

# **Uttlesford District Council Procedure for Considering a Complaint under the Code of Conduct for Councillors**

Our Code of Conduct for Councillors is available on our website at Uttlesford District Council, London Road, Saffron Walden CB11 4ER. A paper copy may be obtained on request to the Council's Monitoring Officer.

If you wish to make a complaint under our Code of Conduct, or under the Code of Conduct for one of the town or parish councils within Uttlesford, please send your complaint in writing to:

Simon Pugh, Monitoring Officer, [spugh@uttesford.gov.uk](mailto:spugh@uttesford.gov.uk) or Council Offices, London Road, Saffron Walden, CB11 4ER.

## **1. Purpose of the Code of Conduct procedure**

This procedure covers the following topics:

- Some definitions.
- The sort of complaints we can consider.
- Making a complaint.
- Assessing the complaint.
- Investigating the complaint.
- Considering the Investigating Officer's report.
- The procedure for hearings before a Hearing Panel of the Standards Committee.
- What sanctions can be imposed if a complaint is upheld.

## **2. Some definitions**

**2.1 “Assessment Panel”:** Assessment panels meet to decide on how to proceed with a complaint in cases where this is not agreed between the Monitoring Officer and the Independent Person assigned to a complaint. Assessment panels are made up of three members of Uttlesford District Council who are also members of its Standards Committee.

**2.2 “Code of Conduct”:** Local councils, including Uttlesford District Council and parish councils within its area, must adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity. The Code is expected to promote principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership. These principles are explained in the Code itself.

**2.3 “Hearing Panel”:** Hearing panels meet to consider complaints that members have breached the code of conduct. Hearing panels are made up of three members of Uttlesford District Council who are also members of its Standards Committee, together with a non-voting Independent Person.

**2.4 “Independent Person”:** This is a statutory role established by the Localism Act 2011. Uttlesford District Council is obliged to appoint at least one “independent person”. In fact, it has appointed three.

- The An Independent Person’s views must be sought, and taken into account, by UDC before it makes decisions on allegations that it has decided to investigate.
- The An Independent Person’s views must also be sought in the circumstances set out in this procedure.
- The views of an Independent Person may also be sought by a member or co-opted member of UDC or of one of the parishes in its area if that member’s behaviour is the subject of an allegation.
- One of the Independent Persons will participate in hearing panels alongside elected members.

**2.5 “Investigating Officer”:** This is a person appointed by UDC to investigate a complaint against a member or a co-opted member.

**2.6 “Member”:** This term is used in this procedure to refer to an elected councillor or co-opted member of UDC or of one of the town or parish councils in its area.

**2.7 “Monitoring Officer”:** This is a statutory role provided for by the Local Government and Housing Act, 1989. UDC is obliged to designate one of its officers as Monitoring Officer.

- The Monitoring Officer has an oversight role in ensuring that local authorities act lawfully and address instances of maladministration.
- In the context of this procedure, the role of the Monitoring Officer is not to carry out formal investigation of complaints but to make some decisions on how to respond to complaints, in consultation with an Independent Person, and to provide advice and support to Hearing Panels.
- The Monitoring Officer is responsible for initiating steps towards the informal resolution of a complaint where informal resolution is identified as appropriate by the Monitoring Officer and the Independent Person who is advising on the complaint.
- The Monitoring Officer is also responsible for keeping a clear and auditable record of how complaints are considered.

**2.8 “Standards Committee”:** This is a committee made up of elected members of Uttlesford District Council. Its main role is to promote and maintain high

standards of conduct by councillors and co-opted members. The membership of Hearing Panels is drawn from UDC's Standards Committee.

### **3. The sort of complaints we can consider.**

- 3.1 This procedure applies to complaints that a member has acted in a way that breaches the Code of Conduct. Uttlesford District Council ("UDC") has a code of conduct for councillors and so do most town and parish councils. Some parish councils have the same code of conduct as UDC but some have their own codes.
- 3.2 The Code of Conduct only applies to councillors when they are conducting council business or are acting, claiming to act or are giving the impression that they are acting as a representative of the council to which they are elected. The Code of Conduct does not apply to their private lives.
- 3.3 We cannot consider complaints under this procedure that do not allege a breach of the Code. It is not a way simply of challenging decisions with which someone disagrees. There may be other ways of pursuing complaints or challenges to actions or decisions taken by councillors that do not relate to the Code of Conduct; for instance through a council's complaints procedure, by complaining to the Local Government Ombudsman or through a statutory appeal process.
- 3.4 We can only consider complaints about councillors elected to UDC or to one of the town or parish councils within Uttlesford.

### **4. Making a complaint**

- 4.1 Complaints should be made in writing, which includes email. They should be addressed to UDC's Monitoring Officer and set out full details of the complaint.
- 4.2 If a member of the public has difficulty in putting a complaint in writing, the Monitoring Officer shall arrange other means to record and register the complaint. If the scope or nature of a complaint is not clear, the Monitoring Officer may ask for more detail. In these circumstances the Monitoring Officer must ask the complainant to confirm that the complaint has been accurately recorded.
- 4.3 The Monitoring Officer will offer advice and assistance but will remain impartial between the complainant and the councillor who is the subject of the complaint.
- 4.4 'Anonymous' complaints will not normally be accepted. If a complainant requests anonymity, they must explain why. The Monitoring Officer will consult an Independent Person before deciding whether to accept a complaint on an anonymous basis. The Monitoring Officer shall record the reason for granting anonymity, if allowed.

- 4.5 Within 5 working days of receipt of the complaint in final form the Monitoring Officer shall acknowledge the complaint and provide a copy of the Code of Conduct and this procedure to the complainant.
- 4.6 Once a complaint is in final form, the Monitoring Officer shall send a copy of the complaint to the member who is the subject of the complaint. The Monitoring Officer will aim to do this within 5 working days. However, the Monitoring Officer may decide not to do this if this might prejudice the investigation. The Monitoring Officer shall consult an Independent Member of the Standards Committee before withholding a copy of the complaint from the member who is the subject of the complaint.
- 4.7 If, at any stage, a complainant wishes to withdraw a complaint, the Monitoring Officer shall consult the Independent Person and may consult the member who is the subject of the complaint. Ordinarily consideration of a complaint would cease if the complainant wished to withdraw it. However, there may be circumstances in which it would be appropriate, in the public interest, to pursue a complaint despite the wishes of the complainant.
- 4.8 In the event that the Monitoring Officer receives a complaint that a councillor has failed to declare a disclosable pecuniary interest (“DPI”) and there is evidence that a serious potential DPI offence may have been committed, they will make immediate contact with the Police through a nominated single point of contact. In these circumstances this procedure under the Code will be suspended pending consideration of the complaint by the Police. For the avoidance of doubt there is no requirement for the Monitoring Officer to refer cases to the Police where it appears there may have been a genuine error or oversight by the member concerned and no advantage has been secured by them.

## **5. Assessing the Complaint**

5.1 Once the substance of a complaint is clear, the Monitoring Officer shall consult the Independent Member about how to proceed. Options at this stage include:

- No further action.
- Informal resolution.
- Formal investigation.

The Monitoring Officer shall, where appropriate, ascertain if the complainant and the member who is the subject of the complaint are prepared to attempt resolution of the complaint by informal means. Informal means may include mediation. In the event that informal resolution is not possible, the formal procedure will continue. Informal resolution may not be appropriate where a serious breach of the Code is alleged, where third party rights may be adversely affected or where there is a wider public interest in pursuing a formal investigation.

5.2 A number of factors, not limited to those below, will inform the Monitoring Officer's decision.

- Whether the alleged action relates to a breach of the code of conduct.
- When the action complained about occurred. (Complaints should be made in a timely manner and should usually be made within three months of the alleged breach.)
- Whether the alleged action is considered to be serious or minor/trivial.
- Whether the complaint appears to be politically motivated, vexatious or retaliatory.
- Whether the allegations relate to actions occurring whilst the member was acting in their official capacity or in their private capacity.
- Whether it is in the public interest to investigate.
- Whether the matter is considered suitable for alternative resolution and if so whether the member and the complainant are prepared to consider this alternative.
- Whether the complaint should be pursued by other means; e.g. through a parish or town council complaints procedure, through an appeals process or through complaint to the Local Government Ombudsman.
- Whether there is sufficient information on which to consider the complaint.
- In deciding whether to investigate a complaint, careful regard will be had to the right of members to freedom of expression and their role in contributing to political debate.
- Regard will also be had to whether an investigation is appropriate if a member has admitted the breach and has offered a sincere apology.

If the Monitoring Officer and Independent Member cannot agree on how to proceed, an assessment panel of the Standards Committee shall decide.

## **6. Investigating the Complaint**

6.1 When there is a decision to investigate a complaint, the Monitoring Officer shall formally appoint an investigating officer with appropriate skills and experience. The appointment shall take account of any potential 'conflict' between the Investigating Officer and Member. If there is no suitable internal appointee, an officer from another authority or an external investigator may be appointed. The Investigating Officer must be prepared to attend any subsequent hearing.

- 6.2 On appointment, the Investigating Officer shall contact, and where possible meet, the complainant, to ensure a full understanding of the nature and substance of the complaint. The Investigating Officer shall acquire a copy of any documentation offered or referred to as evidence, and take details of any witness or witnesses prepared to provide evidence. At this point, the Complainant may not extend the scope of the complaint but may clarify any matters.
- 6.3 The Investigating Officer shall contact witnesses and either obtain signed and dated statements from them concerning the complaint, or interview them and obtain a signed and dated record of the interview from them.
- 6.4 Witnesses should generally be prepared to attend a hearing, and have their evidence examined and cross-examined.
- 6.5 Throughout the investigation process, any interviewee, including the complainant and the member, has the right for a 'friend' to attend. The 'friend' shall not normally act in a legal capacity.
- 6.6 After interviewing the parties and witnesses and considering the evidence, the Investigating Officer shall produce a draft report summarising the investigation and making provisional findings of fact. The draft report shall also indicate whether the Investigating Officer considers that there has been a breach of the Code of Conduct, with reasons.
- 6.7 The Investigating Officer shall send a copy of the draft report to both the complainant and the member, marked 'In Confidence', and invite the parties to identify anything in the report with which they disagree, or which they believe requires further consideration. The Investigating Officer shall receive and take account of any comments. If necessary, in the interests of accuracy and justice, this process may be repeated.
- 6.8 The Investigating Officer shall then submit a final report to the Monitoring Officer.

## **7. Considering the Investigating Officer's report.**

- 7.1 The Monitoring Officer shall, on receipt, review the report and seek any clarifications necessary.
- 7.2 The Monitoring Officer will then send a copy of the final report to the Independent Person, to the complainant and to the member.
- 7.3 If the report concludes that the member has not breached the Code of Conduct, and the Monitoring Officer and the Independent Person accept the finding, the Monitoring Officer shall send all members of the Standards Committee a copy of the report for information.
- 7.4 If the report finds that the member has breached the Code of Conduct, the Monitoring Officer may consider that the matter does not require a formal hearing

and informal resolution may resolve it. In this case, the Monitoring Officer shall consult the Independent Person and may propose a fair resolution that helps to ensure higher standards of conduct in the future. This may require the Member to acknowledge that their conduct was unacceptable. It may include a requirement for any of an apology, a process of conciliation, training or some other remedial action.

7.5 If informal resolution is not appropriate or proves not to be possible, the Monitoring Officer shall refer the matter for a formal hearing.

7.6 If the complaint is resolved informally, the Monitoring Officer will report the matter to the Standards Committee for information, but will take no further action.

7.7 In all other circumstances, the Monitoring Officer shall refer the Investigating Officer's report to a panel of the Standards Committee for a formal hearing.

## **8. The procedure for hearings before a Hearing Panel of the Standards Committee.**

8.1 Formal hearings will be conducted by a panel of three councillors drawn from membership of the Standards Committee on the basis of availability plus one of the Independent Persons.

8.2 A member of the Standards Committee, against whom a Code of Conduct complaint has been made, shall not be selected as a member of a Hearings Panel until consideration of the complaint has been concluded.

8.3 Agendas for hearings panels shall be published and hearings panels shall be held in public unless:

- This would involve disclosure of exempt information as defined by Schedule 12A, Local Government Act, 1972; and
- In all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

8.4 Before a hearing panel meets, the Monitoring Officer shall write to the member and to the complainant, asking each:

- Whether they accept the finding in the report
- Whether they dispute any factual part of the report, identifying any areas of dispute.
- Whether they wish to call any witnesses at the hearing. (Only witnesses identified to the Investigating Officer by the complainant or by the member

may be called as witnesses. In law, witnesses do not have to attend a hearing panel.)

- Whether the complainant wishes to be present at the hearing. (The complainant shall be invited, but is not obliged, to attend the hearing. If the complainant is not present, the procedure below shall be adapted accordingly.)
- Whether they wish to be accompanied at the hearing.

8.5 In advance of a meeting of a Hearing Panel its members shall seek to agree who will chair the hearing. The Chair may issue directions about the conduct of the hearing. A member of a Hearing Panel shall not act as Chair unless they have received relevant training.

8.6 Subject to the discretion of the Chair, the hearing shall be conducted as follows:

- a. The Investigating Officer will be invited to present their report and to call witnesses. The complainant, the member and the Panel (including the Independent Person), in that order, may ask questions or seek clarification both of the Investigating Officer and any witnesses.
- b. The complainant will be invited to comment on the report and its findings and to call witnesses. The Investigating Officer, the member and the Panel, in that order, may ask questions or seek clarification both of the complainant and any witnesses.
- c. The member will be invited to comment on the report and its findings and to call any witnesses. The Investigating Officer, the complainant and the Panel, in that order, may ask questions or seek clarification both of the member and any witnesses.
- d. The Investigating Officer, the complainant and the member will be invited, in that order, to make brief concluding remarks.

8.7 The Chair and Panel, including the Independent Person, may ask for advice at any stage from the Monitoring Officer.

8.8 Once the hearing has been concluded, the Hearing Panel, with the Independent Person, will retire to consider its decision. It may call on the Monitoring Officer to provide advice and guidance. The Hearings Panel is required to do the following: (i) to decide on the facts, (ii) to decide on whether these facts constitute a breach of the Code of Conduct, and (iii) to decide on the appropriate sanction.

8.9 In deciding whether or not to uphold the complaint the Hearing Panel must apply, as the standard of proof, the balance of probability, with the burden of proof resting on the Investigating Officer. The Hearing panel may only make an

adverse finding if satisfied, on this basis, that the member has breached the Code of Conduct.

8.10 The Hearing Panel will then return and announce its findings on whether there has been a breach of the Code, with reasons.

8.11 Following announcement of the Hearing Panel's findings, the complainant and the member will be invited to make submissions, if necessary, regarding remedies or sanctions.

8.12 The Hearing Panel will then consider what, if any, sanction it wishes to impose. It shall retire whilst it considers this. It will then announce its decision and give reasons.

8.13 Following the hearing, the Monitoring Officer shall draft a record of the decision for approval by the Hearing Panel. Once the record of decision has been settled, a copy shall be sent to each of the parties.

## **9. Appealing a Decision about a Complaint**

9.1 There is no right of appeal against a decision on a Code of Conduct complaint. If the complainant or the member considers that the complaint has not been considered properly by UDC, they may be able to complain to the Local Government Ombudsman or seek permission for judicial review.

## **10. Sanctions available to a Hearings Panel**

10.1 The Hearings Panel has powers to take action in respect of individual councillors as necessary to promote and maintain high standards of conduct.

10.2 The Hearings Panel may do one, or a combination, of the following:

- a. Issue a formal Censure or Reprimand to the Member
- b. Report its findings to Council (or to the Parish or Town Council) for information
- c. Recommend the Member's Group Leader (or in the case of ungrouped members, recommend the Council or Committees) to remove the Member from appointments to Committees or Sub-Committees of the Council
- d. Recommend the Leader of the Council to remove the Member from any appointment to the Cabinet, or from particular Portfolio responsibilities
- e. Instruct the Monitoring Officer to (or recommend that the Parish or Town Council) arrange training for the Member

- f. Recommend to the Council (UDC) or its Cabinet, or to the Parish or Town Council that all outside appointments to which he has been appointed or nominated by that Authority are removed
- g. Exclude (or recommend that the Parish or Town Council exclude), the Member from the Council's offices or other premises for a specified period, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings
- h. If relevant, recommend that the Council removes the Member from the post of Leader of the Council.
- i. Publish its findings in respect of the Member's conduct.

In cases where a Hearings Panel makes an adverse finding against a Member, its decision will be published on the Standards Committee pages of the Council's website. This includes decisions relating to members of Town or Parish councils.