



## Arrangements for dealing with standards allegations (against a Parish Councillor) under the Localism Act 2011

### **1 Context**

The “Arrangements” set out how you may make a complaint that an elected or co-opted member of a parish council within the area of West Lindsey has failed to comply with the Parish Council’s Code of Conduct. They set out how West Lindsey District Council (WLDC) will deal with allegations of a failure to comply with the Parish Council’s Code of Conduct.

Under Section 28(6) and (7) of the Localism Act 2011, the District Council must have in place “arrangements” under which allegations that a member or co-opted member of a parish council within the authority’s area has failed to comply with that authority’s Code of Conduct can be investigated and decisions made on such allegations.

The 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. The Independent Persons views can be sought by the authority at any other stage, or by a member or co-opted member of a parish council against whom an allegation has been made.

Complaints which relate to an allegation that took place more than 6 months ago will not be accepted, unless in the view of the Monitoring Officer, if proven, they would result in significant breaches of the Code.

The Monitoring Officer will appoint a Deputy to oversee complaints in which he is referenced.

## 2 The Code of Conduct

Each Parish Council has adopted 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 and request the parish clerk to allow you to inspect the Parish Council's Code of Conduct.

## 3 Making a complaint

The Monitoring Officer is a senior officer of WLDC and has statutory responsibility for maintaining the register of members' interests and is responsible for administering the system in respect of complaints of member misconduct.

In order to ensure that the Monitoring Officer has all the information which he needs to be able to process your complaint, please complete and return the complaint form. The complaint form can be downloaded from the authority's website, or may be obtained on request by telephoning the Monitoring Officer, on 01427 676509.

The Monitoring Officer will aim to acknowledge receipt of your complaint within 5 working days of receiving it, and will keep you informed of the progress of your complaint. The person complained about will be supplied with a copy of your complaint form at the same time. The Monitoring Officer will also send a copy of the acknowledgement letter to the Parish Clerk and the Local Ward Member(s) for information only and **in confidence**.

**Please note at this time the information you provide to us will not be made available in the public domain.**

## 4 Will your complaint be investigated?

The Monitoring Officer will review your complaint.

To assist him in doing this he will seek the views of the Local Ward Member(s) **in confidence**. Local Ward Members will be provided with a copy of the complaint and will be asked to submit any comments they have in writing to the Monitoring Officer within 5 working days. They will be asked to state any conflict of interest they may have. Local Ward Members who do not respond in the initial five days, will be given a further 5 days to respond after which time Non responses will not be chased up further. It will be at the Members discretion as to whether they participate in the process at this stage.

At the same time a copy of the complaint will also be shared with the Independent Member. They too will be asked to submit any comments they have in writing to the Monitoring Officer within 5 working days.

On receipt of any written responses and after consultation with the Independent Person the Monitoring Officer will take a decision as to whether the complaint merits formal investigation. This decision will normally be taken within 20 days of receipt of your complaint. Where the Monitoring Officer has taken a decision, you will be informed of the decision, and the reasons for that decision, in writing.

Where the Monitoring Officer requires additional information in order to come

to a decision, he may come back to you for such information. Also information may be requested from the member against whom your complaint is directed. Such requests will be made in writing. The Monitoring Officer may also seek the views of the Parish Council **in confidence**, 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, known as a local resolution, may involve the member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action suggested 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.

## **5 How is the investigation conducted?**

If the Monitoring Officer decides that a complaint merits formal investigation, an Investigating Officer will be appointed who may be another senior officer of WLDC, an officer of another authority or an external investigator.

The method for recording any interviews will be a decision for the Investigating Officer, however an audio recording will be taken on request;

The Investigating Officer will decide whether he/she needs to meet or speak to you **confidentially** to understand the nature of your complaint. You will have the opportunity to explain your understanding of events and suggest what documents the Investigating Officer needs to see, and who the Investigating Officer needs to interview. All persons interviewed will be asked to maintain confidentiality at this stage in the process. Persons interviewed will also be advised that should the matter proceed to a public hearing, there will be full disclosure of all statements made in connection with the investigation. It will be the responsibility of the Investigating Officer to make contact with any witnesses you as the complainant identify.

The Investigating Officer would normally write, **in confidence**, to the member against whom you have complained and ask the member to provide his/her explanation of events and to identify what documents he/she needs to see and who needs to be interviewed. All persons interviewed will be asked to maintain confidentiality at this stage in the process. Persons interviewed will also be advised that should the matter proceed to a public hearing, there will be full disclosure of all statements made in connection with the investigation. It will be the responsibility of the Investigating Officer to make contact with any witnesses you as the subject member identify.

At the end of the Investigating Officer's investigation a draft report will be produced and a copy will be sent, **in confidence**, to you and to the member concerned. You will both be given the opportunity to identify any matter in that draft report which you disagree with or which you consider requires more consideration.

Having received and taken into account of any comments which you may make on the draft report, the Investigating Officer will send a final report to the Monitoring Officer.

The Investigating Officer will aim to complete this stage of the process within 3 months of your having been advised that the complaint will be investigated. On occasion this may need to be extended but all parties will be advised if this is the case.

**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 Parish Council **in confidence**, 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.

**Please note if your complaint is resolved at this stage of the process all of the information provided to us in connection with the complaint will not be made available in the public domain.**

**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 after consulting with the Independent Person either send the matter for local hearing before the Hearings Panel or 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 the Monitoring Officer will consult with the Independent Person and with you as complainant to seek to agree what you consider to be a fair resolution. This 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 suggested by the Parish Council.

If the member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Sub-Committee and the Parish Council for information, but will take no further action. This report will be considered in closed session.

However, if you tell the Monitoring Officer that any suggested resolution would not be adequate, the Monitoring Officer will then make a decision along with the Independent Person as to whether to refer the matter for a local hearing.

The Monitoring Officer's decision and reasons for proceeding to Local Hearing will be fully documented and provided to all parties.

The Monitoring Officer has the final decision as to whether a complaint should proceed to Local Hearing.

## 7.2 Local Hearing

If the Monitoring Officer considers that local resolution is not appropriate, or the member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will refer the Investigating Officer's report to the Hearings Panel. The Hearings Panel will conduct a local hearing (usually in public) 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.

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. The Chair of the Hearings Panel may issue directions as to the manner in which the hearing will be conducted.

It should be noted that a Hearing can proceed in the absence of the subject member if the MO is not satisfied with their reason for non-attendance.

Full disclosure of all witness statements gathered in connection with the complaint will be made available at this stage in the process.

At the hearing, the Investigating Officer will present the final report, call such witnesses as considered 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 this. 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 Hearings Panel will endeavor to take into account all aspects of the particular case and look at the picture as a whole. In order to help a Parish Council to develop and improve functionality, the Hearings Panel may –

- 8.1 Report its findings to the Parish Council for information;
- 8.2 Recommend that the Parish Council arrange training for the Member;
- 8.3 Recommend to the 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;
- 8.4 Recommend specific action or training to the Parish Council to aid its development and improve functionality;
- 8.5 Recommend to the 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
- 8.6 Recommend that the 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.

## **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 (usually within 5 working days), the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Hearings Panel, and send a copy to you, the member and the Parish Council. That decision notice will be made available for public inspection and displayed on the website for 3 months. The decision will be reported to the next convenient meeting of the Governance and Audit Committee.

## **10 Who are the Hearings Panel?**

The Hearings Panel is made up of 3 members selected from the Standards Sub-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.

A person cannot be “independent” if he/she –

- 11.1 Is, or has within the past 5 years, been a member, co-opted member or officer of the authority;
- 11.2 Is or has been within the past 5 years, a member, co-opted member or officer of a parish council within the authority’s area, or
- 11.3 Is a relative, or close friend, of a person within paragraph 11.1 or 11.2 above. For this purpose, “relative” means –
  - 11.3.1 Spouse or civil partner;
  - 11.3.2 Living with a person within paragraphs 11.1 or 11.2 as husband and wife or as if they were civil partners;
  - 11.3.3 Grandparent of a person within paragraphs 11.1 or 11.2;
  - 11.3.4 A lineal descendent of a grandparent of a person within paragraphs 11.1 or 11.2;
  - 11.3.5 A parent, sibling or child of a person within paragraphs 11.3.1 or 11.3.2;
  - 11.3.6 A spouse or civil partner of a person within paragraphs 11.3.3, 11.3.4 or 11.3.5; or
  - 11.3.7 Living with a person within paragraphs 11.3.3, 11.3.4 or 11.3.5 as husband and wife or as if they were civil partners.

## **12 Appeals**

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

The decision would be open to judicial review by the High Court if it was patently unreasonable, or if it were taken improperly or if it sought to impose a sanction which the authority had no power to impose.