

LANCASTER CITY COUNCIL

LOCALISM ACT 2011 SECTION 28

ARRANGEMENTS FOR DEALING WITH ALLEGATIONS THAT A MEMBER OF THE CITY COUNCIL OR A MEMBER OF A PARISH COUNCIL WITHIN THE DISTRICT OF THE COUNCIL HAS FAILED TO COMPLY WITH THE RELEVANT CODE OF CONDUCT

These arrangements are made under sections 28(6) and (7) of the Localism Act 2011, and set out how the City Council will deal with allegations that a city or parish councillor has failed to comply with the relevant Code of Conduct.

Such arrangements must 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, or by a member against whom an allegation has been made. The City Council has appointed an Independent Person and two reserves. It is envisaged that a member complained of will not consult with the same Independent Person who is advising the Monitoring Officer or the Committee.

Making an Allegation

An allegation that a city councillor or parish councillor has failed to comply with the requirements of the relevant Code of Conduct must be made in writing to:

Mrs S Taylor, Monitoring Officer, Lancaster City Council, Town Hall, Lancaster LA1 1PJ

An allegation may be sent by email to STaylor@lancaster.gov.uk. A form for this purpose is available on the Council's website www.lancaster.gov.uk

The allegation must be about one or more named members of the following authorities: Lancaster City Council or a parish or town council within its district. These are Arkholme-with-Cawood, Bolton-le-Sands, Carnforth, Caton-with-Littledale, Cloughton, Cockerham, Ellel, Gressingham, Halton-with-Aughton, Heaton-with-Oxcliffe, Hornby-with-Farleton, Ireby and Leck, Melling-with-Wrayton, Middleton, Morecambe, Nether Kellet, Over Kellet, Over Wyresdale, Overton, Quernmore, Scotforth, Silverdale, Slyne-with-Hest, Tatham, Thurnham, Warton, Wennington, Whittington, Wray-with-Botton, Yealand Conyers and Yealand Redmayne.

The allegation must be that the member(s) has, or may have, breached the relevant Code of Conduct. A copy of the City Council's Code of Conduct is available on the Council's website www.lancaster.gov.uk. The Code of Conduct adopted by a parish or town council is available on that council's website or from the relevant parish or town council clerk.

Anyone making an allegation should provide full details of the conduct complained of and how it is alleged to constitute a breach of the relevant Code of Conduct. Details of the person making the allegation will generally be provided to the member, unless the Monitoring Officer considers that there are special reasons for keeping this information confidential.

Procedure once an allegation is received

Once an allegation is received, the Monitoring Officer will provide a copy of the

allegation to the member complained of, and advise that the member may submit any comments to the Monitoring Officer if the member wishes to do so.

In appropriate cases, the Monitoring Officer may seek to resolve the matter informally. This may involve the member accepting that his/her conduct was unacceptable and offering an apology.

If informal resolution is not possible, the Monitoring Officer will, in consultation with the Independent Person, the Chairman (or Vice-Chairman) of the Standards Committee, and, if appropriate the Chief Executive, determine whether the complaint merits formal investigation, or whether no further action should be taken.

The Monitoring Officer may refer particular complaints to the Standards Committee if she feels that it would be inappropriate for her to take the decision, and will generally do so where the complainant is the Chief Executive or a Service Head, or where the complainant or the member complained of is the Leader of the Council or a Group Leader. There may be other circumstances where the Monitoring Officer considers that it would not be appropriate for her to take the decision.

Whilst each allegation will be considered on its own facts, the assessment criteria (Appendix 1) will be applied in considering whether or not an allegation should be investigated.

If an allegation is not referred for investigation, the complainant has no right of appeal.

The Monitoring Officer will report to each scheduled Standards Committee meeting on the complaints received and decisions taken on them. The report will not be open to the press and public as it will contain information relating to named individuals.

Investigation

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. The Investigation Procedure is attached at Appendix 2.

If the investigating officer finds no evidence of failure to comply with the Code, the Monitoring Officer is authorised to close the matter, in consultation with the Independent Person, Chairman (or Vice-Chairman) and, if appropriate, the Chief Executive. However, the Monitoring Officer may refer the matter to the Standards Committee if she considers this would be appropriate. The Monitoring Officer will in any event provide a summary to the next meeting of the Standards Committee.

Where a formal investigation finds evidence of failure to comply with the Code, there may yet be an opportunity for local resolution, avoiding the need for a hearing. Sometimes the investigation report can cause a member to recognise that the conduct was at least capable of giving offence, and the complainant may be satisfied by recognition of fault or an apology. The Monitoring Officer has authority to agree a local resolution, in consultation with the Independent Person, the Chairman (or Vice-Chairman) and, if appropriate, the Chief Executive, subject to the complainant being satisfied with the outcome, and subject to a summary report to the Standards Committee.

In all other cases where the formal investigation finds evidence of a failure to comply with the Code, the Standards Committee will hold a hearing at which the member complained of may respond to the investigation report and the Committee will determine whether the member did fail to comply with the Code and what action, if any is appropriate. The Committee's Pre-hearing and Hearing Procedures are attached at Appendices 3 and 4. The Hearing Committee will be advised by an Independent Person and by the Monitoring Officer.

The sanctions open to the Standards Committee are to censure, to report the findings to full Council, (in effect "naming and shaming"), to recommend the member's Group Leader to remove the member from any or all Committees, to withdraw Council facilities, such as a computer, or exclude the member from the Council's offices with the exception of meeting rooms as necessary for attending meetings of Council/Committee. There is no right of appeal.

With regard to parish councillors, the Standards Committee may make a recommendation to the parish council on action to be taken in respect of the councillor. Parish councils will be under no obligation to accept any such recommendation.

Monitoring Officer

October 2012

LANCASTER CITY COUNCIL STANDARDS COMMITTEE – ASSESSMENT CRITERIA

A. The Monitoring Officer will reject a complaint if it fails to meet one or more of the following tests:

A1 The complaint is against one or more named Members or co-opted Members of the Council or a parish or town council within the district.

A2 The member complained of was in office at the time of the alleged conduct and the Code of Conduct was in force at the time.

A3 The complaint, if proven, would be a breach of the Code of Conduct under which the member was operating at the time of the alleged misconduct.

B. The Monitoring Officer (following consultation with the Independent Person, the Chairman (or Vice-Chairman of the Committee) and the Chief Executive, if appropriate) or the Standards Committee may decide to refer a complaint for investigation:

B1 Where the complaint discloses a potential breach of the Code of Conduct sufficiently serious, if proven, to warrant a sanction, and where it would be in the public interest to investigate

C. Circumstances where the Monitoring Officer (following consultation with the Independent Person, the Chairman (or Vice-Chairman of the Committee) and the Chief Executive, if appropriate) or the Standards Committee may decide that no action should be taken in respect of a complaint:

C1 Where the complaint is about someone who is no longer a member of the city council or a parish or town council

C2 Where a substantially similar allegation has previously been made by the complainant to the Standards Committee, or the complaint has been the subject of an investigation by another regulatory authority

C3 Where the complaint is about something that happened so long ago that those involved are unlikely to remember it clearly enough to provide credible evidence, or where the lapse of time means there would be little benefit or point in taking action now. It is acknowledged, however, that where a delay has arisen as a result of criminal or other legal proceedings, it may be appropriate to refer the complaint for investigation or other action.

C4 Where the allegation is anonymous, unless it includes documentary or photographic evidence indicating an exceptionally serious or significant matter

C5 Where the allegation discloses a potential breach of the Code of Conduct, but the complaint does not appear serious enough to warrant further action

C6 Where the complaint appears to be malicious, politically motivated or tit-for-tat, unless a serious matter is raised in the complaint

LANCASTER CITY COUNCIL STANDARDS COMMITTEE

PROCEDURE FOR CASES REFERRED FOR INVESTIGATION

1. When an allegation is referred by the Monitoring Officer or the Standards Committee for investigation, the Monitoring Officer will within five working days, inform the member who is the subject of the allegation of failure to comply with the code of conduct, ("the Subject Member"), the person who made the allegation ("the Complainant"), and the clerk to any parish council concerned that the matter has been referred for investigation.
2. The Monitoring Officer will appoint an Investigating Officer who may be an officer of the Council, or an external 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 advise the Subject Member and the Complainant of the appointment of the Investigating Officer.
3. The Investigating Officer may make such inquiries as he/she thinks 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 will be prepared and agreed with each person interviewed during an investigation, including the Subject Member. The Subject Member will be advised that he/she 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.
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 Member and the Complainant for review and comment, and will indicate that it does not necessarily represent the Investigating Officer's final finding.
7. If the Investigating Officer issues a draft report, he/she will consider whether the responses 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 witness statements obtained during the course of the investigation. The report will commence with a statement of the Investigating Officer's finding. The finding will be either that there has been a failure to comply with the code of

conduct of the authority concerned, or as the case may be any other authority concerned ("a finding of failure"), or that there has not been a failure to comply with the code of conduct of the authority concerned, or as the case may be, of any other authority concerned ("a finding of no failure").

9. The Investigating Officer will submit the final report to the Monitoring Officer.

APPENDIX 3

LANCASTER CITY COUNCIL STANDARDS COMMITTEE

PRE-HEARING PROCEDURE

1. Where an investigation report has found that there has been a breach of the Code of Conduct, and the matter cannot otherwise be resolved by local resolution, for example by the Subject Member admitting the breach and apologising, a hearing will be arranged. The hearing will generally be a meeting of the Committee convened specifically for that purpose..
2. A copy of the investigation report will be sent to the Subject Member, the complainant, the clerk to the parish council if the complaint relates to the Subject Member's conduct as a parish councillor, and to the Independent Person.
3. The Subject Member will be asked for a written response within fifteen working days, which response shall set out the Subject Member's reply to the Investigating Officer's report and shall state whether he/she
 - disagrees with any of the findings of fact in the report, giving the reasons for any disagreement
 - wishes to be represented by a solicitor or barrister, or by any other person
 - wishes to give evidence to the Committee, either orally or in writing
 - wishes to call relevant witnesses to give evidence to the Committee
 - wishes any part of the hearing to be held in private
 - wishes any part of the Investigating Officer's report or other relevant documents to be withheld from the public

Forms will be provided for this response.

4. The Subject Member shall be informed that if, at the meeting of the Committee, he/she seeks to dispute any matter contained in the Investigating Officer's report without having previously notified the intention to do so, the 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 Member's response, the Investigating Officer shall be invited to comment on it within ten working days, and to say whether or not he/she
 - wishes to call relevant witnesses to give evidence or submit written or other evidence to the Committee
 - wishes any part of the hearing to be held in private
 - wishes any part of the report or other relevant documents to be withheld from the public
6. Upon receipt of the Investigating Officer's response, the Monitoring Officer or other legal adviser will consider the responses of the Subject Member and the Investigating Officer and set a date for the hearing in consultation with the chairman of the Committee.
7. The Member and the Investigating Officer are entitled to request that any witnesses they want should be called. However, the Chairman of the Committee may limit the number of witnesses to be called, if he/she believes the number requested is unreasonable and that some witnesses will simply be repeating the

evidence of earlier witnesses, or else not providing evidence that will assist the Committee to reach its decision.

8. Nothing in this procedure shall limit the Chairman of the hearing from requesting the attendance of any additional witnesses whose evidence he/she considers would assist the Committee to reach its decision.
9. The Monitoring Officer/Legal Adviser, in consultation with the Chairman and the Independent Person, will:
 - confirm a date, time and place for the hearing
 - confirm the main facts of the case that are agreed
 - confirm the main facts that are not agreed
 - provide copies of any written evidence to the relevant parties
 - confirm which witnesses will be called by the parties
 - provide the parties with copies of the proposed procedure for the hearing, specifying which parts of the matter, if any, may be considered in private

LANCASTER CITY COUNCIL STANDARDS COMMITTEE

HEARING PROCEDURE

1. The Hearing Committee shall decide, on a balance of probabilities, on the evidence presented to it, whether the complaint is upheld.
2. All matters shall be decided by a simple majority of votes cast. If there are equal numbers, the Chairman 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 Procedure for the hearing shall be as follows, but the Chairman may agree to vary this procedure in any particular instance where he/she is of the opinion that such variation is necessary in the interests of fairness.
6. The Subject Member may be represented or accompanied during the meeting by a solicitor or barrister, or with the permission of the Committee, another person. It is the responsibility of the Subject Member to arrange any representation.
7. The Committee may take legal advice from its legal adviser 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 Member and 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 Member (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 Member is not present at the start of the hearing:
 - The Chairman will ask the Monitoring Officer/Legal Adviser whether the Subject Member has indicated his/her intention not to attend the hearing
 - The Committee shall then consider any reasons which the Subject Member has provided for not attending the hearing and shall decide whether it is satisfied that there is sufficient reason for such failure to attend
 - If the Committee is satisfied with such reasons, it shall adjourn the hearing to another date
 - If the Committee is not satisfied with such reasons, or if the Subject Member has not given any such reasons, the Committee shall decide whether to consider the matter and make a determination in the absence of the Subject Member, or to adjourn the hearing to another date.

11. After the preliminary procedures, the Committee will consider whether or not there are any significant disagreements about the facts contained in the Investigating Officer's report.
12. If there is disagreement, the 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. The Subject Member, the Committee members and the Independent Person may ask questions of the Investigating Officer or any witness.
13. The Subject Member or his/her representative will then present the evidence that is relevant to the facts in dispute. With the permission of the Committee, witnesses can be called to give relevant evidence. The Investigating Officer, the Committee members and the Independent Person may ask questions of the Subject Member or any witnesses.
14. If the Subject Member disagrees with any relevant fact in the report without having given prior notice, he or she must give good reasons for not mentioning it before the hearing. After considering the Subject Member's explanation, the Committee may continue with the hearing, relying on the information in the report, may allow the Subject member to make representations about the issue and invite the Investigating Officer to respond and call any witnesses as necessary, or may postpone the hearing to arrange for appropriate witnesses to be present.
15. 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. Depending on the complexity of the case, this may be done in two stages, with the Committee first hearing evidence and making findings of fact, and then hearing representations as to whether, on those facts, there has been a failure to comply with the Code of Conduct and making a finding on that issue.
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 Member or seek further information. The other party will be given an opportunity to comment upon the questions asked or the responses made.
17. At the conclusion of the Committee's deliberations, the Chairman will advise the Subject member and the Investigating Officer of their findings.
18. If the Committee concludes that the Subject Member has failed to comply with the Code of Conduct, the Chairman will invite representations from the Investigating Officer and the Subject Member as to what action, if any, it should take, and will take advice also from the Independent Person. The Committee may ask questions of the Subject Member and the Investigating Officer. The Subject Member will be invited to make any final relevant points.
19. The Committee shall then consider in private, with the Independent Person whether to impose a sanction, and, if so, what sanction to impose and when that sanction should take effect.
20. The sanctions open to the Committee are:
 - to censure the Subject Member
 - to report its findings to full Council

- to recommend the Subject Member's Group leader to remove the member from any or all Committees, or, if appropriate, to recommend the Leader to remove the member from Cabinet ;
 - to withdraw facilities, such as a computer, or exclude the member from the Council's offices with the exception of meeting rooms as necessary for attending meetings of Council/Committees
21. If the finding relates to the Subject Member's conduct in his/her capacity as a parish councillor, the Committee will report its findings to the parish council, and may make recommendations to the parish council on sanctions.
 22. In deciding to impose a sanction, the Committee shall consider all the relevant circumstances.
 23. The Chairman will announce the decision of the Committee. Written notice of the findings of the Committee will be given as soon as is reasonably practicable to the Subject Member. If the complaint was against the Subject Member as a parish councillor, written notice of the findings of the Committee will be sent to the clerk to the parish council.
 24. The Committee may consider making any recommendations to the authority concerned with a view to promoting higher standards of conduct among its members.
 25. The decision of the Committee, whether or not there has been a finding of breach of the Code of Conduct, will be made public.