

LOCALISM ACT 2011

ARRANGEMENTS FOR DEALING WITH COMPLAINTS ABOUT THE CONDUCT OF MEMBERS

1. Introduction

- 1.1. Section 28(6) of the Act requires Fylde to put in place arrangements by which allegations of failure to comply with the code can be investigated and under which decisions on allegations can be made. This protocol sets out Fylde's arrangements. It was adopted at the council meeting held on XXXXX.
- 1.2. Words used in this protocol have the same meanings as in chapter 7 of part 1 of the Act. In addition, the following words have the meanings given below:

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| Act | The Localism Act 2011 |
| Chairman | The chairman of the committee |
| Code | The code dealing with the conduct of Members adopted by Fylde or (as applicable) a relevant parish council under section 27(2) of the Act |
| Committee | Fylde's Audit & Standards Committee, or any other committee of Fylde to which the powers under chapter 7 of part 1 of the Act have been delegated |
| Complainant | The person making an allegation |
| Fylde | Fylde Borough Council |
| Independent Person | A person appointed for the purposes of section 27(6) of the Act |
| Investigating Officer | A person to whom the monitoring officer has referred an investigation under paragraph 7.1 of these arrangements, or the monitoring officer undertaking an investigation herself |
| Member | A member or co-opted member |
| Monitoring officer | Includes a deputy or any other officer carrying out the functions of the monitoring officer in her place if he monitoring officer has recused herself under paragraph 3.4 below |
| Parish council | A parish council for which Fylde is the principal authority |
| Qualifying criteria | The criteria set out in paragraph 4.2 of these arrangements |
| Relevant parish council | Where an allegation concerns the conduct of the subject member as a parish councillor, the parish council concerned |
| Subject member | The member whom the allegation is against |

2. Independent Person

- 2.1. Fylde will normally appoint three Independent Persons. They will, where possible, be the same persons that Blackpool Borough Council has appointed as Independent Persons.

3. Receipt and consideration of allegations by the monitoring officer

- 3.1. The Monitoring Officer is the Proper Officer to receive allegations. They will normally acknowledge receipt of an allegation within 5 working days of receiving it. They will consider all allegations sent to them by post or by email. They may also, in their discretion, consider allegations received through another route, such as social media.
- 3.2. The monitoring officer will consider allegations in two stages. First, they will decide if the allegation meets the qualifying criteria. Second, if it does, they will decide whether to refer it for investigation. These arrangements set out how the monitoring officer will make those decisions and other procedures for investigating and making decisions on allegations.

- 3.3. No member or officer will participate in any stage of the arrangements if they have, or may have, any personal conflict of interest in the matter.
- 3.4. The monitoring officer will recuse themselves and ask their deputy or another senior Fylde officer or other appropriate person to carry out their functions in their place if it appears to them appropriate to do so.
- 3.5. If, exceptionally, the Monitoring Officer considers that a particular decision which would otherwise fall to be made by them ought to be made by the Committee instead, they may refer it to the Committee.

4. Qualifying criteria

- 4.1. The first decision that the monitoring officer will make will be whether the allegation meets the qualifying criteria. The monitoring officer will consult an independent person about this decision.
- 4.2. An allegation will meet the qualifying criteria only if:
- It is against one or more named members;
 - The subject member was in office at the time of the alleged conduct;
 - It does not concern conduct which has previously been the subject of another allegation which has already been disposed of; and
 - The complainant has supplied their name and contact details, except where the monitoring officer considers (after consulting an independent person) that the conduct complained of is of such gravity that it ought to be considered for investigation notwithstanding that the complainant has not supplied their name or contact details.
- 4.3. If the monitoring officer decides that the allegation does not meet the qualifying criteria, they will inform the complainant in writing (if possible) and close the matter.
- 4.4. If the monitoring officer decides that the allegation meets the qualifying criteria they will inform the subject member and any relevant parish council about the allegation and consider whether to refer it for investigation.

5. Decision whether to refer for investigation

- 5.1. The monitoring officer will confer with an independent person before making the decision whether to refer an allegation for investigation. The monitoring officer may obtain additional factual information to come to a decision and may request information from the subject member. The monitoring officer may also seek the views of any relevant parish council.
- 5.2. The monitoring officer will only refer a matter for investigation if it appears to them that:
- The alleged conduct would be likely to be a breach of the Code ;
 - The subject member was acting in their official capacity at the time of the alleged misconduct;
 - The allegation does not concern something that happened so long ago that those involved are unlikely to remember it clearly enough to provide credible evidence, or where the lapse of time means there would be little benefit or point in taking action now;
 - An investigation would be a proportionate use of public resources and in the public interest;
 - The allegation is not motivated principally by personal animosity, political considerations or as a response to a previous complaint;

- The alleged misconduct would not be more appropriately addressed by the subject member receiving training or mentoring; and
- The subject member is not an inexperienced member who has failed to comply with the code of conduct because of inexperience.

5.3. In appropriate cases, the monitoring officer may defer the decision whether to refer an allegation for investigation in order to seek to resolve the complaint informally, without the need for an investigation. Such informal resolution may involve the subject member accepting that their conduct was unacceptable and agreeing to a course of action put forward by the monitoring officer. Where the subject member or the authority (in appropriate cases) make a reasonable offer of local resolution, but it is rejected by the Complainant, the monitoring officer will take account of this in deciding whether to refer the allegation for investigation.

5.4. If the monitoring officer decides to refer an allegation for investigation, they will give notice of the referral to the complainant, the subject member and any relevant parish council. The notice will contain a brief outline of the allegation and of the reasons for the decision to refer it for investigation. It will outline that the subject member should keep the matter confidential but may confer with an independent person (other than the one the monitoring officer conferred with). The notice will be copied to the independent persons.

5.5. The monitoring officer will make any reasonable and appropriate pastoral support available on request to the subject member during the investigation and hearing process.

6. Confidentiality

6.1. If a complainant has asked for their identity to be withheld, this request will be considered by the monitoring officer when deciding whether the allegation meets the qualifying criteria.

6.2. The monitoring officer will only agree to withhold the identity of the complainant where they consider that there are exceptional circumstances which outweigh the considerations of fairness and natural justice which would normally support the subject member being ~~be~~ told who has complained about them. Such circumstances may include the complainant's belief, on reasonable grounds, that they or any witness may be at risk of physical emotional or psychological harm, or that their employment may be jeopardised.

6.3. If the monitoring officer decides to refuse a request by a complainant for confidentiality, they will offer the complainant the option to withdraw the complaint, rather than proceed with their identity being disclosed.

7. Investigation

7.1. If the monitoring officer decides to refer an allegation for investigation, they may investigate the allegation themselves, or refer it to another Fylde officer, an officer of another council, or an external investigator. They will also be supplied with a copy of the referral notice.

7.2. The investigating officer will investigate the allegation independently and objectively, but will follow any instructions issued by the Monitoring Officer directed to ensuring proportionality and the cost-effective use of Council resources

7.3. The investigating officer will interview those individuals they feel could assist in the investigation including the subject member. Any person interviewed should be given the opportunity to be accompanied by an advisor or acquaintance. After the investigating officer has completed the investigation, they will prepare a report and submit it, together with any supporting papers, to the monitoring officer. The report should set out the investigating officer's findings of fact, conclusions on the allegation and the reasons for them, but should not itself include or annex statements or interview records.

7.4. The monitoring officer will give a copy of the investigator's report to an independent person (other than an independent person who has been consulted by the subject member) as soon as practicable after receiving it.

8. Investigating Officer finding of insufficient evidence of failure to comply with the Code of Conduct

- 8.1. If the investigating officer's report finds no breach of the code of conduct, the monitoring officer will (unless they consider that the investigation has not been conducted satisfactorily), make a confirmation decision to confirm the finding of no failure to comply with the code.
- 8.2. The monitoring officer will write to the complainant, the subject member and any relevant parish council, with a copy of the confirmation decision and the monitoring officer may, at their discretion, provide to any or all of them a copy of the investigating officer's report.
- 8.3. If the monitoring officer is not satisfied that the investigation has been conducted satisfactorily, they may ask the investigating officer to reconsider their report and conclusion.
- 8.4. The committee will also be notified of the matter, and its closure, for information.

9. Investigating officer finding of sufficient evidence of failure to comply with the code of conduct

- 9.1. If the investigating officer's report finds that there has been a breach of the code, the monitoring officer will write to the complainant, the subject member and any relevant parish council, with as full a summary of the investigating officer's report as they consider appropriate to assist in seeking to bring about a local resolution.
- 9.2. The monitoring officer will review the investigating officer's report and, in consultation with the independent person, will seek to close the matter through local resolution. If this is not possible, the investigation findings will be reported to the committee for a local hearing.

10. Local Resolution following investigation

- 10.1. If the monitoring officer considers that the matter can reasonably be resolved without the need for a hearing, they will consult with the independent person and the complainant and seek to agree an acceptable resolution. Such resolution may include the subject member accepting that their conduct was unacceptable, offering an apology, committing to undertake specified training and/or other remedial action. If the subject member accepts the suggested resolution, the monitoring officer will report the outcome to the committee and any relevant parish council for information, but will take no further action.
- 10.2. If the monitoring officer considers that the allegation cannot reasonably be resolved without a committee determination, or an acceptable resolution cannot be achieved, the monitoring officer will refer the matter to the committee for determination without further reference to the complainant or the subject member.

11. Determination by the Audit & Standards Committee

- 11.1. Unless the committee decides otherwise, the committee will follow the procedure in the appendix when determining a complaint.
- 11.2. The Committee has delegated authority to determine whether the subject member has failed to comply with the code and, if so, whether to apply a sanction. Where it finds a failure to comply with the code, the committee will:
 - 11.2.1 Determine what action, if any, to take in order to promote and maintain high standards of conduct; and
 - 11.2.2 Publish a decision notice online, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the committee, and any sanction applied
- 11.3. Sanctions which may be considered include reporting its findings to full council or to the relevant parish council for information. Other sanctions that may be imposed include:

- 11.3.1 Publishing its findings and the investigator's report;
- 11.3.2 Recommending to the subject 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;
- 11.3.3 Recommending to the relevant group leader that the subject member be removed from a position of special responsibility if relevant;
- 11.3.4 Instructing the monitoring officer to arrange training for the subject member;
- 11.3.5 Removing the subject member from outside body appointments;
- 11.3.6 Withdrawing facilities provided to the member by the council, such as a computer, website and/or email and Internet access; or
- 11.3.7 Excluding 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.

Where the breach of the code of conduct took place in the member's capacity as a parish councillor, the committee may recommend any of the sanctions to the relevant parish council.

APPENDIX

DETERMINATION BY THE COMMITTEE

BEFORE THE MEETING

- A1 The monitoring officer will ensure that:
 - i. the investigating officer and one independent person (other than an independent person who has been consulted by the subject member) will be at the meeting;
 - ii. the subject member ~~has been told about, and appears to understand,~~ has been informed of their right to make written or oral representations to the meeting, and has had adequate time to **seek clarification on their understanding on matters and** prepare any representations; and
 - iii. the investigating officer's report, the observations of the monitoring officer and any written representations made by the subject member are included in the agenda for the meeting, and that the agenda has been sent to committee members in accordance with the relevant statutory provisions;
- A2 Committee members will read the investigating officer's report and any written representations made by or on behalf of the subject member.
- A3 The chairman will (after consulting committee members if he feels it appropriate to do so) inform the monitoring officer of any matters arising out of the investigating officer's report on which they feel that the committee might welcome explanation, clarification or more information, and the monitoring officer will inform the investigating officer so they can be prepared to address those matters.

DURING THE MEETING

- B1 The meeting will take place in public unless the necessary resolution is agreed by the committee to exclude the public.

- B2 The committee may take legal or procedural advice (from both the monitoring officer and the head of governance or other legal advisor) at any time. The committee may adjourn while the advice is being prepared.
- B3 While they are present, the subject member may be accompanied or represented by any person.
- B4 Except as mentioned in paragraph B5, no person should participate in the meeting if they have been interviewed as part of the investigation, or if they are, or have a close association with, the complainant, the subject member, the investigating officer, or any person representing or accompanying the subject member.
- B5 The subject member (and anyone representing them) and the investigating officer may be present at the meeting until the subject member has made their representations, and may return to the meeting when invited to do so to hear the committee's decision. They may only participate in the meeting when invited to do so in accordance with this procedure.

HEARING PROCEDURE

- C1 The chairman opens the meeting, introduces the persons who will participate and briefly explains the procedure.
- C2 The investigating officer presents any points of explanation or clarification, or any additional information, that they have been asked by the chairman to address.
- C3 The independent person is invited to make observations to the committee (or, if the independent person has submitted written observations, those observations are brought to the attention of the committee).
- C4 Committee members have the opportunity to ask the investigating officer questions about their report.
- C5 The chairman will draw the attention of the committee to any written representations made by or on behalf of the subject member. The subject member (or any person acting on their behalf) may address the committee up to a time limit of fifteen minutes to amplify any written submissions.
- C6 The committee will retire and deliberate in private in order to reach its decisions on (i) whether it finds that the subject member has been in breach of the code and (ii) if so, what, if any, sanction to apply to the subject member. During its deliberations, the committee may ask additional questions for clarification of the independent person, monitoring officer or legal advisor.
- C7 The investigating officer and the subject member will be given the opportunity to return whilst the chairman informs all parties of the committee's decision. The committee's decision will be final.
- C8 If committee finds that the subject member has been in breach of the code and imposes a sanction, it will include a summary of its reasons for imposing that sanction in the record of its decision. If the committee finds the subject member has been in breach of the code and imposes no sanction, it will include a summary of its reasons for not imposing a sanction in the record of its decision.