



**Melton
Borough
Council**

**Complaints about Alleged Breaches of
the Members Code of Conduct**

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Arrangements for dealing with complaints about breach of the Code of Conduct

1 Introduction

- 1.1 These arrangements set out how Melton Borough Council (“the Council”) will deal with allegations that an elected or co-opted member of the Council or of a Parish Council within its area has failed to comply with the Code of Conduct.
- 1.2 The person making the complaint will be referred to as “the Complainant” and the person against whom the complaint is made will be referred to as “the Subject Member”.

2 The Code of Conduct

- 2.1 The Council has adopted a Code of Conduct for members, which is available for inspection in the Council’s Constitution at Chapter 4, Part 3 and also on the website: [\(Public Pack\)Agenda Document for Constitution, 12/05/2022 00:00 \(melton.gov.uk\)](#)
- 2.2 Each Parish Council is also required to adopt a Code of Conduct. If the Complainant wishes to review a Parish Council’s Code of Conduct, the Complainant should visit the website of the parish council or request the parish clerk to allow the Complainant to inspect the parish council’s Code of Conduct.
- 2.3 Councillors are required to cooperate with any Code of Conduct investigation and respect the impartiality of officers. This is in recognition of the key role monitoring officers have in ensuring what might be contentious and difficult issues are handled fairly.
- 2.4 Local authorities must have a Code of Conduct for councillors, which must be consistent with the “Seven Principles of Public Life”, selflessness, honesty, integrity, objectivity, accountability, openness and leadership.
- 2.5 The system of regulation of standards of councillor conduct in England is governed by the Localism Act 2011. Under the Localism Act 2011, local authorities (other than parish and town councils) must have in place ‘arrangements’ under which allegations of a failure to comply with the authority’s Code of Conduct can be considered and decisions made on such allegations. This guidance sets out those arrangements.

- 2.6 The Principal Authority must also appoint at least one independent person. Melton Borough Council has appointed 6 Independent Persons. The view of an Independent Person will be taken into account before making a decision on a complaint we have decided to investigate.
- 2.7 Anyone who considers that a councillor may have breached the Code of Conduct may make a complaint to Council's Monitoring Officer. Each complaint must be assessed to see if it falls within the authority's legal jurisdiction, for example whether the subject member was acting as a councillor or representative of the authority at the time. A decision must then be made on whether or not some action should be taken, either as an investigation or some other form of action. In many cases it will be possible to resolve issues easily through a simple apology or through swift action from an officer, a political group or meeting chair. Reference to the Code of Conduct and a formal complaint are very much the last resort where issues remain unresolved.
- 2.8 In some cases a matter will be considered serious enough to refer for investigation or other action, this does not mean that a decision has been made about the validity of the allegation. It simply means that the authority believes the alleged conduct, if proven, may amount to a failure to comply with the Code of Conduct and that some action should be taken in response to the complaint.

3 Making a complaint

- 3.1 All complaints must be submitted in writing to:

The Monitoring Officer
Melton Borough Council
Parkside, Burton Street
Melton Mowbray
LE13 1GH

Or by emailing: monitoringofficer@melton.gov.uk

Or by visiting the website: [Complaint against a Councillor \(melton.gov.uk\)](http://melton.gov.uk)

- 3.2 Your complaint should include:

- the Complainant's name and contact details;
- the name of the member(s) the Complainant believes has breached the Code of Conduct and the name of the authority/parish council;
- what the Subject Member has allegedly done that the Complainant believes breaches the Code of Conduct; and

- the remedy you are seeking;
 - details of why the Complainant believes their name and/or the details of the complaint should be withheld (if necessary).
- 3.3 In order to ensure that the Council has all the information to be able to process the complaint a complaint form is available on the Council's website and can be also be provided by request to monitoringofficer@melton.gov.uk Support with completing the form can also be provided on request.
- 3.4 Formal complaints about the conduct of a Parish Councillor towards the Clerk can be made by either the Chair, an individual Parish Councillor, the Parish Council as a whole or the Clerk.

4 Criminal conduct

- 4.1 If the complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to refer the matter to the Police and other regulatory agencies.

5 Acknowledging the complaint

- 5.1 The Monitoring Officer will acknowledge receipt of the complaint within 5 working days of receiving it.
- 5.2 The Monitoring Officer may ask for further clarification or information if the complaint form submitted does not include sufficient detail.
- 5.3 The Monitoring Officer will write to the Subject Member where appropriate (and in the case of a complaint about a Parish Councillor to the Clerk of the Parish Council) with details of the allegations (subject to any representations from the Complainant about confidentiality or concerns that disclosure of the complaint would prejudice any potential investigation) and notifying the Subject Member of their right to consult the Independent Person.
- 5.4 The Subject Member may, within 10 working days of the date of the letter, or such longer period as the Monitoring Officer may agree, make written representations to the Monitoring Officer which will be taken into account when deciding how the complaint will be dealt with.
- 5.5 The Subject Member may wish to consult one of the Council's Independent Persons and this can be arranged at any stage of the process.

6 Initial filtering of complaints

- 6.1 The Monitoring Officer will make an initial assessment based on the criteria set out below:
- 6.1.1 Is the complaint against one or more named councillors of the authority or of a parish or town council the authority is responsible for;
 - 6.1.2 Was the named councillor in office at the time of the alleged conduct;
 - 6.1.3 Does the complaint relate to matters where the councillor was acting as a councillor or representative of the authority and it is not a private matter;
 - 6.1.4 Would the complaint, if proven, would be a breach of the Code under which the councillor was operating at the time of the alleged misconduct.
- 6.2 If the complaint fails one or more of these tests it cannot be investigated as a breach of the Code, and the complainant will be informed that no further action will be taken in respect of the complaint.
- 6.3 The Monitoring Officer will inform the Complainant, the Subject Member (and in the case of a complaint about a Parish Councillor to the Clerk of the Parish Council) of the decision and the reasons for that decision in writing.

7 Confidentiality

- 7.1 As a matter of fairness and natural justice, the Subject Member should be told who has complained about them. There may be occasions where the Complainant requests that their identity is withheld. Such a request may be granted in circumstances that the Monitoring Officer considers to be exceptional, for example:
- 7.1.1 The Complainant has reasonable grounds for believing that they will be at real risk of intimidation, victimisation or physical harm if their identity is disclosed.
 - 7.1.2 The Complainant is an officer who works closely with the Subject Member and they are afraid of the consequences to their employment if their identity is disclosed.
 - 7.1.3 The Complainant suffers from a serious health condition, which might be adversely affected if their identity is disclosed.

- 7.2 If the Monitoring Officer decides to refuse a request by the Complainant for confidentiality, he/she will offer the Complainant the option to withdraw the complaint, rather than proceed with disclosure of the Complainant's identity.
- 7.3 As a matter of fairness and natural justice, the Subject Member should also be informed of the nature of the complaint. If however the Monitoring Officer considers that disclosure of details of the complaint to the Subject Member might prejudice the investigation, the Monitoring Officer can agree to delay notifying the Subject Member until consideration of the complaint has progressed sufficiently.
- 7.4 It is important, first, to preserve the integrity of the complaints process and, second, to minimise any negative impact of the complaint on all the people affected by it, that information relating to the complaint is treated as confidential.
- 7.5 In order to protect the integrity of the process parties should also refrain from discussing the matter in the public domain.

8 Additional Information

- 8.1 If the Complainant does not submit sufficient information to enable the Monitoring Officer to come to a decision, the Monitoring Officer may ask the Complainant for such information, and may request additional information from the Subject Member.
- 8.2 The Monitoring Officer may also carry out pre-assessment enquiries, which will not amount to an investigation. This may include obtaining documentation, such as a copy of the relevant Code of Conduct or minutes of meetings.

9 Initial Assessment of the Complaint

- 9.1 Where the complaints meets the criteria set out in section 6 or there is any doubt whether the initial criteria are met, the Monitoring Officer will review the complaint together with any representations received from the Subject Member and, after consultation with the Independent Person, take a decision as to whether the complaint merits formal investigation or should be dealt with informally or rejected.
- 9.2 This decision will normally be taken within 20 working days of receipt of the complaint or the Subject Member's written representation, whichever is the latter.
- 9.3 Where the Monitoring Officer has determined that if the complaint is proven, there would potentially be a breach of the Code and recommended an informal resolution, it is in the public interest for the Subject Member to be named, however where the Monitoring Officer has made a finding of no breach, the Subject Member will not be identified.

- 9.4 In order to determine what further action (if any) to take the Monitoring officer will consider the following criteria:
- 9.4.1 Does the complaint contain sufficient evidence to demonstrate a potential breach of the Code?
 - 9.4.2 Is there an alternative, more appropriate remedy?
 - 9.4.3 Where the complaint is by one councillor against another, does the behaviour complained of go beyond what would be considered robust political debate and/or the members right to freedom of expression?
 - 9.4.4 Is the complaint malicious, politically motivated, or “tit for tat”?
 - 9.4.5 Would an investigation be in the public interest, or the matter, if proven, would not be serious enough to warrant any sanction?
 - 9.4.6 Has a substantially similar complaint already been considered and no new material evidence has been submitted?
 - 9.4.7 Does the complaint relate to conduct in the distant past?
 - 9.4.8 Has the behaviour complained of already been dealt with?
 - 9.4.9 Is the complaint in relation to dissatisfaction with a local authority decision rather than the conduct of an individual member?
 - 9.4.10 Is the complaint about someone who is no longer a councillor?
- 9.5 Following consideration of the criteria set out above the Monitoring Officer may reach one of the following decisions:
- 9.5.1 No further action should be taken on the allegation
 - 9.5.2 The matter should be dealt with through informal resolution (see below)
 - 9.5.3 The matter should be referred for formal investigation
 - 9.5.4 A decision to take no further action may be made where the allegation discloses a potential breach of the Code but it is not considered to be in the public interest to pursue the matter further. The decision in these cases will set out the reasons for the taking no further action, but will not make a finding of fact in relation to the allegation(s).

10 Informal Resolution

- 10.1 In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation.
- 10.2 Such informal resolution may involve the Subject Member accepting that his/her conduct was unacceptable; and
 - 10.2.1 offering an apology;
 - 10.2.2 agreeing to attend a training course;
 - 10.2.3 agreeing to engage in a process of conciliation; or
 - 10.2.4 the Council introducing some other remedial action (such as changing procedures).
- 10.3 Where the Subject Member makes a reasonable offer of informal 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.
- 10.4 Where the Monitoring Officer recommends informal resolution, but the Subject Member is not willing to accept his/her conduct was unacceptable or not willing to accept the informal resolution proposed, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

11 Investigation

- 11.1 If the Monitoring Officer decides that the complaint merits formal investigation, he/she will appoint an Investigating Officer, who may be another senior officer of the authority, an officer of another authority or an external investigator.
- 11.2 The Investigating Officer will decide whether he/she needs to meet or speak to the Complainant to understand the nature of the complaint.
- 11.3 The Investigating Officer would normally write to the Subject Member and provide him/her with a copy of the complaint, and ask the Subject Member to provide his/her explanation of events, and to identify what documents the Investigating Officer needs to see and who she/he needs to interview.
- 11.4 In exceptional cases, where it is appropriate to keep the Complainant's identity confidential or the Monitoring Officer considers that disclosure of details of the complaint to the Subject Member might prejudice the investigation, the Investigating Officer can delete the Complainant's name and address from the papers given to the Subject Member, or delay notifying the Subject Member until the investigation has progressed sufficiently.

- 11.5 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 to the Subject Member concerned, to give them both an opportunity to identify any matter in that draft report which they disagree with or which they consider requires more consideration.
- 11.6 Both parties will be given 10 working days to make representations or, in exceptional circumstances, such other period as the Investigating Officer considers reasonable. Having received and taken account of any comments on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer.

11A Timescales for an investigation

- 11.7 There are many factors that can affect the time it takes to complete an investigation. Nevertheless, it is important that there are realistic targets from the outset for the completion of an investigation. This allows the Monitoring Officer to monitor the progress of investigations and explore reasons for any delays where they have delegated the investigation. The LGA recommends that most investigations are carried out, and a report on the investigation completed, within a maximum of six months of the original complaint being referred for an investigation.
- 11.8 This will not always be possible, particularly where there is overlapping jurisdiction or you are waiting for a key piece of evidence from an external body but if it is to take longer than that, specific permission should be discussed between the monitoring officer and the Independent Person, and a note made as to the reasons why.
- 11.9 Refusal by the subject member or other relevant party to cooperate, for example by not making themselves available for an interview without good reason, should not be a reason for delay but should be reflected in the report. If the subject member refuses to cooperate that of itself is a potential breach of the Model Code and may be something that any decision maker in a case may want to take account of.

12 No evidence of a failure to comply with the Code of Conduct

- 12.1 The Monitoring Officer will review the Investigating Officer's report and, if he/she is satisfied that the Investigating Officer's report is sufficient, will send to the Complainant and the Subject Member (and the Parish Council, where the complaint relates to a Parish Councillor) a copy of the Investigating Officer's final report and confirm the finding of no failure to comply with the Code of Conduct.

- 12.2 If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider his/her report.

13 Evidence of a failure to comply with the Code of Conduct

- 13.1 The Monitoring Officer will review the Investigating Officer's report and will then either send the matter for local hearing before the Hearing Panel ("the Panel") where it is in the public interest or, after consulting the Independent Person, seek local resolution.
- 13.2 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 the Complainant and seek to agree what the Complainant considers to be a fair resolution which also helps to ensure higher standards of conduct for the future.

Informal Resolution:

- 13.3 Such informal resolution may involve the Subject Member accepting that his/her conduct was unacceptable; and
- 13.3.1 offering an apology;
 - 13.3.2 agreeing to attend a training course;
 - 13.3.3 agreeing to engage in a process of conciliation; or
 - 13.3.4 the Council introducing some other remedial action (such as changing procedures).
- 13.4 If the Subject Member complies with the suggested resolution, the Monitoring Officer will issue a decision notice. The decision notice will include a brief statement of facts, the provisions of the code of conduct engaged by the allegations, the views of the Independent Person, the reasons for the decision and any sanctions applied.
- 13.5 A copy of the decision notice will be sent to the Complainant, to the Subject Member [and to the Parish Council in the case of a complaint about a Parish Councillor], published on the Council's website and reported to the next convenient meeting of the Standards Committee.
- 13.6 However, if the Subject Member refuses to accept the resolution the Monitoring Officer will refer the matter for a local hearing where it is in the public interest to do so.

Local Hearing:

- 13.7 If following consultation with the Independent Person and the Chair of the Audit and Standards Committee (where appropriate) the Monitoring Officer considers that local resolution is not appropriate, or the or the Monitoring Officer accepts the reasons the Complainant is not satisfied by the proposed resolution, or the Subject Member is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigating Officer's report to the Hearing Panel which will conduct a local hearing before deciding whether the Subject Member has failed to comply with the Code of Conduct and, if so, whether to take any action.
- 13.8 The Monitoring Officer will conduct a "pre-hearing process", requiring the Subject Member to give his/her response to the Investigating Officer's report in writing, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing.
- 13.9 The Chairman of the Panel may issue directions as to the manner in which the hearing will be conducted.
- 13.10 At the hearing:
 - 13.10.1 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 Subject 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 Panel.
 - 13.10.2 The Subject Member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Panel as to why he/she considers that he/she did not fail to comply with the Code of Conduct.
 - 13.10.3 The Panel can allow witnesses to be questioned and cross examined by the Subject Member, the Monitoring Officer, the Investigating Officer (or their representative(s)) directly or through the Chairman.
 - 13.10.4 The Panel can also question witnesses. The Independent Person will be invited to attend to observe, but will not participate in the hearing.
 - 13.10.5 The Panel will seek the views of the Independent Person/Legal Adviser and take those views into account before making its decision.

13.10.6 The Panel may conclude that the Subject Member did not fail to comply with the Code of Conduct, and if so will dismiss the complaint.

13.10.7 If the Panel concludes that the Subject Member did fail to comply with the Code of Conduct, the Chairman will inform the Subject Member of this finding and the Panel will then consider what action, if any, the Panel should take as a result of the Subject Member's failure to comply with the Code of Conduct. In doing this, the Panel will give the Subject Member an opportunity to make representations to the Panel and seek the views of the Independent Person and take those views into account before making its decision.

14 What action can the Hearing Panel take where a member has failed to comply with the Code of Conduct?

14.1 The Council has delegated to the Panel such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct.

14.2 Accordingly the Panel may do one or a combination of the following:

14.2.1 Send a formal letter to the Subject Member;

14.2.2 Issue a formal Censure;

14.2.3 Publish its findings in respect of the Subject Member's conduct;

14.2.4 Report its findings to Council (or to the Parish Council) for information;

14.2.5 Recommend to the Subject Member's Group Leader (or in the case of ungrouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;

14.2.6 Recommend to the Leader of the Council that the Subject Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;

14.2.7 Instruct the Monitoring Officer to (or recommend that the Parish Council) arrange training for the Subject Member;

- 14.2.8 Recommend to the Subject Member's Group Leader that he/she is removed ([or recommend to the Parish Council that the Subject Member be removed]) from all outside appointments to which he/she has been appointed or nominated by the authority (or by the Parish Council);
- 14.2.9 In the case of a co-opted Member, recommend to Council (or to the Parish Council) that he/she be removed from the Council or any of its committees, sub-committees or working groups;
- 14.2.10 Withdraw (or recommend to the Parish Council that it withdraws) facilities provided to the Subject Member by the Council (such as a computer, website and/or email and Internet access) for a specified period; or
- 14.2.11 Exclude (or recommend that the Parish Council exclude) the Subject Member from the Council's offices or other premises for a specified period, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.
- 14.3 The Hearings Panel has no power to suspend or disqualify the Subject Member or to withdraw members' or special responsibility allowances. It also has no power to impose a sanction which would fetter the otherwise appropriate activities of a democratically elected representative.

15 What happens at the end of the hearing?

- 15.1 At the end of the hearing, the Chairman will state the decision of the Panel as to whether the Subject Member failed to comply with the Code of Conduct and as to any actions which the Panel resolves to take.
- 15.2 As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chairman of the Panel.
- 15.3 The decision notice will include a brief statement of facts, the provisions of the code of conduct engaged by the allegations, the views of the Independent Person, the reasons for the decision and any sanctions applied.
- 15.4 A copy of the decision notice will be sent to the Complainant, to the Subject Member [and to the Parish Council in the case of a complaint about a Parish Councillor], published on the Council's website and reported to the next convenient meeting of the Standards Committee.

16 What is the Hearing Panel?

- 16.1 The Hearing Panel is a sub-committee of the Council's Standards Committee. The Independent Person is invited to attend all meetings of the Panel and his/her views are sought and taken into consideration before the Panel takes any decision on whether the Subject Member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

17 Who is the Independent Person?

- 17.1 The Independent Person is a person who has been appointed by the Council under Section 28 of the Localism Act 2011.
- 17.2 The Independent Person's views must be sought and taken into account before a decision on an allegation can be made. Their views may also be sought by the Subject Member.
- 17.3 The Monitoring Officer will consult the Independent Person as set out in these arrangements, but has the discretion to consult the Independent Person on any other issues arising out of an allegation that a member has failed to comply with the Code of Conduct.
- 17.4 The Council has access to a pool of Independent Persons which will provide resilience in the event a particular Independent Person is unable to act.

18 Revision of these arrangements

- 18.1 The Monitoring Officer and the Audit & Standards Committee have the power to amend these arrangements.
- 18.2 The Council has delegated to the Panel and the Monitoring Officer the right to depart from these arrangements where it considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

19 Appeals

- 19.1 There is no right of appeal against a decision of the Monitoring Officer or the Panel.
- 19.2 If the Complainant feels that the Council has failed to deal with the complaint properly, he/she may complain to the Local Government and Social Care Ombudsman.