

# **REVISED PROTOCOL FOR INVESTIGATION OF COMPLAINTS ABOUT ELECTED AND CO-OPTED MEMBERS OF CUMBRIA COUNTY COUNCIL**

## **STANDARDS COMMITTEE**

### **Introduction**

This Protocol sets out the procedure that will be followed by the Council's Monitoring Officer on receipt of a complaint that an elected or co-opted member of the Council has breached the Member's Code of Conduct.

The role of the Monitoring Officer in dealing with complaints about members is to review every complaint received and make a decision as to whether it merits formal investigation.

Where it appears that formal investigation may be appropriate, the Monitoring Officer will refer the complaint to the Standards Committee.

In order to reach a decision as to whether a complaint should be referred to the Standards Committee, the Monitoring Officer will ordinarily follow the procedure set out below.

However, in certain cases the Monitoring Officer may decide that the complaint should be immediately referred to the Standards Committee, for example where the complaint is particularly sensitive.

The Monitoring Officer may consult with the Independent Person at any point that he/she considers it may be appropriate or beneficial to the complaint process and will consult the Independent Person where specified under this Protocol.

The Monitoring Officer may vary this procedure, including any timescales referred to, when he/she considers it desirable in the interests of justice or fairness or the effective conduct of the matter to do so.

If the Monitoring Officer has a conflict of interest in relation to the complaint, for example if he/she has formally advised the member on the matter previously, the Monitoring Officer will appoint another person to carry out the procedure, and will have no further involvement in the complaint. The Monitoring Officer may appoint the Deputy Monitoring Officer, or a Monitoring Officer or Deputy Monitoring Officer from another authority to carry out the procedure.

### **Confidentiality**

The complaint procedure will be carried out with an expectation of confidentiality from all parties involved in the complaint.

An elected or co-opted member who does not respect the confidentiality of the complaint process by for example, without authorisation sharing or publicly disclosing information provided by the Monitoring Officer or gained during an investigation, may breach the Code of Conduct.

The Standards Committee will determine whether to hold a hearing following a formal investigation in public.

## **Procedure**

### **Stage One**

All complaints must be submitted on a properly completed complaints form or the complaint will be rejected. The Monitoring Officer will ensure that reasonable arrangements are in place to assist a prospective complainant who requires assistance to submit a complaint in the correct format.

A complainant must provide their full name and address to the Monitoring Officer when making their complaint. However, a complainant may request that their identity and/or other personal details are not disclosed further during this process. A complainant's details will only be withheld from others involved in this process where there are cogent and relevant reasons not to divulge this information. The decision whether to grant anonymity to the complainant will be made by the Monitoring Officer and be at his/her discretion. If the Monitoring Officer decides to refuse a request from a complainant for anonymity, he/she will inform the complainant before proceeding further with their complaint.

The Monitoring Officer will review the properly completed complaints form and decide whether the complaint merits initial enquiry. The Monitoring Officer will at this Stage reject complaints which:

1. are not about the conduct of a named current elected or co-opted member of Cumbria County Council; or
2. are about conduct which is not covered by the Code of Conduct; or
3. are anonymous, or the complainant has not provided contact details which enable communication with the complainant; or
4. are being, or have been, investigated and determined elsewhere.

The Monitoring Officer may, following consultation with the Independent Person, reject at this stage complaints which:

1. relate to a breach of the Code of Conduct alleged to have taken place more than 12 months before the date on which the Monitoring Officer received the complaint; or
2. provide insufficient information to suggest that the alleged conduct may have taken place and if proved might amount to a breach of the Code of Conduct; or
3. on the face of the complaint make trivial allegations or allegations which are vexatious or politically motivated.

If a complaint alleges conduct which could constitute a criminal offence, the Monitoring Officer will assess whether on the information available a referral to the

Police is the most appropriate course of action. If a matter is assessed as requiring referral to the Police, that referral will be made as soon as possible after the conclusion of the assessment. Once a referral to the Police has been made, no further action will be taken by the Monitoring Officer unless and until the Police have confirmed such further action to be appropriate.

The Monitoring Officer will have discretion as to whether to refer a complaint to the Police. Where the complaint relates to a breach of the Code in relation to a disclosable pecuniary interest, the Monitoring Officer will in exercising their discretion have regard to the Protocol agreed between the Monitoring Officers of Cumbria and the Cumbria Constabulary.

If the complaint is rejected at this Stage, the Monitoring Officer will inform the complainant of their decision and the reasons for it.

Stage 1 is normally expected to take up to 14 working days.

## **Stage Two**

The Monitoring Officer will commence a process of enquiry in order to gather the information necessary to decide whether there is substance to the complaint and if there is, whether seeking an informal resolution is an appropriate outcome or whether the complaint should be referred to the Standards Committee for formal investigation. In carrying out Stages 2 and 3 the Monitoring Officer will have regard throughout as to whether the balance of the public interest favours taking any further action in respect of the complaint. The test will be specifically relevant when considering whether to recommend formal investigation of the complaint to the Standards Committee. Application of the test seeks to ensure that only the most serious complaints, which justify the public expense of formal investigation and determination are formally investigated. The public interest test that the Monitoring Officer will consider is set out in Appendix 1.

The Monitoring Officer may undertake the enquiries him/herself or may ask another appropriate Council officer to undertake the enquiries on his/her behalf. If another Council officer is to undertake the enquiries, they will follow the process set out at Stage Three below and prepare a report for the Monitoring Officer.

The Monitoring Officer may defer making further enquiries in respect of the complaint if it is appropriate in the circumstances to do so, for example because it might prejudice an ongoing criminal investigation. If a complaint is deferred at this stage, the Monitoring Officer will inform the complainant of their decision and the reasons for it.

Stage 2 is normally expected to take up to 7 working days.

## **Stage Three**

If the Monitoring Officer considers that further information or clarification is required from the complainant, the Monitoring Officer will arrange to discuss the complaint with the complainant.

The Monitoring Officer will normally send the complaint to the relevant member within 7 days of moving to Stage 3 and will ask for the member's comments. The member should provide those comments within 14 days of the complaint being referred to them.

The Monitoring Officer will provide the relevant Group Leader with a copy of the complaint at the same time as this is sent to the relevant member<sup>1</sup>.

The Monitoring Officer will seek an informal resolution to complaints whenever in his/her reasonable judgement it is appropriate to do so. However, there may be circumstances where the Monitoring Officer, following consultation with the Independent Person, decides that the balance of the public interest is in referring the complaint to the Standards Committee without first seeking to resolve the complaint informally.

Discussion will take place between the Monitoring Officer and the Group Leader within 21 days of the complaint being referred to consider possible resolutions.

Stages 3 is normally expected to take up to 28 working days.

#### **Stage Four**

If in the opinion of the Monitoring Officer, in consultation with the Independent Person, an informal resolution can be achieved in discussion with the Group Leader, the complaint will be closed and the Monitoring Officer will within 14 days of the conclusion of Stage 3, provide a written record of his/her decision in respect of the complaint to the complainant, relevant member and Group Leader.

If the Monitoring Officer is not satisfied with the response of the Group Leader, he/she will consult the Independent Person within 14 days of the conclusion of Stage Three.

Following that discussion there will be one of two decisions made:

1. to refer the matter to the Standards Committee for a decision whether not to instigate a formal investigation; or
2. to take no further action.

In making a decision at this point, the Monitoring Officer will consider if the balance of the public interest is in recommending formal investigation or in taking no further action.

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<sup>1</sup> In cases where the complaint relates to an independent member, it will be discussed with the Chief Executive and references throughout this protocol to Group Leader(s) should be taken to include the Chief Executive where appropriate.

References to Group Leader include the Deputy Group Leader if the Group Leader is absent or otherwise unable to act.

If following consultation with the Independent Person, the decision is that the matter should be referred to the Standards Committee, a sub-committee of three members (one from each main political group) who have no interest in the complaint will be convened and that sub-committee will decide whether to instigate a formal investigation.

If the sub-committee of the Standards Committee decides to instigate a formal investigation, the Monitoring Officer will appoint an investigating officer and draft the terms for the investigation.

If the sub-committee of Standards Committee decides not to instigate a formal investigation the Monitoring Officer will within 14 days provide a written record of the decision to the member, the member's group leader and the complainant.

## **The investigation**

The aim will be for any investigation to be completed within 3 months with updates being provided to the Monitoring Officer on a monthly basis.

If during an investigation it appears to the Monitoring Officer that an informal resolution may be both possible and appropriate, the Monitoring Officer will, following consultation with the Independent Person seek an informal resolution. The Monitoring Officer will discuss the proposed informal resolution with the member's Group Leader. If an informal resolution cannot be achieved within a reasonable timescale determined by the Monitoring Officer, the investigation will continue.

On conclusion of the investigation, the investigating officer will produce a written report in draft. The Monitoring Officer will review the report in consultation with the Independent Person and may request further investigation or evidence.

If the investigating officer's report concludes that on the balance of probabilities the member has breached the Code of Conduct, the Monitoring Officer will, following consultation with the Independent Person, refer the report to the Standards Committee for determination.

## **The hearing of the Standards Committee**

If the Monitoring Officer refers a complaint to the Standards Committee the Chief Executive will call a meeting of the Committee within 21 days of the Monitoring Officer's referral.

The role of the Standards Committee will be to review the investigation and determine:

1. whether on the balance of probabilities the subject member breached the Code of Conduct; and if so,
2. whether it is appropriate to apply any sanction; and if so
3. what sanction to apply.

The following parties will be invited to the meeting of the Standards Committee:

1. the complainant
2. the subject member
3. the investigating officer
4. the Independent Person
5. any other person the Committee consider appropriate to its determination of the complaint.

The Monitoring Officer will attend as advisor to the Committee. Where the Monitoring Officer has carried out the formal investigation, he/she will appoint the Deputy Monitoring Officer or a Monitoring Officer or Deputy Monitoring Officer from another authority to advise the Committee.

The Standards Committee will determine, having regard to the advice of the Monitoring Officer whether the hearing (or part of it) will be held in public or private in compliance with the Access to Information Procedure Rules (Part 5D of the Constitution).

The tone of the hearing will be one of enquiry. There will be no cross-examination during the hearing (that is, the complainant and member(s) complained of will not be permitted to ask questions of each other).

The complainant and subject member will be entitled to be accompanied by a representative or friend but will normally be expected to address the Committee themselves. On request, assistance can be arranged where required to enable participation in a hearing.

At the hearing the investigating officer will present their report.

The Standards Committee may ask questions of the investigating officer, the complainant, the subject member, the Independent Person, and any other person invited by the Committee.

The Independent Person will be invited to provide their view to the Standards Committee.

If the Standards Committee determines that the subject member did not breach the Code of Conduct, there will be no further action against the member in relation to the complaint.

If the Standards Committee determines that the subject member breached the Code of Conduct, the Committee will hear from the subject member and the Independent Person before determining what further action to take.

The action that the Standards Committee may take includes one or more of the sanctions set out in the terms of reference of the Standards Committee (Part 2J of the Constitution).

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

The Standards Committee has no right to suspend or disqualify a member of the Council.

### **Decision notice**

At the conclusion of the Standards Committee hearing the Monitoring Officer will as soon as practicable publish on the Council's website a notice detailing the complaint, the provision of the Code of Conduct engaged by the complaint, a brief statement of the facts, the view of the Independent Person, the Standards Committee's decision, the reasons for the decision and any sanction imposed. The Monitoring Officer will send a copy of the decision notice to the member, the member's Group Leader and the complainant.

### **Reporting**

The Monitoring Officer will report at least annually to the Standards Committee giving details of complaints received and their outcome or progress at the date of the meeting. The Monitoring Officer will provide details and reasons for any divergence from this Protocol.

The Standards Committee may make recommendations to full Council following a hearing or at any other time with a view to promoting and maintaining good standards of member conduct.

**Approved by Standards Committee on 25 January 2021**

**Review Due: June 2025**

## **APPENDIX 1**

### **Public interest Test**

There is no single definition of the public interest, which can cover a wide range of values concerning what is in the best interests of society. The public interest in local democracy includes there being widespread trust in the integrity of local members as community representatives and decision makers. The Code of Conduct is designed to protect the democratic role of members, encourage good conduct and safeguard public trust in local democracy by setting out the standards of conduct that citizens can reasonably expect from members elected to or co-opted onto the Council.

The public interest is therefore not necessarily the same as what the public is interested in, as demonstrated for example through traditional or social media discussion. It is also not necessarily the same as the private interests of any person, though something which affects the private interests of a person may also impact on the wider public interest.

### **The seriousness of the allegations.**

In assessing the seriousness of the allegations, the Monitoring Officer will consider the evidence provided by the complainant. Evidence that indicates a more serious breach is likely to include evidence that the alleged breach was planned or premeditated, evidence that the alleged breach is ongoing, repeated or has escalated, evidence that the member or someone connected to them has benefited from the alleged breach, whether the member has been found to have breached the Code previously, evidence of alleged harm to individuals or groups of people, evidence that the alleged breach involves discrimination on the basis of gender, race, disability or other characteristic protected by the Equality Act 2010, evidence that the complaint suggests a wider issue in the Council. The seniority and length of experience of the member may also be relevant to this consideration.

### **The proportionality of conducting a full investigation**

Proportionality involves considering whether the cost of an investigation, and the impact of an investigation on the member complained of and others who will be drawn into the investigation is justified by the need to maintain public trust and confidence in elected members and local democracy. The likely sanction that would be imposed if the member is found to have breached the Code is relevant to this consideration. An investigation necessarily involves public resources and for this reason the Monitoring Officer will ordinarily only recommend full investigation of alleged breaches of the Code that appear likely to be significant in their impact on public trust and confidence in elected members and/or local democracy.