the sanctions which are available to the Sub-committee are set out below.

#### **The sanctions (all or any of the following):**

- (a) Censuring or reprimanding the member or recommending the Council to do so;
- (b) Reporting its findings to Council;
- (c) Recommending to the Member that he or she make an apology to the complainant if they have not already done so.
- (d) Recommending to the appropriate person or body that the member be removed from any or all Committees or Sub-Committees of the Council or the Cabinet;
- (e) Requesting the Monitoring Officer to arrange training for the Member;
- (f) Recommending to the appropriate person or body that the Member be removed from all outside appointments to which the member has been appointed or nominated by the Authority;
- (g) Withdrawing facilities provided to the Member by the Council e.g. photocopying facilities if that facility was previously abused by the member concerned;
- (h) Excluding 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.
- (i) recommending to the appropriate person or body that a Member's membership of one or more committees or other bodies should be suspended such time as he or she submits a written apology in a form specified by the Sub-Committee;
- (j) a recommending to the appropriate person or body that a Member's membership of one or more committees or other bodies should be suspended for a period up to a maximum of six months or until such time

as he or she undertakes such training or conciliation as the Sub-Committee may specify;

‘the appropriate person’ includes, where relevant, the Leader of the Member’s political group.

- 4.11 The Chairman may invite the Investigator to make any submissions that they wish to make about the sanction that he or she considers would be reasonable to impose and the date when it should take effect.
- 4.12 The Chairman will invite the Member to respond to the comments from the Investigator (if any) and to make submissions on the sanction to be imposed, the time when it should run from and any mitigating circumstances he or she believes may exist.
- 4.13 The Sub-Committee shall then retire once more to decide in private with assistance from the Monitoring Officer or Legal Adviser:
  - i whether to impose a sanction
  - ii where a sanction is to be imposed -
    - (a) what that sanction should be; and
    - (b) when that sanction should commence, how long it should be for, whether the sanction should be suspended and, if so, in what circumstances; and
  - iii. any recommendations the Sub-committee considers it should make to the authority or any other person or body.
- 4.14 In determining the sanction to be imposed, the Sub-committee should consider all relevant information, including the factors listed in the following section of this guidance.
- 4.15 A sanction will normally take immediate effect but the Sub-Committee can direct or recommend that it commence on any date within a period of six months after the imposition of the sanction. For example, if there are no meetings which the Member would otherwise attend in the next few months the imposition of an immediate sanction would in practice have little impact and it may therefore be appropriate for the Sub-Committee to delay the start imposition of the sanction.

#### **Written decision of Findings**

- 4.16 The Monitoring Officer shall in conjunction with the Chairman prepare a short written notice of the decision and the reasons for that decision and he or she shall send a copy to the Member, the Complainant and the members of the Sub-committee as soon as possible after the close of the Hearing. In the case of a suspended sanction, it will include an explanation of the steps which need to be taken by the Member if he or she is to avoid the sanction coming into effect.

- 4.17 Within two weeks after the close of the Hearing, the Monitoring Officer shall prepare a full written decision of the Sub-committee and shall send it to the following people:
- the Member
  - the Investigator.
  - the members of the Sub-committee
  - the Audit, Governance and Standards Committee (or equivalent) of any other authority involved
  - the person(s) who made the allegation.
- 4.18 Where the Sub-committee finds that there has not been a failure to comply with the Code of Conduct then the full report shall state that fact and shall state the reasons for that finding.
- 4.19 Where the Sub-committee finds that there has been a failure to comply with the Code of Conduct but that no action needs to be taken in respect of that failure then the full report shall state that fact and shall also state the details of the failure and the reasons for the Sub-committee's finding.
- 4.20 Where the Sub-committee finds that there has been a failure to comply with the Code of Conduct then the full report shall state that fact and shall also state the details of the failure, the reasons for the Sub-committee's finding and the sanction to be imposed.

## Annex 3

### Considerations on Appropriate Sanctions

1. When deciding what sanction to impose, the Sub-committee should make sure that it is reasonable and in proportion to the Member's behaviour. Before deciding what penalty to set, the Sub-committee should consider the following issues:
  - What were the consequences of the failure to follow the Code of Conduct for the Member, the Council and others?
  - How serious was the incident?
  - Did the Member know (or should reasonably have known) that he or she was failing to follow the Code of Conduct?
  - Did the Member get advice from officers before the incident? Was that advice acted upon in good faith?
  - Has there been a breach of trust?
  - Has there been financial impropriety (for example, improper expense claims or procedural irregularities)?
  - Does the Member accept he or she was at fault?
  - Did the Member apologise to the relevant people?
  - Did the Member agree to attend conciliation or training?
  - Has the Member previously been warned or reprimanded for similar misconduct and/or been found to be in breach of the Code on a previous occasion?
  - Is the Member likely to do the same thing again?
  - Are there any other factors that need to be considered?
  - Are there any cost implications for the Council e.g. the cost of arranging training or conciliation?
  - What is fair, reasonable and proportionate in all the circumstances?