

Bentworth Parish Council Procedure for handling complaints

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Note: complaints are handled by East Hampshire District Council.
Bentworth Parish Council has therefore resolved to adopt East
Hampshire’s policies, which are reproduced below.

BENTWORTH PARISH COUNCIL PROCEDURE FOR HANDLING COMPLAINTS

ARRANGEMENTS FOR DEALING WITH ALLEGATIONS THAT A MEMBER OF THE DISTRICT COUNCIL OR A MEMBER OF A PARISH COUNCIL WITHIN THE DISTRICT OF THE COUNCIL HAS FAILED TO COMPLY WITH THE RELEVANT CODE OF CONDUCT. LOCALISM ACT 2011 SECTION 28

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

1. Making an allegation

- (1) An allegation that a councillor has failed to comply with the requirements of the relevant Code of Conduct must be made to:
 - (a) The Monitoring Officer,
- (2) An allegation may be sent by email, or other any other media with any supporting information to the Monitoring Officer. A form for this purpose is available on the Council's website.
- (3) The allegation must be that the Councillor(s) has, or may have, breached the relevant Code of Conduct. 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.
- (5) 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 Councillor, unless the Monitoring Officer considers that there are special reasons for keeping this information confidential.

2. Procedure once an allegation is received

- (1) Once an allegation is received or the Monitoring Officer has been made aware of circumstances meeting the criteria in Appendix 1, the Monitoring Officer will provide a copy of the allegation or a summary of the circumstances to the Councillor complained of, and advise that the Councillor may submit any comments to the Monitoring Officer if the Councillor wishes to do so.
- (2) In appropriate cases, the Monitoring Officer may seek to resolve the matter informally. This may involve the Councillor accepting that his/her conduct was unacceptable and offering an apology.
- (3) If informal resolution is not possible, the Monitoring Officer will, in consultation with the Independent Person, the Chairman of the Standards Committee (or the Vice-Chair if the Chairman is a member of the same group within the Council as the Councillor complained of), and, if appropriate inform the Chief Executive, determine whether the complaint merits formal investigation, or whether no further action should be taken.
- (4) The Monitoring Officer may refer a complaint to the Standards Committee for a decision to investigate if the Monitoring Officer considers it would be inappropriate for them to take the decision.
- (5) Whilst each allegation will be considered on its own facts the assessment criteria are provided to assist.
- (6) 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.

3. Investigation

- (1) 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.
- (2) If the investigating Officer finds no evidence of failure to comply with the Code, the Monitoring Officer may close the matter, in consultation with the Independent Person, Chairman or Vice-Chairman of the Standards committee and inform the Chief Executive. The Monitoring Officer may still refer the matter to the Standards Committee if in their absolute discretion it appears appropriate. The Monitoring Officer will in any event provide a summary to the next meeting of the Standards Committee.
- (3) Where a formal investigation finds evidence of failure to comply with the Code of Conduct, an opportunity for local resolution may be provided 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 of the Committee subject to the complainant being satisfied with the outcome a summary report will be made to the Standards Committee.
- (4) In all other cases where the formal investigation finds evidence of a failure to comply with the Code of Conduct, the Standards Committee will hold a hearing within two months of the investigation report at which the Councillor complained of may respond to the investigation report and the Committee will determine whether the Councillor did fail to comply with the Code of Conduct and what action, if any, is appropriate. The Committee's Pre-hearing and Hearing Procedures is set out in Part 4 – Section 3 (C) and (D).

The Hearing Committee will be advised by an Independent Person and by the Monitoring Officer.

- (5) The sanctions open to the Standards Committee are:
 - i. to censure, to report the findings to Full Council,
 - ii. to recommend the Councillor's Group Leader to remove the Councillor from any or all Committees,
 - iii. to withdraw Council facilities, such as a computer, or to exclude the Councillor 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.

- (6) 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.

4. Conflict of interest

- (1) Where a complaint is made by a Councillor about another Councillor, and the membership of the Committee there could also be a perception of conflict of interest where the Chair is consulted and is of the same group as the complainant. The Monitoring Officer will discuss with both the Chair and the Vice-Chair the management of any possible perceived conflicts of interest.

ASSESSMENT CRITERIA

1. The Monitoring Officer will reject a complaint if it fails to meet one or more of the following tests:
 - a. The complaint is against one or more named Councillors or co-opted members of the or a parish or town council within the District.
 - b. There is sufficient evidence to suggest the Councillor was acting in a public or Council capacity.
 - c. The complaint, if proven, would be a breach of the Code of Conduct.
2. The Monitoring Officer, following consultation with the Independent Person, the Chairman or Vice-Chairman of the Committee, or the Standards Committee may decide to refer a complaint for investigation 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.
3. 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:
 - a. Where the complaint is about someone who is no longer a member of the Council or a parish or town council,
 - b. 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,
 - c. Where the Monitoring Officer has considered the complainant has unduly delayed without reasonable cause,
 - d. Any undue delay has resulted in the Councillor being so unfairly prejudiced that it would be wholly unreasonable to continue. In the event the delay was cause or contributed to by the actions of the subject councillor the Monitoring Officer may continue with the investigation and any hearing.
4. Where the allegation is anonymous, and without capability of independent corroboration.
5. When the allegation discloses a potential breach of the Code of Conduct, but the complaint does not appear serious enough to warrant further action.
6. Where the complaint appears to be malicious, politically motivated or tit-for-tat, unless a serious matter is raised in the complaint

REFERRED FOR INVESTIGATION

1. When an allegation is referred by the Monitoring Officer or the Standards Committee for investigation, the Monitoring Officer will within ten working days or as soon as reasonably practical, inform the Councillor who is the subject of the allegation of failure to comply with the Code of Conduct, (“the Subject Councillor”), 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 may 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 Councillor and the Complainant of the appointment of the Investigating Officer.
3. The Investigating Officer may make such inquiries as they think 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 Councillor. The Subject Councillor will be advised that they 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. Any accompanying person must either be under a professional duty of confidentiality (a solicitor or legal representative) or have signed a confidentiality agreement in respect of any information disclosed during the interview or hearing that is not in the public domain.
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 Councillor and the Complainant for review and comment, and will indicate that it does not necessarily represent the Investigating Officer’s final conclusion.
7. If the Investigating Officer issues a draft report, the investigator 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 investigation. The report will commence with a statement of the Investigating Officer’s conclusion. The conclusion will indicate if the evidence supports a failure to comply with the Code of Conduct of the council or parish or town council.
9. The Investigating Officer will submit the final report to the Monitoring Officer.

PRE-HEARING PROCEDURE

1. Where an investigation report indicates that there has been a breach of the Code of Conduct, and the matter cannot otherwise be resolved by local resolution, a hearing will be arranged within two months of receipt. The hearing will be a meeting of the Committee convened specifically for that purpose.
2. A copy of the investigation report will be sent to the Subject Councillor, the complainant, the clerk to the parish council if the subject is a Parish Councillor, the Chairman or Vice Chairman of Standards Committee.
3. The subject Councillor may provide written response within 15 working days, which response shall set out the Subject Councillor's reply to the Investigating Officer's report and shall state if they:
 - a. disagree with any of the findings of fact in the report, giving the reasons for any disagreement
 - b. wish to be accompanied at a hearing by any person
 - c. wish to give evidence to the Committee, either orally or in writing
 - d. wish to ask any person to give evidence to the Committee
 - e. wish any part of the hearing to be held in private
 - f. wish any part of the Investigating Officer's report or other relevant documents to be withheld from the public.
4. The Subject Councillor shall be informed that if, at the meeting of the Committee, they seek 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 Subject Councillor's response, the Investigating Officer shall be invited to comment on it within ten working days. If the report is disputed the investigating officer must indicate if they are appointing another officer or person to be present the evidence upon which the report was based.
6. Upon receipt of the Investigating Officer's response, the Monitoring Officer will consider the responses of the Subject Councillor and the Investigating Officer and set a date for the hearing in consultation with the Chairman of the Committee.
7. If the subject Councillor has indicated they wish a person to attend to give evidence the Standards Committee may in its absolute discretion agree to hear from that person. A question may only be asked with the permission and absolute discretion of the Chairman of the Committee.
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.

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 Chair 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 set out below, but the Chair may agree to vary this procedure in any particular instance where they are of the opinion that such variation is necessary in the interests of fairness.
6. The Subject Councillor may be accompanied during the meeting by another person to support, advise or assist them.
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 Councillor and the Presenting/Investigating Officer if they are present at the hearing.
8. At the start of the hearing, the Chair shall introduce each of the members of the Committee, the Independent Person, the Subject Councillor (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 Councillor is not present at the start of the hearing:
 - a. The Chair will ask the Monitoring Officer if the Subject Councillor has provided any explanation.
 - b. The Committee shall then consider any reasons which the Subject Councillor has provided for not attending the hearing and shall decide if in exceptional circumstances an adjournment is justified.
 - c. If the Subject Councillor has not given any reasons for non-attendance, the Committee shall consider the matter and make a determination in the absence of the Subject Councillor.
11. If there is disagreement, the Presenting/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. With the permission of the Chairman of the Committee the Subject Councillor, the Committee members and the Independent Person may ask questions of a witness.
13. The Subject Councillor will then present the evidence that is relevant to the facts in dispute. With the permission of the Committee, witnesses can be asked to give relevant evidence. With the permission of the Chairman of the Committee the Subject Councillor, the Committee members and the Independent Person may ask questions of a witness.
14. If the Subject Councillor disagrees with any relevant fact in the report without having given prior notice, they must provide reasons, the Committee may continue with the hearing, relying on the information in the report, may allow the Subject Councillor to make representations about the issue and invite the Presenting/Investigating Officer to respond. The Committee may in exceptional circumstance postpone the hearing.
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.

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 Councillor or seek further information. The other party will be given an opportunity to comment upon the questions asked or the responses made.

Signed: Jane Costigan

Chair Bentworth Parish Council

3rd May 2022