



September 2024

Localism Act 2011 Section 28 – Code of Conduct

Arrangements for Dealing with Allegations

These arrangements set out how allegations that the Code of Conduct has been breached will be investigated. Any decision to investigate an allegation will be a proportionate response to the issues raised when weighed against any likely sanction. It will consider the wider public interest and the investigation's costs. Allegations will only be investigated where they are reasonably considered serious and by the public interest test set out in Appendix A.

However, consideration of the public interest is only one of several criteria that must be met in deciding whether to investigate a complaint: crucially, the complaint must also be supported by detailed and verifiable evidence of a breach of the Code.

1. Making an Allegation

Any allegation that a serving Councillor (the Councillor) has failed to comply with the Code of Conduct should be addressed to:

The Monitoring Officer
Hart District Council
Harlington Way
Fleet
Hants GU15 4AE

Email to: monitoringofficer@hart.gov.uk

All allegations must be made in writing. A form for making complaints is available at: hart.gov.uk/about-council/councillor_complaint

Allegations alleging a councillor's failure to declare a Disclosable Pecuniary Interest (DPI), corruption, or the misuse of resources or power for private gain are beyond the scope of this procedure and will not be investigated. These may constitute a criminal offence, and the complainant should direct any allegations directly to the Police.

Anonymous allegations will also not be investigated.

2. Initial Action by the Monitoring Officer

Upon receiving an allegation, the Monitoring Officer has the absolute discretion to dismiss it without taking further action if:

A. The Monitoring Officer considers that:

- i. insufficient information has been submitted at the outset to demonstrate that there has been a prima facie breach of the Code; or
 - ii. the allegation is based essentially on hearsay evidence and is not supported at the outset by detailed and verifiable supporting evidence; or
 - iii. the allegation does not relate to behaviour in the Councillor's capacity as a member of the respective local authority; or
 - iv. the allegation relates to a matter so trivial that it would not be in the public interest to pursue it further (see Appendix A); or
- B. The allegation relates to someone who is no longer a serving Councillor of the relevant local authority; or
- C. The allegation relates to a matter that happened more than 12 months before it was reported to the council (exceptions may be made if there is a good reason for the delay); or
- D. The allegation relates to a matter or issue known to the complainant for more than six months before the allegation was reported to the council (exceptions may be made if there is a good reason for the delay).

The Monitoring Officer will inform the complainant and the Councillor of the rejection of the allegation accordingly.

When a District councillor or an officer employed by the District Council makes a grievance allegation against an individual acting in the capacity of a District councillor (a grievance can be defined as any unfair or inappropriate act or treatment), the grievance will be dealt with as an internal grievance according to the District Council's Constitution. It will not be further addressed under this process.

If a parish or town council member or an officer employed by the respective council makes an allegation against a council member of the same authority, unless the Monitoring Officer believes there is significant public interest at stake, they may refer the allegation to the respective council for resolution. In this case, the Monitoring Officer will not investigate the allegation further. The council can then handle the allegation internally and reach conclusions as outlined in Appendix D.

If the Monitoring Officer does not dismiss the complaint for any of the reasons above, they will acknowledge it and let the person who raised the complaint know what happens next. The Monitoring Officer may ask for more information or clarification.

The Monitoring Officer will also send a copy of the allegation to the councillor complained about, asking them to provide their initial written comments within 10 working days unless there are exceptional circumstances where it is in the public interest not to do so.

The Monitoring Officer may also ask the councillor any questions the Monitoring Officer considers necessary to assist in the initial assessment of the allegation.

3. Assessment of the Allegation

If practicable, the assessment will take place within 20 working days of receiving the councillor's written comments under section 2 above.

The Monitoring Officer will make the decision on their assessment in consultation with an Independent Person (IP).

Before the Monitoring Officer concludes their assessment, the Monitoring Officer will send the IP

- a) A copy of the allegation
- b) Any other information in the Monitoring Officer's possession that they consider relevant.

The Monitoring Officer will provide a written decision with explanations to the councillor, the complainant, and the Clerk to the Parish/Town Council (if the allegation is related to a Parish/Town councillor) within 20 working days after the assessment. There will be no right of appeal.

4. Decision Options at Assessment

The Monitoring Officer, at their absolute discretion after consulting with the IP, may decide to take one of the following options:

- a) Take no action (Appendix B); or
- b) Attempt to resolve the allegation informally between the complainant and councillor, either in writing, by face-to-face meeting, or by any other method the Monitoring Officer considers appropriate. In this case, there will be no formal decision as to whether there was a breach of the Code of Conduct. If an attempt to resolve the matter in this way is not achieved, the options as set out in Appendix B remain open; or
- c) Arrange a hearing before a Panel of 3 members drawn from the Standards Committee at which the councillor and complainant can state their case and, if appropriate, call witnesses. Procedures are set out in Appendix C. The hearing will form a recommendation as to whether the councillor breached the Code of Conduct, and the Monitoring Officer may act upon any such recommendation.

Public Interest Considerations

The Code of Conduct aims to help councillors meet public expectations for their behaviour. It also aims to support proper decision-making and the right use of public resources. Conducting investigations that do not contribute to these goals is not in the public interest.

The resources should not be used to investigate trivial matters or have little or no impact on the public. Any decision to investigate an allegation should be a proportionate response to the allegations raised when weighed against any likely sanction. It will consider the wider public interest and the investigation's costs.

Allegations will be investigated where they have substance¹ and are reasonably considered to be serious matters such as discrimination, harassment and bullying, for example². Allegations are unlikely to be investigated where the matter complained about does not raise a significant public interest concern.

There is no widely accepted definition of the public interest, but this has been described as “*something which is of serious concern and benefit to the public*”. The public interest, therefore, relates to something which has an impact on the public, and it is not merely a matter that the public finds to be of interest or concern that impacts an individual (although an individual may be more directly affected by the matter than the wider public). The public in this context does not necessarily mean the whole of Hart District. It may refer to a distinct public section, such as a small community or interest group.

1. Seriousness

The more serious the alleged breach, the more likely it will be investigated.

Relevant considerations when deciding the level of seriousness of the allegation are the extent to which the councillor was responsible for or was to blame for the alleged breach, the circumstances of the complainant, and whether the alleged conduct caused harm or injustice to any person.

a) To what extent was the councillor responsible for or to blame for the conduct complained of?

When deciding who is responsible or at fault, the following factors will be considered: the councillor’s level of involvement, whether the alleged breach was planned, if they have a history of similar issues or sanctions if the conduct is ongoing or repeated, the councillor’s length of service, and their knowledge of the matter at hand.

b) What are the relevant circumstances of any person affected by the alleged breach, and has the breach caused harm to any person?

The circumstances of any person affected by the breach of the Code of Conduct are relevant and must be considered when determining the seriousness of the allegation.³

¹ The allegation must have substance and have something in it that is of meaningful quality

² The application of the investigations not limited to these matters

³ Allegations are unlikely to be investigated where the complainant has not suffered significant personal injustice as a direct result of the actions of the councillor complained about.

The alleged breach will be considered in relation to whether it was motivated by discrimination based on ethnicity, national origin, gender, disability, age, religion, belief, sexual orientation, or gender identity or if the councillor showed hostility towards a person based on any of those characteristics. The impact of the alleged breach on the complainant will be considered when determining if an investigation is necessary in the public interest.

c) Proportionality

Account must always be taken of the resource implications of any investigation and adjudication, especially where they could be regarded as excessive when weighed against any likely sanction. No decision on the public interest will be made based on resources alone, but it is a relevant consideration when making an overall assessment.

These considerations will help identify the public interest, but they are not exhaustive, and not all are relevant in each case. In any event, consideration of the public interest is only one criterion that must be met in deciding whether to investigate a complaint: crucially, the allegation must also be supported by evidence of a breach of the Code and that it has caused a personal injustice.

Decision Actions

No Action will be taken where any of the following apply:

- A. the Monitoring Officer considers that there is no prima facie evidence that the Code has been breached
- B. the Monitoring Officer, in consultation with the IP considers that the allegation does not relate to a serious matter and raises no issue of wider public interest (see Appendix A for the Public Interest test)
- C. considering the nature of the allegation, the Monitoring Officer, in consultation with the IP, considers that any investigation of the allegation and its associated use of resources would be excessive when weighed against any likely sanction
- D. the Monitoring Officer, in consultation with the IP, considers the allegation vexatious, malicious, frivolous, trivial, politically motivated, or tit-for-tat or made by a persistent complainant. The allegation must have something of meaningful substance
- E. the conduct complained about has already been the subject of investigation or inquiry by another public body
- F. the same, or substantially the same, issue has been the subject of a previous Code of Conduct allegation, and the Monitoring Officer, in consultation with the IP, considers that there is nothing further to be gained by reviewing it again
- G. the Monitoring Officer considers that there is not enough information to take the matter further
- H. the allegation was made anonymously
- I. the complainant has requested that their identity be withheld from the councillor, and the Monitoring Officer, in consultation with the IP and Chairman of Standards Committee, considers that the matter cannot reasonably be taken further in these circumstances
- J. The councillor has apologised for the action that was the subject of the allegation, and the Monitoring Officer considers that this is sufficient to dispose of the complaint
- K. The Monitoring Officer considers that the allegation is essentially against the action of the Council as a whole and cannot properly be directed against an individual Councillor(s)
- L. The Monitoring Officer, in consultation with the IP, considers there is a reasonable alternative course of action that the complaint could take to achieve an appropriate outcome to the complaint.

Procedure for Hearings

1. General

The aim of the Hearing is:

- reconciliation
- to put right things that may have gone wrong.

Hearings are not public meetings and are not subject to the provisions of the Local Government Act 1972. Access to a Hearing will be by invitation only and strictly limited to the parties directly subject to the complaint process

Hearings will, where possible, be held within two months of the initial assessment decision.

The hearing will be before a Panel of 3 members (one of which must be a Parish Councillor) drawn from the Standards Committee. One of the Panel members will be elected Chairman.

An Independent Person [IP] appointed under Section 28 of the Localism Act 2011 may also be present as an observer. The Panel may ask for and consider the IP's views, but the IP cannot otherwise participate or vote. The absence of an IP has no implications for the validity of the Hearing proceedings.

The Monitoring Officer or Deputy Monitoring Officer will be present as an advisor to the Panel. They may participate in full, but they cannot vote. In making any decisions on the allegation, the Panel will have regard to the Monitoring Officer's advice.

Unless the matter is peculiarly complex, a separate legal representative will normally not be required. It will be for the Monitoring Officer to determine whether a legal representative is appropriate or necessary.

30 days' notice will be given, and both the Councillor and complainant will be invited to appear. They may present their own case or be represented. However, no representative will be allowed to adopt a formal 'advocacy' role, which can unnerve the other participants and undermine the principle of equal partners in the discussion.

Both parties may bring witnesses (of a number the Panel considers reasonable), in which case written statements from the witnesses must be lodged with the Monitoring Officer at least ten working days before the hearing. "Character witnesses" who cannot provide direct evidence on the matter complained about will not be allowed. The parties concerned must bear the cost of any attendance/representation.

All written evidence will be circulated to the Panel, the IP, the Councillor and the complainant at least five working days before the hearing.

Written statements will not be read out at the hearing, as it will be assumed that all present are already familiar with their contents.

The Monitoring Officer can speak at any time to advise the Panel on technical matters or ask questions of any party.

2. Confidentiality

While the outcome of any Hearing will be made public, the Hearing, proceedings, and any paperwork it receives will remain confidential to all the respective parties to the Hearing. Only those who need to know should be given access to relevant information, and they, in turn, should treat that information as confidential.

3. Hearing Proceedings:

The Panel Chairman will decide the procedure for the hearing and reinforce the message that there should be no formal presentation of evidence. The Hearing will take the form of a round-the-table discussion managed by the Panel Chairman. It is intended to be an informal process that allows all parties to respond to any questions the Panel might have and let everyone make their case known.

The Panel Chairman will ensure that while Panel questioning may be thorough, all questioning must be fitting for the relative informality of the Hearing. No questioning shall be leading, argumentative (e.g. badgering), or aggressive.

After the respective cases have been explained and the questioning completed, the Panel Chairman will conclude the Hearing. The complainant and the councillor subject to the allegation (and any companions if present) will leave the room. The Panel, the Monitoring Officer and the IP (if present) will remain to deliberate and frame the Panel's decision.

4. The Decision

The Panel's decision will be final.

Appendix D outlines the panel's choices for making a decision. The Panel should aim to make a decision promptly after the Hearing. While an initial informal decision might be given straight away, a formal written statement detailing the Panel's definitive ruling will be sent to both the complainant and the Member within five working days following the Hearing. If the allegation is related to a Parish/Town Councillor, the Parish/Town Council Clerk will also receive a copy.

The written report will be published on the District Council's web page at hart.gov.uk/about-council/councillor_complaint

Decision Options Open to a Hearing Panel (See Appendix C) or a Parish/Town Council Dealing with a Complaint as an Internal Matter under the Section 2 Provision

To conclude:

- 1 The Councillor did not breach the Code of Conduct;
or
- 2 The Councillor **did** breach the Code of Conduct, and that:
 - I. No action needs to be taken – reasons to be given;
or
 - II. The Councillor should be censured, and one or more of the following:
 - a. The findings of the Hearing be reported to Full Council [*or to the Parish/Town Council*] for information;
 - b. Recommendation be made to the Monitoring Officer [*or recommend to the Parish/Town Council*] that training be arranged for the Councillor;
 - c. Recommendation be made to Cabinet [*or recommend to the Parish/Town Council*] that the Councillor be removed from all outside appointments to which they have been appointed or nominated by the District Council [*or by the Parish/Town Council*];
 - d. Recommendation be made to Full Council [*or recommend to the Parish/Town Council*] that it withdraws facilities provided to the Councillor by the Council, such as a computer, website and/or email and Internet access; or
 - e. Recommendation be made to Full Council [*or recommend to the Parish/Town Council*] that it exclude the Councillor from the Council's offices or other premises, except for meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

The Hearing Panel [*or any Parish/Town Council*] may make any recommendations it considers appropriate on procedural amendments that might assist Councillors in following the Code of Conduct and promoting standards.