

# COMPLAINT ABOUT AN ELECTED MEMBER

**Guidance on how to make a complaint if you are unhappy about the behaviour of an Elected Member serving on Middlesbrough Council, Nunthorpe Parish Council or Stainton and Thornton Parish Council. This form may also be used to submit a complaint about Non-Elected Members such as a Co-opted Member of a Scrutiny Panel**

1. This Guidance explains what you may complain about, how to fill in the complaint form and what will happen to your complaint once it has been submitted.

## **Code of Conduct**

2. Middlesbrough Council has adopted a Code of Conduct for all of its Members. Each Parish Council is also required to adopt a Code of Conduct for its Members.
3. Formal standards complaints about the conduct of a parish councillor towards a clerk should be referred by the chair or by the parish council as a whole to the Legal Services Manager, rather than the clerk in all but exceptional circumstances.

## **Monitoring Officer**

4. Charlotte Benjamin, Director of Legal and Governance Services, is the Council's Monitoring Officer. This is a statutory role, responsible for ensuring that the Council, its Members and officers carry out their functions in a lawful and ethical manner. The role includes supporting the Standards Committee and the Independent Person(s) in dealing with complaints alleging a breach of the Members' Code of Conduct. The functions of the Monitoring Officer in respect of Code of Conduct Complaints is shared with the Deputy Monitoring Officers and any reference to Monitoring Officer contained within this document refers equally to the Deputy Monitoring Officers.

## **Independent Persons**

5. The Council appoints Independent Persons from outside the Council to assist the Monitoring Officer and the Standards Committee in considering complaints. This is statutory requirement under the Localism Act 2011. Middlesbrough has appointed two Independent Persons.
6. The Independent Person must be consulted at various stages in the complaints process and also before the Standards Committee makes a finding as to whether a member has failed to comply with the Code of Conduct and decides on the action to be taken in respect of a Member.

## **Factors to consider prior to a complaint being accepted under the Members' Code of Conduct?**

7. The council will need to consider, when deciding to accept a complaint or to take other action, the cost, both of public money and the Officers' and Councillors' time. This is an important consideration where the matter is relatively minor.

8. The following non-exclusive factors may help Middlesbrough Council when deciding whether to accept or reject a complaint the process is split into two stages:

**8.1. Initial Criteria:**

The first step would be a jurisdictional test and would assess whether the complaint is:

- a) against one or more named councillors of the authority or of a parish or town council the authority is responsible for;
- b) the named councillor was in office at the time of the alleged conduct;
- c) the complaint relates to matters where the councillor was acting as a councillor or representative of the authority and it is not a private matter;
- d) the complaint, if proven, would be a breach of the Code under which the councillor was operating at the time of the alleged misconduct.

If the complaint fails one or more of these jurisdictional tests it cannot be investigated as a breach of the Code, and the complainant must be informed that no further action will be taken in respect of the complaint.

**8.2. Secondary Criteria**

The following non-exclusive factors may help an authority to develop local criteria:

- a) Does the complaint contain sufficient evidence to demonstrate a potential breach of the Code?
- b) Are there alternative, more appropriate, remedies that should be explored first?
- c) Where the complaint is by one councillor against another, a greater allowance for robust political debate (but not personal abuse) may be given, bearing in mind the right to freedom of expression;
- d) Is the complaint in the view of the authority malicious, politically motivated, or 'tit for tat'?
- e) Whether an investigation would not be in the public interest or the matter, even if proven, would not be serious enough to warrant any sanction and conducting a full investigation would have a disproportionate effect on both public money and officers' and Members' time;
- f) Whether a substantially similar complaint has previously been considered and no new material evidence has been submitted within the current administration;

- g) Whether a substantially similar complaint has been submitted and accepted;
- h) Does the complaint relate to conduct in the distant past? This would include consideration or any reason why there had been a delay in making the complaint;
- i) Was the behaviour that is the subject of the complaint already dealt with? For example, through an apology at the relevant meeting;
- j) Does the complaint actually relate to dissatisfaction with a local authority decision rather than the specific conduct of an individual? And
- k) Is it about someone who is no longer a councillor or who is seriously ill?

### **How to make a complaint**

9. Your complaint must be made in writing using the Members' Code of Conduct Complaints form. An online form is available on the council's website by clicking the link, the form can also be downloaded there: <https://www.middlesbrough.gov.uk/mayor-council-and-councillors/councillors/councillor-code-conduct>
10. Once you have completed your form, please send it, together with any additional information that you want to include in support of your complaint to the above address.

### **How to complete the Complaint Form:**

11. **Section 1: Your contact details** - Please provide your full name, address, contact telephone number and e-mail address if you have one.
12. **Section 2: Your Complaint** - You can complain about Members of Middlesbrough Council, or Members of Nunthorpe Parish Council, Stainton and Thornton Parish Council or a Co-opted Member of a Committee.
13. You can complain about a Member breaching any part of the Members' Code of Conduct. A copy of the Code of Conduct can be found at Appendix A to this Guidance.
14. If you believe that a Member has breached the Code of Conduct, please indicate which parts of the Code that you believe they have breached and attach any evidence that you may have that you feel is relevant to your complaint. This evidence may include details of any witnesses, or copies of any relevant documentation.
15. We can only consider a complaint on the evidence that has been provided or made available to us.

**16. Section 3: Confidential information** - In the interests of fairness and natural justice, we believe that Members who are complained about have a right to know who made the complaint and we would usually provide them with a summary of the complaint. Unless the Monitoring Officer is of the opinion that it is not in the public interest to do so, we are unlikely to withhold your identity, or the details of your complaint. For example, where the disclosure of your personal details could result in any evidence being compromised or destroyed by the Member that is the subject of the complaint, or if there is a possibility that you or a witness could suffer intimidation from the Member.

### **What will happen to your complaint?**

17. Once you have submitted your complaint, we will write to you to advise that we have received it. The Monitoring Officer will then consider your complaint and decide whether it should be accepted or rejected. As part of this process, the Monitoring Officer will consult the Independent Person for their view on the merits of the complaint. If a decision is made to reject your complaint, we will write to you giving reasons for our decision.

18. Your complaint will be assessed by the Monitoring Officer, in consultation with the Independent Person, following the assessment criteria.

19. If the complaint is accepted, we will advise the Member that you are complaining about and advise them of the relevant parts of the Code of Conduct that it is alleged that they may have breached.

20. If a decision is made to progress the complaint, it may be considered for informal resolution or referred for investigation.

### **What is meant by 'Informal Resolution?'**

21. The Monitoring Officer in consultation with the Independent Person, may decide that your complaint is best handled by 'Informal Resolution'. The reasons for this **could** be:

- a) The Subject Member appears to have a poor understanding of the Code of Conduct and/or related Council or Parish Council procedures; or
- b) There appears to be a breakdown in the relationship between the Complainant and the Subject Member; or
- c) The conduct complained of appears to be a symptom of wider underlying conflicts which, if unresolved, are likely to lead to further misconduct or allegations of misconduct; or
- d) The conduct complained of appears common to a number of Members of the Council or Parish Council, demonstrating a lack of awareness, experience or recognition of the particular provisions of the Code of Conduct and/or other Council or Parish Council procedures, etc.; or

- e) The conduct complained of appears to the Monitoring Officer not to require a formal censure; or
- f) The complaint appears to reveal a lack of guidance, protocols and procedures within the Council or Parish Council; or
- g) The complaint consists of allegations and retaliatory allegations between Councillors; or
- h) The complaint consists of allegations about how formal meetings are conducted; or
- i) The conduct complained of may be due to misleading, unclear or misunderstood advice from officers.

22. Informal resolution **may** consist of one or more of the following actions, which do not have to be limited to the Member, but **may** extend to other Councillors including the Council as a whole, where it may be useful to address systemic behaviour:

- a) Training;
- b) Conciliation/mediation;
- c) Mentoring;
- d) Apology, written/verbal;
- e) Implementing changes to the Council or Parish Council's procedures.
- f) Conflict management;
- g) Development of the Council's or Parish Council's protocols;
- h) Other remedial action by the Council or Parish Council; or
- i) Other steps (other than investigation), if it appears appropriate to the Monitoring Officer in consultation with the Independent Person.

23. Where the Member will not participate in the informal resolution process or if, having agreed to one or more actions under the informal resolution process, the Member refuses or fails to carry out any agreed action, the Monitoring Officer will report the matter to the Standards Committee.

### **Investigation**

24. If a decision is made to investigate your complaint we will write to you and inform you of the timescales involved in completing the investigation. You will have the opportunity to provide the Investigating Officer with any information/documentation which you feel is relevant to your complaint. If the complaint is in relation to a Parish Councillor, we may ask the Parish Council to assist with the investigation. Responsibility for the investigation and the final decision on the outcome of the complaint will remain with the Monitoring Officer.

### **Conclusion of the Investigation**

25. Once the investigation has concluded, if it is found that there is no breach of the Code of Conduct, the Monitoring Officer will write to you and the person who is the subject of the complaint to advise of the outcome and inform you that there

will be no further action taken. There is no appeal against this decision but reasons for the decision will be given.

26. If the Investigating Officer concludes that there is evidence of a breach of the Code of Conduct, then the Monitoring Officer will consult the Independent Person and make a decision either to:
- Resolve the matter through an Informal Resolution
  - Convene a meeting of the Standards Committee to hear the matter.

### **Standards Committee**

27. If the complaint progresses to a Standards Committee then the Monitoring officer will write to you and inform you of the Committee date.

28. The Committee will consider whether to hold the meeting in public or in private. This will be dependent on the nature and content of the complaint and whether any of the information is exempt/confidential.

29. The Investigating Officer will present their report to the Committee and call any witnesses that they deem necessary. The Member concerned will be allowed to respond to the Investigating Officer's findings and may also call witnesses.

30. If the Standards Committee determines that there has been no breach of the Code of Conduct, then the matter will be closed. There is no provision for an appeal against the decision of the Standards Committee.

31. If the Standards Committee concludes that there has been a breach of the Code of Conduct, the Committee must consider whether and what sanction would be appropriate to impose on the Member. These **could** include (but not limited to):

- Instructing the Monitoring Officer to arrange training for the member.
- That policies/procedures are amended.
- That a briefing/information note be issued.
- That an apology be given.
- That the Member is censured in writing and a copy of the letter is published on the Council's website.
- Withdrawal of certain facilities or services which could include access to Council premises and/or removal or restriction of IT facilities.
- Implement a Communication Plan.
- Take no action where it is not considered appropriate in the circumstances to impose a sanction.

32. The Council does not have the authority to suspend a Councillor from office or to withhold any basic allowance remuneration.

33. Where there is a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on the Council website, including a brief statement of facts, the provisions of the code involved in the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.

34. There is no provision for an appeal against the decision of the Monitoring Officer and Independent Person or the Standards Committee.