

## **SOUTH DERBYSHIRE DISTRICT COUNCIL**

### **PROCEDURE FOR CONSIDERING A COMPLAINT THAT A MEMBER HAS BREACHED THE CODE OF CONDUCT**

1. The Monitoring Officer acknowledges receipt of the complaint within 5 working days of receipt.
2. The Monitoring Officer informs the subject Member of:-
  - (a) the complaint, giving a summary of it and the name of the complainant.
  - (b) his/her right to consult one of the Independent Persons appointed by the Council, through the Monitoring Officer.
3. The Monitoring Officer, in consultation with an Independent Person (other than one consulted by the subject Member under paragraph 2 (b)), decides, within 20 working days of receipt of the complaint, that:-
  - (a) The complaint does not come within the remit of the Code of Conduct.
  - (b) The complaint is not sufficiently serious to warrant an investigation.
  - (c) It is not in the public interest to investigate the complaint.
  - (d) He/she should seek to resolve the complaint without the need for an investigation (e.g. by an apology or training by the subject Member).
  - (e) The complaint should not be investigated because it is vexatious, malicious or obsessive.
  - (f) The complaint should not be investigated because it is broadly similar to a complaint against the same Member about the same alleged incident.
  - (g) The complaint should not be investigated because there is a clear ulterior/political motive for it or it is just a tit for tat complaint.
  - (h) An investigation should take place.
4. Before coming to his/her decision under paragraph 3, the Monitoring Officer may request further information and/or clarification from the complainant and/or the subject Member and the time period shall be extended accordingly.
5. If the Monitoring Officer decides that the complaint should be investigated, or his/her attempts to resolve the complaint without an investigation do not succeed, then he/she will carry out an investigation or appoint an investigator to carry out an investigation on his/her behalf.

6. The investigator appointed under paragraph 5 by the Monitoring Officer may be:-
  - (a) A senior officer of the Council.
  - (b) A senior officer of another Council.
  - (c) An external investigator with relevant experience.
7. A report into an investigation shall include the investigator's findings on whether the Code has been breached.
8. Before finalising his/her report, the Investigator shall send a copy of it to both the complainant and subject Member and give them at least 5 working days to comment on it.
9. If the investigator's final report finds there has not been a breach of the Code, the Monitoring Officer can, in consultation with the Independent Persons, decide to:-
  - (a) Take no action.
  - (b) Refer the report to the Hearing Sub-Committee of the Standards Committee.
10. If the investigator's report finds there has been a breach of the Code then the Monitoring Officer must refer the matter to the Hearing Sub-Committee.
11. When the matter has been referred to the Hearing Sub-Committee by the Monitoring Officer, it will:-
  - (a) Allow the investigator to present his/her report and call witnesses, including the complainant.
  - (b) Allow the subject Member to make representations and call witnesses.
  - (c) Decide if the subject Member has breached the Code of Conduct.
  - (d) Decide what sanction should be imposed if it decides the Code has been breached.
12. The sanctions the Hearing Sub-Committee can impose if it finds a breach of the Code are:-
  - (a) Censuring the Member.
  - (b) Reporting its findings to Council for information.
  - (c) Recommending to the Member's Group Leader (or in the case of ungrouped Members, recommending to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council.
  - (d) Recommending to Council that the Member be replaced as Leader of the authority.
  - (e) Recommending to the Leader of the Council that the Member be removed from Committees and/or Sub-Committees.

- (f) Recommending the Monitoring Officer to arrange training for the Member.
- (g) Recommending to Council that the Member be removed from all outside appointments to which he/she has been appointed or nominated by the authority.

*[In respect of Parish Councils all of these will be recommendations].*

13. In reaching a decision as to whether there has been a breach of the Code and, if so, what sanction should be imposed, the Hearing Sub-Committee will consult and take into account the views of the Independent Persons who will attend such hearings.
14. Following any final decision by the Monitoring Officer or the Hearing Sub-Committee, at whatever stage, the Monitoring Officer shall inform the complainant and the subject Member of the decision and the reasons for it within 10 working days.
15. Where there has been a decision that the subject Member has breached the Code of Conduct, that decision and the reasons for it shall be placed on the Council's website.
16. Wherever there is a decision that the subject Member has not breached the Code of Conduct, that decision shall be placed on the Council's website if the subject Member wishes it to be.
17. Any decision of the Monitoring Officer or Hearing Sub-Committee shall be final and binding.
18. The Monitoring Officer will, every 6 months, take a report to the Standards Committee providing:-
  - (a) The number of complaints received and brief details.
  - (b) How they are progressing.
  - (c) What decisions have been made.
  - (d) What action has, where appropriate, been taken.
19. The Monitoring Officer has delegated power, in consultation with the Independent Persons and the Chairman of the Standards Committee, to approve a departure from these arrangements when he/she considers it is expedient to do so to secure the effective and fair consideration of any matter.
20. In all cases where the Monitoring Officer is unable to perform his/her role, his/her deputy will do so.