

APPENDIX 1

**ARRANGEMENTS FOR DEALING WITH COUNCILLOR CODE OF CONDUCT**  
**COMPLAINTS**

SECTION 28 LOCALISM ACT 2011

These arrangements are made under Sections 28(6) and (7) of the Localism Act 2011, and set out how East Hampshire District Council (EHDC or the Council) will receive and deal with complaints that a Councillor (Member) has failed to comply with their relevant Code of Conduct.

These arrangements apply to complaints relating to EHDC Councillors and Town and Parish Councillors within EHDC's area.

**1. Making a Complaint**

- 1.1. A complaint that a Councillor has failed to comply with the requirements of their relevant Code of Conduct where possible must be made in writing on the [complaint form](#) to: the Monitoring Officer at [Monitoring.Officer@easthants.gov.uk](mailto:Monitoring.Officer@easthants.gov.uk)
- 1.2. A complaint may be sent by post or e-mail together with any supporting documentation or information to the Monitoring Officer.
- 1.3. The postal address is : The Monitoring Officer, EHDC, PO Box 310, Petersfield, GU32 9HN.
- 1.4. The complaint form and general information can also be found on the EHDC website.
- 1.5. The written complaint should provide full details of the conduct complained of, any dates the incidents took place and how it is considered that the conduct complained of is alleged to constitute a breach of the relevant Code of Conduct. Please supply as much supporting documentation as possible.
- 1.6. For EHDC, the Code of Conduct for Councillors can be found [here](#).

1.7. For Town or Parish Councils, these can be found on their relevant website or by request to the Town or Parish Clerk.

## **2. Confidentiality**

1.1. As a matter of natural justice, a Councillor is entitled to know the identity of the person making the complaint.

1.2. The Councillor must be able to properly understand the complaint made against them and that includes knowing the identity of the complainant as that may directly impact on their response or the assessment criteria below.

1.3. Anonymous complaints are unlikely to be progressed.

1.4. Where a complainant is identified but wishes to remain anonymous, this needs to be balanced against the rights of the Councillor.

1.5. A request can be made to withhold a complainant's identity, the Monitoring Officer will only grant this request in exceptional circumstances and if there is a clear public interest to do so.

## **3. Scope**

1.1. The Monitoring Officer is only able to deal with allegations about breaches of Codes of Conduct for EHDC Councillors or Town or Parish Councils in its district.

1.2. If the complaint is about a Council decision or service, please direct this through the Council's relevant complaint process.

1.3. Complaints about compliance with the standing orders or internal procedures of a Town or Parish Council are not within the scope of these arrangements and should be directed to the Town or Parish Clerk.

## **4. Independent Person**

1.1. These arrangements provide for the Council to appoint at least one Independent Person, whose views must be sought by the Council before it takes a decision on an allegation which it has decided should be investigated and whose views can be sought by the Council at any other stage.

1.2. The Independent Person is a statutory role under the Localism Act 2011 and is

appointed from a pool of individuals independent of the Council.

1.3. The Independent Person helps ensure a process is adopted that is reasonable and fair to the Complainant and the Councillor.

## 2. **Complaint Process**

1.1. When a complaint is received, the Monitoring Officer will acknowledge receipt of the complaint, in writing, within 10 working days of receipt.

### 1.2. **Initial Filter**

The Monitoring Officer will consider the complaint and may reject it at the outset if any of the following apply:

- 1.1.1. the Councillor being complained about is no longer a Councillor;
- 1.1.2. the complaint is made anonymously;
- 1.1.3. the same, or substantially the same issue has been the subject of a previous Code of Conduct complaint and there is no further benefit in pursuing this complaint;
- 1.1.4. the complaint is essentially against the action of a Council as a whole and cannot properly be directed against individual Councillor(s);
- 1.1.5. the complaint does not relate to the conduct of a Councillor and is a service complaint or other matter;
- 1.1.6. the complaint is against an officer of EHDC or a Town or Parish Council;
- 1.1.7. the Councillor being complained about was not acting in a Council or public capacity;
- 1.1.8. The complaint does not disclose any potential breach of the Code of Conduct;
- 1.1.9. The complaint discloses a potential breach of the Code of Conduct but:
  - i. it is not in the public interest or reasonable to progress the complaint;
  - ii. it is not a reasonable use of public funds to progress the complaint;
  - iii. the nature of the complaint does not appear serious enough to warrant further action;
  - iv. the issue is minor and the Councillor complained about has already accepted their breach and offered an apology;
  - v. the complaint or pattern of complaints appear to be malicious or politically motivated or tit-for-tat;
  - vi. the complaint is part of a pattern of complaints that appears to be symptomatic of internal issues or conflict within an authority;
  - vii. the complaint has been unduly delayed without reasonable cause

and the undue delay has or is likely to result in the Councillor being so unfairly prejudiced that it would be wholly unreasonable to deal with the complaint;

- viii. the complaint has been the subject of an investigation by another regulatory authority and no finding of breach has been made against the Councillor complained about;
- ix. the complaint is currently the subject of an investigation by another regulatory authority and it would be necessary to await the outcome of that investigation. The complaint may be reopened following notification of the outcome of the investigation.

5.3 The complainant will be notified of the Monitoring Officer's decision, in writing, within 10 working days after the acknowledgement.

## **6. Assessment**

- 1.1. If the complaint is accepted, the Monitoring Officer will write to the Councillor who is the subject of the complaint. If they are a Town or Parish Councillor, the Monitoring Officer will also write to the relevant Town or Parish Clerk, with full details of the complaint including any supporting documentation received.
- 1.2. The assessment process is conducted on a confidential basis at this stage because the matters complained of have not yet been substantiated against the Councillor who is the subject of the complaint.
- 1.3. The Councillor and Town or Parish Clerk will be asked to provide a written response to the complaint, within 10 working days of receipt of the details of the complaint from the Monitoring Officer.
- 1.4. The Monitoring Officer can request any further information from any of the parties during this process.
- 1.5. The Monitoring Officer can extend any timescales as are appropriate and reasonable.
- 1.6. If the Councillor fails to respond to the complaint, the complaint may be assessed on the basis of the information available.
- 1.7. When the Monitoring Officer considers they have all the necessary information, the Monitoring Officer will apply the following considerations in making the assessment:

- i. while the complaint discloses a potential breach of the Code of Conduct, it would not be in the public interest or a reasonable use of public funds to investigate the complaint;
- ii. while the complaint discloses a potential breach of the Code of Conduct, the nature of the complaint does not appear serious enough to warrant further action;
- iii. while the complaint discloses a potential breach of the Code of Conduct, the nature of the complaint would be suitable for an informal resolution ;
- iv. the Councillor complained about has accepted their breach and offered an apology;
- v. the complaint or pattern of complaints appear to be malicious or politically motivated or tit-for-tat;
- vi. the complaint or pattern of complaints appear to be symptomatic of internal issues or conflict within an authority;
- vii. the complaint has been unduly delayed without reasonable cause and the undue delay has or is likely to result in the Councillor being so unfairly prejudiced that it would be wholly unreasonable to deal with the complaint;
- viii. the complaint has been the subject of an investigation by another regulatory authority and no finding of breach has been made against the Councillor complained about;
- ix. the complaint is currently the subject of an investigation by another regulatory authority and it would be necessary to await the outcome of that investigation. (The complaint may be reopened following notification of the outcome of the investigation.

## **7. Consultation**

- 1.1. The Monitoring Officer will consult with the Independent Person and Chairman or Vice Chairman of the Standards Committee, on the assessment, investigation or outcome as they consider appropriate.
- 1.2. The Monitoring Officer may at any time consult and inform the subject Councillor's group leader or group administrator as they consider appropriate.
- 1.3. The Monitoring Officer may refer a matter to the EHDC Standards Committee or its Sub-Committee, as they consider appropriate.
- 1.4. The subject Councillor may also consult with the Independent Person on matters specifically relating to the complaint about them.

## **8. Assessment outcomes**

The Monitoring Officer may reach the following decisions:

- a) to take no further action in respect of the complaint;
- b) that the complaint is suitable for an informal resolution or other action;
- c) to refer the complaint for investigation.

The Monitoring Officer will write to all the parties with the decision within 10 working days of completing the assessment.

## **9. Appeal**

1.1. There is no right of appeal to the Monitoring Officer's decision although a complaint can be made to the Local Government and Social Care Ombudsman about how the complaints process has been administered.

1.2. <https://www.lgo.org.uk/>

## **10. Reporting of Complaints to Standards Committee**

The Monitoring Officer will provide a report to each scheduled Standards Committee meeting on the complaints received and decisions taken on them.

## **11. Investigation**

1.1. Where a complaint is referred for investigation, the Monitoring Officer will arrange for the investigation to be undertaken by an Officer of the Council, or by an external investigator (Investigating Officer).

1.2. If the Investigating Officer finds no evidence of a failure to comply with the Code, the Monitoring Officer may close the matter, in consultation with the Independent Person.

1.3. The Monitoring Officer may still refer the matter to the Standards Committee if in their absolute discretion they consider it appropriate.

1.4. Where an investigation finds evidence of failure to comply with the Code of Conduct, the Investigating Officer may recommend that the matter is suitable for a local resolution, taking into account the public interest and judicious use of public resources.

1.5. The Monitoring Officer may agree a local resolution, in consultation with the

Independent Person. The Monitoring Officer may also consult with the Chairman (or Vice-Chairman) of the Standards Committee as appropriate.

- 1.6. Where the Monitoring Officer has concluded the complaint, the Monitoring Officer may provide the Standard Committee with a report on the matter. Where the Monitoring officer has not concluded the complaint and the formal investigation finds evidence of a failure to comply with the Code of Conduct, the Monitoring Officer may arrange for the Standards Committee to sit as a Hearing Committee (the Hearing Committee).
- 1.7. The subject Councillor may respond to the investigation report and the Committee will determine whether the Councillor did fail to comply with the Code of Conduct and what action, if any, is appropriate.
- 1.8. The Investigation Procedure, Hearing Committee's Pre-hearing and Hearing Procedures are set out at the Appendices to this document.

## **2. The Hearing Committee**

The Hearing Committee will be advised by an Independent Person and the Monitoring Officer.

## **3. Sanctions**

- 3.1. Where the Hearing Committee finds that the Councillor has breached their Code of Conduct, the sanctions open to the Standards Committee are:
  - i. to censure the Councillor;
  - ii. to request that the Councillor apologise;
  - iii. to report the findings to Full Council;
  - iv. to recommend that the Councillor's Group Leader removes the Councillor from any or all Committees;
  - v. to recommend that the Councillor is removed from all outside appointments to which they have been appointed to by the Council;
  - vi. to recommend to the Executive Leader that the Councillor be removed from the Cabinet or particular portfolio responsibilities or outside appointments to which they have been appointed to by the Executive;
  - vii. to withdraw Council facilities, such as a computer, or to exclude the Councillor from the Council's offices with the exception of meeting rooms as necessary for attending meetings of Council/Committee;
  - viii. to recommend appropriate training for the Councillor;

3.2. With regard to Town or Parish Councillors, the Standards Committee may make a recommendation to the Town or Parish Council on action to be taken in respect of the Councillor and must be within the scope of the above sanctions.

3.3. The Standards Committee has no power to suspend or disqualify the Councillor or to withdraw or suspend allowances.

3.4. There is no right of appeal against a decision of the Standards Committee.

#### **15. Conflicts of Interest**

The Monitoring Officer will discuss with both the Chairman and the Vice-Chairman of the Standards Committee, the management of any possible perceived conflicts of interest arising between group memberships and membership of the Hearing Committee.



## APPENDIX A

### INVESTIGATION PROCEDURE

1. When a complaint is referred by the Monitoring Officer or the Standards Committee for investigation, the Monitoring Officer will within ten working days or as soon as is reasonably practicable, inform the Councillor who is the subject of the allegation of failure to comply with the Code of Conduct, (“the Subject Councillor”), the person who made the allegation (“the Complainant”), and the Clerk to any Town or Parish Council concerned that the matter has been referred for investigation.
2. The Monitoring Officer may appoint an Investigating Officer who may be an Officer of the Council, or an external investigating Officer (the Investigating Officer). The Investigating Officer may appoint persons to assist him/her in the conduct of the investigation, and may obtain such professional advice as may be necessary. The Monitoring Officer will inform the Subject Councillor and the Complainant of the appointment of the Investigating Officer. The costs of an investigation are met from public funds through EHDC.
3. The Investigating Officer may make such inquiries as they think necessary or expedient for the purposes of conducting the investigation, and may request any person to give such information or explanation as the Investigating Officer thinks necessary or expedient for the purpose of conducting the investigation. The Investigating Officer may require any of the relevant authorities concerned to provide such advice and assistance as may reasonably be needed to assist in the investigation, and to provide reasonable access to such documents in the possession of that authority as appear to the Investigating Officer to be necessary for the purpose of conducting the investigation.
4. Statements or notes will be prepared and agreed where possible with each person interviewed during an investigation, including the Subject Councillor. The Subject Councillor will be advised that they may be accompanied by a professional representative or advisor, a Group colleague or friend during the interview. Any other person interviewed may be accompanied by a friend or representative if they so wish. Any accompanying person, is under a duty of confidentiality and it is the responsibility of the Councillor to ensure compliance.

5. The Investigating Officer will complete the investigation within a reasonable period of time according to the nature of the complaint and the extent of the investigation required.
6. The Investigating Officer, having concluded the investigation, will consider whether to produce a draft report before the final report. A draft report may be appropriate where the facts are complex or ambiguous, or where the facts are disputed. Any draft report will be issued to the Subject Councillor and the Complainant for review and comment and will indicate that it does not necessarily represent the Investigating Officer's final conclusion.
7. If the Investigating Officer issues a draft report, the Investigating Officer will consider whether the responses to the draft report reveal a need for further investigation or for changes to the report. In some complex cases, the Investigating Officer may wish to issue a second draft report before the final report.
8. The Investigating Officer's final report will include all relevant documents, and copies of all statements or notes of meetings obtained during the investigation. The report will commence with a statement of the Investigating Officer's conclusion. The conclusion will indicate if the evidence supports a failure to comply with the Code of Conduct of the Council or Parish or Town Council.
9. The Investigating Officer will submit the final report to the Monitoring Officer with appropriate recommendations.

## APPENDIX B

### PRE-HEARING PROCEDURE

1. Where an investigation report concludes that there has been a breach of the Code of Conduct, and the matter cannot otherwise be resolved by local resolution, a hearing will be arranged within two months of receipt of the investigation report or as soon as reasonably practicable. The hearing will be a meeting of the Standards Committee convened specifically for that purpose (the Hearing Committee).
2. A copy of the investigation report will be sent to the Subject Councillor, the Complainant, the Clerk to the Town or Parish Council if the subject is a Town or Parish Councillor and the Chairman or Vice Chairman of Standards Committee.
3. The Subject Councillor may provide written response within 15 working days, which response shall set out the Subject Councillor's reply to the Investigating Officer's report and shall state if they:
  - a. disagree with any of the findings of fact in the report, giving the reasons for any disagreement;
  - b. wish to be accompanied at a hearing by any person;
  - c. wish to give evidence to the Committee, either orally or in writing;
  - d. wish to ask any person to give evidence to the Committee;
  - e. wish any part of the hearing to be held in private;
  - f. wish any part of the Investigating Officer's report or other relevant documents to be withheld from the public.
4. The Subject Councillor shall be informed that if, at the meeting of the Hearing Committee, they seek to dispute any matter contained in the Investigating Officer's report without having previously notified the intention to do so, the Hearing Committee may refuse to allow the disputed matters to be raised unless satisfied that there are good reasons why they have not been raised beforehand.
5. Upon receipt of the Subject Councillor's response, the Investigating Officer shall be invited to comment on it within ten working days. If the report is disputed the Investigating Officer must indicate if they are appointing another officer or person to present the evidence upon which the report was based.

6. Upon receipt of the Investigating Officer's response, the Monitoring Officer will consider the responses of the Subject Councillor and the Investigating Officer and set a date for the hearing in consultation with the Chairman of the Hearing Committee. Owing to the cost and complexity in arranging committee hearing dates, exceptional reasons will be required to justify changing an agreed date.
7. The Monitoring Officer will decide, taking into account any representations made, whether any part of the hearing should take place in private or if any reports or documents should be withheld from the public.
8. If the Subject Councillor has indicated they wish a person to attend to give evidence, the Hearing Committee may in its absolute discretion agree to hear from that person. A question may only be asked with the permission and absolute discretion of the Chairman of the Committee.
9. Nothing in this procedure shall limit the Chairman of the Hearing Committee from requesting the attendance of any additional witnesses whose evidence they consider would assist the Committee to reach its decision.

## APPENDIX C

### **HEARING PROCEDURE**

1. The Hearing Committee shall decide, on a balance of probabilities, on the evidence presented to it, whether the complaint is upheld or not.
2. All matters shall be decided by a simple majority of votes cast. If there are equal numbers, the Chair shall have a second and casting vote.
3. The Independent Person shall attend the hearing in an advisory, non-voting capacity.
4. The meeting will be open to the press and public unless confidential or exempt information is likely to be disclosed.
5. The Chairman may agree to vary any part of the hearing procedure, in any particular instance, where they are of the opinion that such variation is necessary in the interests of fairness and natural justice.
6. The Subject Councillor may be accompanied during the meeting by another person to support, advise or assist them.
7. The Committee may take legal advice at any time during the hearing or during its deliberations. The substance of any advice given to the Committee will be shared with the Subject Councillor and the Presenting/Investigating Officer if they are present at the hearing.
8. At the start of the hearing, the Chairman shall introduce each of the members of the Committee, the Independent Person, the Subject Councillor (if present), the Investigating Officer (if present) and any other Officers present, and shall then explain the procedure which the Committee will follow in the conduct of the hearing.
9. The Committee shall then confirm that it is quorate, and deal with any disclosures of interests.

10. If the Subject Councillor is not present at the start of the hearing:
  - a. The Chair will ask the Monitoring Officer if the Subject Councillor has provided any explanation.
  - b. The Committee shall then consider any reasons which the Subject Councillor have provided for not attending the hearing and shall decide if there are any exceptional circumstances for an adjournment to be justified. A Committee Hearing should not be postponed more than once.
  - c. If the Subject Councillor has not given any reasons for non-attendance and no exceptional circumstances have been identified, the Committee shall proceed with consideration of the matter and make a determination in the absence of the Subject Councillor.
  
11. The Presenting/Investigating Officer will present their report. If there is disagreement over the facts, the Presenting/Investigating Officer will present the evidence which is relevant to the facts in dispute. With the permission of the Committee, witnesses can be called to give relevant evidence. With the permission of the Chairman of the Committee, the Subject Councillor, the Committee members and the Independent Person may ask questions of a witness.
  
13. The Subject Councillor will then present the evidence that is relevant to the facts in dispute. With the permission of the Committee, witnesses can be asked to give relevant evidence. With the permission of the Chairman of the Committee, the Subject Councillor, the Committee members and the Independent Person may ask questions of a witness.
  
14. If the Subject Councillor disagrees with any relevant fact in the report without having given prior notice, they must provide reasons as why no prior notice was given. The Committee may continue with the hearing, relying on the information in the report, may allow the Subject Councillor to make representations about the issue and invite the Presenting/Investigating Officer to respond. The Committee may in exceptional circumstances postpone the hearing.
  
15. After both parties have presented their case, the Committee will consider in private, with the Independent Person, all the evidence which it has heard in order to establish its findings of fact, and to reach a conclusion as to whether there has been a failure to comply with the Code of Conduct.

16. At any stage in the consideration of the matter, the Committee may return to ask further questions of the Investigating Officer or the Subject Councillor or seek further information. The other party will be given an opportunity to comment upon the questions asked or the responses made.
17. The Committee will reconvene to announce the decision reached.
18. In the event of a finding of a breach of the Code, the Hearing Committee may agree on all or a combination of the following sanctions:
  - to censure the Councillor;
  - to request that the Councillor apologise;
  - to report the findings to Full Council;
  - to recommend that the Councillor's Group Leader removes the Councillor from any or all Committees;
  - to recommend that the Councillor is removed from all outside appointments to which they have been appointed to by the Council;
  - to recommend to the Executive Leader that the Councillor be removed from the Cabinet or particular portfolio responsibilities or outside appointments to which they have been appointed to by the Executive;
  - to withdraw Council facilities, such as a computer, or to exclude the Councillor from the Council's offices with the exception of meeting rooms as necessary for attending meetings of Council/Committee;
  - to recommend appropriate training for the Councillor.
19. With regard to Town or Parish Councillors, the Hearing Committee may make a recommendation to the Town or Parish Council on action to be taken in respect of the Councillor and must be within the scope of the sanctions listed at paragraph 18 above.
20. The Standards Committee has no power to suspend or disqualify the Councillor or to withdraw or suspend allowances.

Flow Chart – Appendix 1

