

DAVENTRY DISTRICT COUNCIL

Arrangements for Dealing with Allegations of Breaches of the Code of Conduct for Members - 2012

1) Context

These “Arrangements” set out how you may make a complaint that an elected or co-opted Member of Daventry District Council (*or of a parish council within its area*) has failed to comply with its Code of Conduct for Members and sets out how the Council will deal with such allegations.

2) The Code of Conduct

Daventry District Council has adopted a Code of Conduct for Members, which is available for inspection on the Council’s website or at the Council Offices.

Each parish council is also required to adopt a Code of Conduct. If you wish to inspect a Parish Council’s Code of Conduct you should inspect any website operated by the parish council and/or request the parish clerk to allow you to inspect the parish council’s Code of Conduct.

3) Making a complaint

If you wish to make a complaint, you must write to:

The Monitoring Officer
Daventry District Council
Lodge Road
Daventry
Northamptonshire
NN11 4FP

Or email: monitoringofficer@daventrydc.gov.uk

The Monitoring Officer is a senior officer of the Authority who has statutory responsibility for maintaining the register of Members’ interests and who is responsible for administering the system in respect of complaints of Member misconduct.

You need to make a complaint in writing.

In order to ensure that we have all the information which we need to be able to process your complaint, please use the complaint form, which can be downloaded from the District Council’s website and is available on request from the Council Offices.

You need to provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress.

If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form, with reasons, in which case the Monitoring Officer will determine if exceptional circumstances warrant this and so not disclose your name and address to the Member against whom you are making the complaint without your prior consent.

The Council does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

The Monitoring Officer will acknowledge receipt of your complaint within five working days of receiving it, and will keep you informed of the progress of your complaint.

4) Initial assessment of complaints

The Monitoring Officer will review every complaint received and take a decision as to whether it is, firstly, admissible and, if so, whether it merits no action, informal resolution or formal investigation. This decision will normally be taken within 28 days of receipt of your complaint. When the Monitoring Officer has taken a decision you will be informed of the outcome and the reasons for it.

For the complaint to be admissible it must be in a legible format and relate to an existing Member of the Council.

Where the Monitoring Officer requires additional information in order to come to a decision, you may be asked for such information and/or he may ask the Member against whom your complaint is directed. *(Where your complaint relates to a parish councillor, the Monitoring Officer may also inform the parish council clerk of your complaint and seek the views of the parish council before making this decision).*

In determining whether or not the complaint merits no action, informal resolution or formal investigation, the Monitoring Officer will have regard to a range of factors including the following:-

- i) Whether there is sufficient information upon which to base a decision.
- ii) Whether the alleged action is serious.
- iii) Whether the complaint is politically motivated, vexatious or tit for tat.
- iv) Whether the action complained about occurred recently or not.
- v) Whether the allegations relate to actions occurring whilst the subject member was acting in their official capacity, or whether they relate to their private life.
- vi) Whether the matter is considered suitable for informal resolution and either the subject member or the complainant is prepared to accept this.

5) Informal Resolution

In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the Member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the Council.

Where the Member or the Council make a reasonable offer of local resolution, but you are not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

The Council is keen to promote informal resolution wherever appropriate.

If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer can pass such information to the Police and other regulatory agencies.

6) Investigation

If the Monitoring Officer decides that a 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. The Investigating Officer will decide whether he/she needs to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents the Investigating Officer needs to see, and who the Investigating Officer needs to interview.

The Investigating Officer would normally write to the Member against whom you have complained and provide him/her with a copy of your complaint, and ask the Member to provide his/her explanation of events, and to identify what documents he needs to see and who he needs to interview. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the Member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the Member, or delay notifying the Member until the investigation has progressed sufficiently.

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 you and to the Member concerned, to give you both an opportunity to identify any matter in that draft report which you disagree with or which you consider requires more consideration.

Having received and taken account of any comments which you may make on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer.

The Monitoring Officer will review the Investigating Officer's report and, if satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the Member concerned (*and to the Parish Council, where your complaint relates to a Parish Councillor*), giving you both a copy of the Investigating Officer's final report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, the Investigating Officer may be asked to reconsider his/her report.

7) After an investigation

7.1 If the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct, the Monitoring Officer will, after consulting with the Independent Person, take no further action and close the case. You will be notified of the decision.

7.2 If the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct, the Monitoring Officer will in consultation with the Independent Person, either:

- a) where the failure is deemed by the Investigating Officer to be minor, take no further action and close the case; or
- b) in other cases, seek local resolution between, and to the satisfaction of, all parties.

Otherwise, the Monitoring Officer will arrange a hearing.

You will be notified of the decision.

7.2.1 Local Resolution

The Monitoring Officer may, in consultation with the Independent Person, consider that the matter can reasonably be resolved without the need for a local hearing. In such case the Monitoring Officer will consult with the Member and you, as complainant, and seek to agree a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the Member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the Council. If the Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Appeals and Standards Committee (*and to the Parish Council where your complaint relates to a parish councillor*) for information, but will take no further action.

7.2.2 Local Hearing

If the Monitoring Officer, in consultation with the Independent Person, considers that local resolution is not appropriate, or it is not possible to achieve, the Monitoring Officer will report the Investigating Officer's report to the Hearings Panel which will conduct a local hearing before deciding, in consultation with the Independent Person, whether the Member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Member.

In summary, the Monitoring Officer will conduct a "pre-hearing process", requiring the Member to give his/her response to the Investigating Officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing, and the Chair of the Hearings Panel may issue directions as to the manner in which the hearing will be conducted.

At the hearing, 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 Member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask you as the complainant to attend and give evidence to the Hearings Panel.

The Member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Hearings Panel as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

The Hearings Panel, with the benefit of any advice from the Independent Person, may conclude that the Member did not fail to comply with the Code of Conduct, and so dismiss the complaint. Alternatively, if the Hearings Panel concludes that the Member did fail to comply with the Code of Conduct, the Chair will inform the Member of this finding and the Hearings Panel will then consider what action, if any, the Hearings Panel should take, or recommend, as a result of the Member's failure to comply with the Code of Conduct. In doing this, the Hearings Panel will give the Member an opportunity to make representations to the Panel and will consult the Independent Person.

At the end of the hearing, the Chairman will state the decision of the Hearings Panel as to whether the Member failed to comply with the Code of Conduct and as to any actions which the Hearings Panel resolves to take, or recommends be taken.

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Hearings Panel, and send a copy to the complainant and the Member (*and to the parish council where the complaint relates to a parish councillor*), make that decision notice available for public inspection and report the decision to the next convenient meeting of the Appeals and Standards Committee, or Council, as appropriate.

8) Action that can be taken where a Member has failed to comply with the Code of Conduct

The Council has delegated to the Monitoring Officer and Hearings 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. Accordingly they may:

- 8.1 issue a formal letter/censure to the Member;
- 8.2 publish the findings in respect of the Member's conduct;
- 8.3 arrange (*or recommend that the parish council arrange*) training for the Member;
- 8.4 report findings to Council (*or to the parish council*) for information;
- 8.5 recommend to the Member's Group Leader (or in the case of un-grouped Members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 8.6 recommend to the Leader of the Council that the Member be removed from particular Portfolio responsibilities;

- 8.7 recommend that the Member be removed from outside appointments to which he/she has been appointed or nominated by the Council;
- 8.8 exclude (*or recommend that the parish council exclude*) the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

The Council has no power to suspend or disqualify a Member, or to withdraw Members' allowances.

9) The 'Hearings Panel'

The Hearings Panel is a sub-committee of the Council's Appeals and Standards Committee. The Council has decided that it will comprise of three Members of the Council, a non-voting Co-opted Parish Member and a non-voting Co-opted Independent Member.

The Independent Person is invited to attend all meetings of the Hearings Panel and their views are sought and taken into consideration before the Hearings Panel takes any decision on whether the Member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken, or recommendation, in consequence.

10) The 'Independent Person'

The Independent Person is a person who has applied for the position following advertisement, and been appointed by the District Council.

A person cannot be "independent" if he/she is a Member or Officer of the Council, or a relative or close friend of theirs. The Independent Person is not the same as a Co-opted Independent Member of the Appeals and Standards Committee.

11) Revision of these arrangements

The Council may by resolution agree to amend these arrangements.

12) Appeals

There is no right of appeal for the complainant or for the Member against a decision of the Monitoring Officer or of the Hearings Panel.