

TANDRIDGE DISTRICT COUNCIL ARRANGEMENTS FOR DEALING WITH STANDARDS ALLEGATIONS UNDER THE LOCALISM ACT 2011

[The current Tandridge DC Arrangements appear in normal type. Proposed amendments and additions to the current Arrangements appear in *italics* and deletions in strikethrough.]

1 Context

- 1.1 These 'Arrangements' explain how this Council will deal with allegations that an elected or coopted Member of Tandridge District Council ("the Council") or one of the 21 Parish Councils within the District (hereafter referred to as 'Member') has failed to comply with the applicable Code of Conduct.
- 1.2 Under Section 28(6) and (7) of the Localism Act 2011, the Council must have "arrangements" in place for investigating and determining allegations that a Member has failed to comply with the applicable Code of Conduct.
- 1.3 Such arrangements must provide for the Council 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;
 - can be sought by the authority or the Member at any other stage.
- 1.4 *All timescales contained within these arrangements are subject to the timely provision of information by third parties requested by the Monitoring Officer and/or Investigating Officer.*
- 1.5 *There is no statutory mechanism preventing complainants alleging a breach of the Code of Conduct for Members (or those the subject of such a complaint) making the nature of the allegation known to the press and public or making public comment on the allegation. Any such comments would be subject to the general law of defamation and a Member could seek a court injunction to prevent the publication of defamatory material.*
- 1.6 *A Member who is aware of a complaint is recommended not to make any public comment on it, and it is recommended that the matter should not be the subject of public discussion or debate.*

2 The Code of Conduct

- 2.1 The Council has adopted a Code of Conduct for Members (to be attached to these Arrangements and made available for inspection on the Council's website).
- 2.2 The Codes of Conduct of the Parish Councils may be viewed by arrangement with the respective Parish Clerks and may be available for inspection on the Parish Council's website.

3. Independent Person/ Reserve Independent Person

The Council has made these appointments in connection with 1.3 above and the Protocol for the Independent Person(s).

4. Making a complaint

4.1 ~~If you wish to make a Complaints should be addressed, please write or email to –~~

The Monitoring Officer
Tandridge District Council
Council Offices
Station Road East
Oxted Surrey
RH8 0BT
monitoringofficer@tandridge.gov.uk

4.2 The Monitoring Officer is a senior officer of the Council who has statutory responsibility for maintaining the Register of Members' Interests and who is responsible for administering the system in respect of complaints of Member misconduct.

4.3 Complainants will be asked to provide their names and contact details for subsequent communication purposes. If a complainant wishes to keep his/her name and address confidential, *the Council* ~~we~~ will not disclose the information to the Member. However, the Council does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

4.4 The Monitoring Officer will acknowledge receipt of ~~your~~ *the* complaint within five working days.

4.5 *The Monitoring Officer may vary the procedure set out below, including timescales, when he/she considers it desirable in the interests of justice or fairness or the effective conduct of the matter to do so.*

5. ~~Will your complaint be investigated?~~ **Stage 1 – consideration of complaint by Monitoring Officer**

5.1 The Monitoring Officer will review every complaint received and *decide whether it merits initial enquiry. The criteria against which complaints are assessed and may, at the Monitoring Officer's absolute discretion, be rejected are set out at Appendix 1.* ~~after consultation with the Independent Person, take a decision as to whether it merits formal investigation.~~ This decision will normally be taken within 14 working days of receipt of a complaint.

5.2 *If the complaint is rejected at this stage, the Monitoring Officer will inform the complainant of his/her decision and the reasons for that decision.*

- 5.3 *The Monitoring Officer will commence a process of enquiry ('preliminary fact-finding') in order to gather the information necessary to decide whether there is substance to the complaint and if there is, whether an informal resolution can be reached or whether a factfinding investigation should be conducted.*
- 5.4 ~~In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the Member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the authority. Where the Member or the authority make a reasonable offer of local resolution, but the complainant is not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.~~
- 5.5 The Monitoring Officer may ask the complainant or the Member for additional information. Where a complaint relates to a Parish Councillor, the Monitoring Officer may also inform the Parish Council and seek their views before deciding whether the complaint merits formal investigation.
- 5.6 ~~If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has power to call in the Police and other regulatory agencies. *the complainant makes allegations that a criminal offence may have been committed, then the matter will be referred to the Police. Consideration of the complaint under the Council's procedure will be paused during Police investigation and may be recommended by the Monitoring Officer, in consultation with the Independent Person, upon completion of action by the criminal justice system up to and including prosecution.*~~

6 ~~Stage 2 - How is the Factfinding Investigation conducted?~~

- 6.1 If the Monitoring Officer decides that a complaint merits an *fact-finding* investigation, he/she will appoint an Investigating Officer, who may be the Deputy Monitoring Officer, or an officer of another authority or an external investigator. *They will agree a timescale in which to undertake the investigation, which will normally take no more than 12 weeks from the appointment (subject to timely provision of information by the complainant and witnesses).* The Investigating Officer may then decide to contact the complainant to establish an ~~mutual~~ understanding of events and *help* to identify what documents the Investigating Officer needs to see, and who he/she needs to interview.
- 6.2 ~~The~~ When notifying the complainant that a fact-finding investigation will be conducted ~~the Investigating Officer will normally write to the Member to will request that they respond within 10 working days:~~
- Provide the Member with a copy of the complaint;
 - Seek the Member's explanation of events;
 - ~~Identify what documents the Investigating Officer needs to see and who he/ she need to interview.~~
 - *List any documents which the Investigating Officer proposes to take into account in any investigation of the allegation, providing copies of*

these documents, and confirm where the original documents may be inspected;

- *Request that they provide the name, address and telephone number (or other appropriate contact details) where known to the Member of any person or organisation whom the Interviewing Officer proposes to interview in the course of any investigation of the allegation;*
- *Provide any other information they wish to rely on.*

6.3 In exceptional cases, where:

- it is appropriate to keep a complainant's identity confidential; or
- disclosure of details of the complaint to the Member might prejudice the investigation,

the Monitoring Officer can delete the complainant's name and address from the papers given to the Member, or delay notifying the Member until the investigation has progressed sufficiently.

6.4 At the end of his/her investigation, the Investigating Officer will produce a draft report and will send copies of that ~~draft report, in confidence, to the complainant and the Member. This would provide an opportunity for either individual to identify areas of disagreement or aspects they consider require further consideration. Having received and taken account of any comments from either party on the draft report, the Investigating Officer will send his/ her final report to the Monitoring Officer. The Monitoring Officer will then consult with the Independent Person.~~

7 What happens if the Investigating Officer concludes *in conjunction with the Independent Person* that there is no evidence of a failure to comply with the Code of Conduct?

7.1 The Monitoring Officer will review the Investigating Officer's report and, if he/she is satisfied *having consulted in conjunction with the Independent Person* that the investigation has been conducted properly *and there is no evidence of a failure to comply with the Code of Conduct*, he/she will write to the complainant and the Member (and to the Parish Council where a complaint relates to a Parish Councillor) confirming that he/she is satisfied that no further action is required. A copy of the Investigating Officer's final report will be supplied to the complainant; Member; and (if applicable) Parish Council at this time.

7.2 If the Monitoring Officer in conjunction with the Independent Person is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider his/her report.

7.3 *The Monitoring Officer will take action as appropriate within ten working days of receipt of the Investigating Officer's report.*

8 *Stage 3 - Referral for local hearing or seeking local resolution* What happens if the Investigating Officer ~~in conjunction with the Independent Person~~ concludes that there is evidence of a failure to comply with the Code of Conduct?

8.1 *Having reviewed the Investigating Officer's report, the Monitoring Officer will consult the Independent Person on whether there is evidence of a failure to comply with the Code of Conduct and, if so, whether to refer the matter for local hearing before the Hearings Panel or, seek local resolution.*

8.2 Local Resolution

8.2.1 The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with the Independent Person *and ask the views of the complainant within ten working days* and seek agreement on a fair resolution which 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 ~~by the authority~~. If the Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee for information but will take no further action.

8.3 Local Hearing

8.3.1 If:

- the Monitoring Officer *in conjunction with the Independent Person* considers that local resolution is not appropriate; or
- the complainant is not satisfied by the proposed resolution; or
- the Member is not prepared to undertake any proposed remedial action, such as giving an apology

the Monitoring Officer will refer the Investigating Officer's report to the Hearings Panel which will conduct a local hearing 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. *The Panel will normally meet within ten working days of a decision to refer the decision.*

8.3.2 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 *that the Monitoring Officer may* identify what is likely to be agreed and what is likely to be in contention at the hearing.

8.3.3 *The Hearings Panel may govern its own procedure as long as it acts fairly. The Chairman of the Hearings Panel may issue directions as to the manner in which the hearing will be conducted.—It may request advice from the Monitoring Officer (or Deputy) at any time. However in general the following procedure should be adopted:*

- a) Hearings, having started in public session, should normally be held in private unless the Hearings Panel has resolved not to exclude the press and public from all or any part of the hearing*
- b) Any submissions by either party about the conduct of the case, including disputes about witnesses, potential new information, new supporting documents etc should be raised at the commencement of the hearing*

- c) *The Panel will adopt as far as is reasonably practicable an inquisitorial approach to the hearing rather than permit an adversarial or hostile approach to develop.*
- d) *Witnesses are not to be present in the hearing until they have been called to give their evidence.*
- e) *If the subject Member is not present, then the Hearings Panel shall consider whether or not to proceed. If the Hearings Panel is not satisfied that there is sufficient reason for the subject Member's absence, it may either proceed to consider the matter and make a determination in the absence of the subject Member or adjourn the hearing to another date and time. If the Hearings Panel is satisfied there is sufficient reason, it shall adjourn the hearing to another date unless the subject Member has indicated that the hearing should proceed in their absence.*

8.3.4 At the hearing, the Investigating Officer will present his/her report, call such witnesses as he/she considers 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 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.

8.3.5 *The subject Member may be represented or accompanied during the hearing by another person as long as the Hearings Panel or its Chairman has given prior consent, such consent not to be unreasonably withheld.*

8.3.6 *The subject Member may make representations (orally or in writing) or present evidence in accordance with this procedure either personally or through their representative. The Hearings Panel will not normally permit the subject Member and their representative to both make representations.*

8.3.7 The Hearings Panel, ~~having taken 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 Chairman will inform the Member of this finding and the Hearings Panel will then consider what action, if any, it should take. In doing this, the Hearings Panel will give the Member an opportunity to make representations to the Panel and will consult the Independent Person.

9 ~~Stage 4 – Action following a finding of failure~~ ~~What action can the Hearings Panel take where a Member has failed to comply with the Code of Conduct?~~

9.1 The Panel may:

- 9.1.1 Publish its findings in respect of the Member's conduct *and any other relevant actions the Panel has decided to take*;
- 9.1.2 *Ask the Member to apologise*;
- 9.1.3 Report its findings to Council or to the Parish Council for information;
- 9.1.4 Recommend to the Member's Group Leader (or in the case of un-grouped Members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 9.1.5 Instruct the Monitoring Officer to arrange (or recommend that the Parish Council arrange) training for the Member;
- 9.1.6 Remove the Member from all outside bodies which he/she has been appointed or nominated by the authority (or recommend to the Parish Council that he/she be removed from such bodies appointed by the Parish Council);
- 9.1.7 Withdraw (or 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
- 9.1.8 Exclude (or 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.
- 9.1.9 The Hearings Panel has no power to suspend or disqualify the Member or to withdraw members' or special responsibility allowances.

10 What happens at the end of the hearing?

- 10.1 At the end of the hearing, the Chair will state the decision of the Panel and what actions, if any, it has resolved to take.
- 10.2 ~~As soon as reasonably practicable thereafter,~~ the Monitoring Officer shall, *within five working days of the Panel meeting*, prepare a formal decision notice in consultation with the Chairman of the Hearings Panel and:
 - send a copy to the complainant, the Member and (if applicable) to the Parish Council;
 - make the decision notice available for public inspection; and
 - report the decision to the next convenient meeting of the Council.

11 Who are the Hearings Panel?

- 11.1 The Hearings Panel is a Sub-Committee of the Council's Standards Committee. It will comprise three District Councillors. *For each hearing, the Monitoring Officer, in consultation with the Chief Executive, will appoint three members of the Panel:*
 - *one Member will be a member of the Standards Committee who has received appropriate training*

- *the two remaining Members (not necessarily members of the Standards Committee) will be selected on the basis that they are disinterested in the matter under consideration.*

11.2 *The Committee will elect a Chair at each meeting.*

11.3 The Independent Person is also invited to attend the meetings and his/her views will be sought and taken into consideration before the Hearings Panel takes any decisions.

11.4 *Members of Hearings Panels who have not received training will be required to attend a briefing before sitting on the Panel.*

12 Annual report

12.1 *The Monitoring Officer will report annually to the Standards Committee on the number of complaints made in relation to the Code of Conduct for Members and actions taken in response to those complaints.*

13 Revision of these arrangements

13.1 The Council may by resolution agree to amend these arrangements and has delegated to the Chairman of the Hearings Panel the right to depart from these arrangements where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

13 Appeals

13.1 There is no right of appeal for the complainant or the Member against a decision of the Monitoring Officer or of the Hearings Panel.

13.2 If a complainant considers that the authority has failed to deal with his/her complaint properly, he/she may make a complaint to the Local Government Ombudsman.

Annex 1 - Standards complaints assessment criteria

A. Complaints which would not normally be referred for investigation

1. *The complaint is not considered sufficiently serious to warrant investigation and dealing with the complaint would have a disproportionate effect on both public money and Members' and Officers' time; or*
2. *The complaint appears to be simply motivated by malice or is 'tit-for-tat'; or*
3. *The complaint appears to be politically motivated, vexatious or trivial; or*
4. *The complaint relates to a matter relating to the Member's democratic role and is more appropriately judged by the electorate at the local elections; or*
5. *It appears there can be no breach of the Code of Conduct; for example, that it relates to the Councillor's private life or is about dissatisfaction with a Council decision; or*
6. *It is about someone who is no longer a Councillor unless there are exceptional circumstances, eg allegation of bullying, harassment etc; or*
7. *There is insufficient information or evidence available for a referral; or*
8. *The complaint has not been received within three months of the alleged misconduct unless there are exceptional circumstances, eg allegation of bullying, harassment etc; or*
9. *The matter occurred so long ago that it would be difficult for a fair investigation to be carried out;*
10. *The circumstances have changed so much that there would be little benefit arising from an investigation or other action; or*
11. *The same, or similar complaint has already been investigated and there is nothing further to be gained seeking the sanctions available to the Hearings Panel; or*
12. *It is an anonymous complaint, unless it includes sufficient documentary evidence to show a significant breach of the Code of Conduct; or*
13. *Where the Member complained of has apologised and/or admitted making an error and the matter would not warrant a more serious sanction.*

B. Complaints which may be referred for investigation

1. *It is serious enough, if proven, to justify the range of actions available to the Hearings Panel; or*
2. *There are individual acts of minor misconduct which appear to be part of a continuing pattern of behaviour that is unreasonably disrupting the business of the Council and there is no other avenue left to deal with it other than by way of an investigation; or*
3. *When the complaint comes from a senior officer of the Council, such as the Chief Executive or the Monitoring Officer and it would be difficult for the Monitoring Officer to investigate; or*
4. *The complaint is about a high profile Member such as the Leader of the Council and it would be difficult for the Monitoring Officer to investigate; or*
5. *Such other complaints as the Monitoring Officer considers it would not be appropriate for him/ her to investigate.*

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