

Complaints under Members' Code of Conduct

Arrangements for dealing with complaints

Under the Localism Act 2011 Cheshire West and Chester Council has agreed these arrangements for dealing with standards complaints against members.

Making a complaint

1. If someone wishes to complain about the behaviour of a member of Cheshire West and Chester Council or a parish or town council in the borough, they must make their complaint by e-mailing or writing to the Monitoring Officer. They may complete the standard Complaint Form and must give sufficient information about why they consider there has been a failure to comply with the relevant code of conduct. The Monitoring Officer will acknowledge receipt within 5 working days and tell the Complainant what happens next.

Initial assessment

2. The Monitoring Officer will consider the complaint and if appropriate consult the Independent Person before making a decision whether to:
 - a) take no action
 - b) arrange other action e.g. training or mediation
 - c) refer the matter to the relevant group leader or parish /town council chairman as appropriate for informal action
 - d) arrange a formal investigation of the complaint, or
 - e) refer the matter to the police or other relevant regulatory agency.

The Subject Member will not normally be told about the complaint until this initial assessment has been undertaken. However in some cases, in order to come to a decision, the Monitoring Officer may need to go back to the Complainant or request information from the Subject Member. Where the complaint relates to a parish/town council member, the Monitoring Officer may inform the parish/town council clerk of the complaint and seek further information before making a decision.

3. Once the Monitoring Officer has made a decision, he/she will inform the Complainant of that decision and the reasons for it. Where he/she decides to take no action on a complaint, he/she will inform the Subject Member and in such a case, if the complaint relates to a parish/town councillor, will also inform the clerk.

The Monitoring Officer's decision to take no action on a complaint is final. There is no right to have the decision reviewed.

The Monitoring Officer will normally make his/her decision within 15 working days of receipt of the complaint. Criteria have been agreed to assist in the initial assessment of complaints.

Appointment of investigator

4. If the Monitoring Officer decides that a complaint should be formally investigated, he will appoint an Investigator to conduct an investigation.

Independent person

5. The Subject Member may consult the Independent Person at any stage during the investigation. If the complaint concerns a parish councillor then he may also consult with the Parish Representative.

Investigation report

6. The Investigator will prepare a written report at the end of his/her investigation to include the following.
 - Executive summary: an outline of the allegation, who made it, details of the relevant code of conduct provisions and the Investigator's finding(s) as to whether there has been a failure to comply with the code
 - Member's details: an outline of when the member was elected/appointed, details of council responsibilities and committee membership and any relevant training
 - Complainant's details and any relevant background
 - Summary of facts and evidence gathered
 - Investigator's findings and reasoning: dealing with each allegation and explaining whether the Investigator considers there to have been a breach of the code and any aggravating or mitigating facts
 - Schedule: a list of witnesses interviewed and copies of relevant documents
7. Before sending his/her final report to the Monitoring Officer, the Investigator will produce a draft report and send it in confidence to the Subject Member and to the Complainant to check for factual accuracy and to provide an opportunity for comment.
8. The Investigator will take account of any comments received before sending his/her final report to the Monitoring Officer.

Investigations should normally be completed and the final report submitted to the Monitoring Officer within three months of referral of the matter to the Investigator.

Consideration of the investigator's report: no evidence of failure

9. Where the Investigator concludes that there is no evidence of a failure to comply with the code of conduct, the Monitoring Officer will review the report in consultation with the Independent Person and, where appropriate, the Parish Representative. If the Monitoring Officer is satisfied with the Investigator's report, he/she will write to the Complainant and to the Subject Member and, where the complaint relates to a parish/town council member, send a copy to the parish/town council clerk, telling them that no further action will be taken. He /she will give them a copy of the Investigator's report.

The Monitoring Officer will make his/her decision within 15 working days of receipt of the final report.

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

Consideration of the investigator's report: evidence of failure

11. Where the Investigator concludes that there is evidence of a failure to comply with the code of conduct, the Monitoring Officer will review the report and will either send the matter for hearing before the Standards Complaints Panel or, after consulting the Independent Person (and Parish Representative where appropriate), seek local resolution.

A. Local resolution

12. If the Monitoring Officer believes that the matter can be reasonably resolved without the need for a hearing, he/she will consult the Independent Person (and Parish Representative where appropriate) and the Complainant and seek to agree what the Complainant considers to be a fair resolution e.g. the Subject Member accepting that his/her conduct was unacceptable and offering an apology and/or the authority taking remedial action. This should also seek to ensure higher standards of conduct in future. The Monitoring Officer will then consult the Subject Member.

13. If the Subject Member complies with the suggested resolution, the Monitoring Officer will report the matter for information to Audit and Governance Committee and the Standards Advisory Board (and the town/parish clerk if applicable) but will take no further action. If the Complainant tells the Monitoring Officer that any suggested resolution would not be adequate or if local resolution cannot be achieved, the Monitoring Officer will refer the matter for hearing.

B. Hearing

14. If the Monitoring Officer considers local resolution is not appropriate or this is not agreed by the parties, he/she will refer the matter to the Standards Complaints Panel who will conduct a hearing before deciding whether the Subject Member has failed to comply with the code of conduct and, if so, what action if any to take against the member.

The Panel will consider the allegation(s) made against the Subject Member afresh, having regard to the Investigator's findings and all relevant information presented to the hearing by the Complainant and the Subject Member.

The Independent Person (and Parish Representative where appropriate) must be consulted and his/her views taken into account before any decision is made on an allegation which has been investigated. The Independent Person (and a Parish Representative) should be present at the hearing to present their views in person.

Meetings of the Standards Complaints Panel when conducting hearings will be subject to the normal rules for publication of agendas and access to information.

15. The Standards Complaints Panel will announce their decision at the end of the hearing. Within five working days, the Monitoring Officer will prepare a formal Decision Notice in consultation with the Chair of the Panel and send a copy to the Complainant, the Subject Member and, where appropriate, the relevant parish/town council clerk.
16. The Decision Notice will be available for public inspection and posted on the Council website. It will be reported to the next meeting of Audit and Governance Committee.
17. There is no right of appeal from the decision of the Standards Complaints Panel.

Definitions

- Complainant: the person making the complaint
- Subject Member: the council member whose behaviour the complaint is about
- Independent Person: a person who is not a member or officer of Cheshire West and Chester Council and who has been appointed in accordance with s.28 of the Localism Act 2011
- Investigator: the person appointed by the Monitoring Officer to investigate the complaint and produce reports (this may be an external or internal appointment of a suitably qualified officer who will be independent in relation to the complaint)
- Monitoring Officer: Cheshire West and Chester Council's Monitoring Officer or an officer designated by him/her
- Parish Representative: a person appointed as a parish representative following election by the parish and town councils within the borough of Cheshire West and Chester
- Relevant group leader or parish/town council chairman: where the group leader or chairman is not available or where it is not appropriate for them to deal with a matter under these arrangements (e.g. if they have a conflict of interest) then it will be referred to the relevant deputy group leader or vice-chairman