

Process for Dealing with a Complaint that a Member or Co-opted Member has Breached the Code of Conduct

1. The Monitoring Officer is appointed the proper officer to receive all complaints that a Member has breached the Code of Conduct and all complaints should be sent to:
The Monitoring Officer
Eastleigh Borough Council
Eastleigh House
Upper Market Street
Eastleigh
Hampshire
SO50 9YN

2. Once a complaint has received it will be checked to ensure that it:
 - a) Can be dealt with by the Council (or is it a criminal offence which should be referred to the Police);
 - b) Is a complaint about a Member of Eastleigh Borough Council or a Member of one of the parish or town councils in the Borough;
 - c) Does relate to a section(s) of the relevant Code of Conduct;

If a complaint does not comply with any of the above the Monitoring Officer will write to the complainant to advise why the complaint cannot be dealt with under the Council's procedure for complaints that a Member had breached the Code of Conduct.

3. If the complaint satisfies the criteria above it will be considered by the Monitoring Officer using the following initial assessment of complaints as a guide:
 - a) Is the Member no longer a Member and there would be little to be gained from taking action?
 - b) If the Member is no longer a Member but is a Member of a different authority would it be preferable to refer the complaint to that other authority?
 - c) Has the complaint or a similar complaint been considered previously and there is nothing more to be gained from further action?
 - d) Is the complaint about something that happened so long ago that there would be little benefit in taking action?
 - e) Is the complaint too trivial to warrant further action?
 - f) Does the complaint appear to simply be malicious, politically motivated or tit-for-tat?

The Monitoring Officer may decide to contact the complainant and the subject of the complaint to try to resolve the complaint informally.

If, at this stage, the Monitoring Officer decides that no action be taken or that it be referred to another authority, notification, in writing, will be given to the complainant, the subject of the complaint and any other relevant authority (including the town or parish council if the subject of the complaint is a town or parish council Member) if appropriate.

4. If, after considering the items in (3) above, and any other relevant matters, the Monitoring Officer decides that the complaint merits formal investigation he must make the necessary arrangements for this to be carried out. He will write to the complainant, the subject of the complaint and the parish or town council if relevant advising that an investigation will take place.
5. In carrying out an investigation all complaints will be assessed on a case by case basis and relevant guidance and professional advice will be taken into account. The Independent Person will be consulted and his/her views taken into account prior to any decision being taken.
6. Once the Monitoring Officer has completed his investigation he will produce a written summary of his findings. This will include whether he agrees that the Code of Conduct has been breached or not. Where the Monitoring Officer finds that the Code has been breached he may or may not take action or refer the matter to a sub-Committee of the Administration Committee for a decision on appropriate action. Action that can be taken includes:
 - reporting findings to Council and/or to the relevant Parish/Town Council;
 - making recommendations to the relevant Group Leader to remove the Member from committees of the Council;
 - making recommendations to the Leader of the Council that the Member be removed from the Cabinet, or from particular Portfolio responsibilities;
 - arranging training for the Member;
 - recommending to the Council or relevant committee or relevant Parish/Town Council that the Member be removed from outside bodies;
 - withdrawing facilities provided by the Council or recommending that the relevant Parish/Town Council withdraw facilities such as a computer and/or internet access; and/ or
 - excluding the Member from the Council's offices or other premises or recommending that the Parish/Town Council exclude the Member from the parish/town council office or other premises (except for meeting rooms for attendance at meetings).

Once an investigation has been completed and a decision made to take no action or on suitable action this will be published on the Council's website, unless there are reasons within legislation to keep the information confidential. The Monitoring Officer will also write to the complainant, the subject of the complaint and the parish or town council if relevant providing details of the outcome.

7. There is no ability to appeal against a decision made by the Monitoring Officer, the Administration Committee or its sub-committee. Further action may be pursued, where relevant, with the Ombudsman or by way of judicial review.
8. The Monitoring Officer will produce an annual report for consideration by the Administration Committee providing details of all complaints received (excluding any details deemed confidential in law) and action taken. The Administration Committee can request interim reports or details of a specific complaint at any time.
9. If, at any stage, there is insufficient detail for the Monitoring Officer to effectively deal with the complaint, he can go back to the complainant or approach the subject of the complaint or other parties to request further information.
10. If, at any stage, the Monitoring Officer feels it is inappropriate for him to deal with a complaint he can refer it to the Deputy Monitoring Officer, Chief Executive or a sub-committee of the Administration Committee for consideration.
11. The Monitoring Officer may authorise any officer of the Council or other appropriate person to carry out investigations on his behalf.
12. The Council and the subject of a complaint may at any stage seek the views of the Council's Independent Person about the complaint.

NOTE In this procedure note where it states 'Monitoring Officer' in his absence this includes the deputy Monitoring Officer; where it states Member this includes all Members or Co-opted Members of Eastleigh Borough Council and of any of the town and parish councils in the Borough; where it refers to the Code of Conduct it means the relevant Code of Conduct for the authority that the Member or Co-opted Member belongs;

ADMINISTRATION SUB-COMMITTEE

Where the Monitoring Officer refers a matter to a sub-committee of the Administration Committee that sub-committee will be made up of three Members of the Administration Committee, excluding group leaders and, where possible, including at least one Member who is from a different political party to the Member who is the subject of the complaint. One Member will be elected chair of the sub-committee.

The meeting of the sub-committee may be attended by the Monitoring Officer or his representative, the Independent Person, the subject of the complaint, the complainant and any other person relevant to the complaint. The subject of the complaint and the complainant may make written submissions to the sub-committee prior to the meeting and they may make representations at the meeting of the sub-committee where it is felt that this would add to any written submissions. Written and oral submissions must relate directly to the complaint being dealt with. The cost of attendance/making representations must be borne by the party concerned.

Procedure:

At a meeting of the sub-committee of the Administration Committee the following procedure will be followed:

- a) The complainant may address the sub-committee and call witnesses (if any).
- b) The subject of the complaint may ask the complainant and witnesses questions.
- c) The sub-committee and Independent Person can ask the complainant and witnesses questions.
- d) The subject of the complaint can address the Panel and call witnesses (if any)
- e) The complainant can ask the subject of the complaint and witnesses questions.
- f) The sub-committee and Independent Person can ask the subject of the complaint and witnesses questions.
- g) The complainant can make a closing statement.
- h) The subject of the complaint can make a closing statement.
- i) All those present except the sub-committee, the Independent Person, the Monitoring Officer or his representative and clerk will leave to room while the sub-committee makes its decision. The sub-committee's decision will be announced orally as soon as possible.
- j) A written report of the meeting and decision, with reasons, will be prepared, usually within 5 working days. A copy will be sent to all those present and to the Clerk of the Parish/Town Council if the complaint was about a Parish/Town Councillor. The written report will be available for public inspection.

Complaint Flow Chart

