

East Lindsey District Council

ARRANGEMENTS FOR DEALING WITH STANDARDS ALLEGATIONS UNDER THE LOCALISM ACT 2011

1 Context

These “Arrangements” set out how you may make a complaint that an elected or co-opted member of this authority or of a parish council within its area has failed to comply with the authority’s Code of Conduct, and sets out how the authority will deal with allegations of a failure to comply with the authority’s Code of Conduct.

Under Section 28(6) and (7) of the Localism Act 2011, the Council must have in place “arrangements” under which allegations that a member or co-opted member of the authority or of a parish council within the authority’s area or of a Committee or Sub-Committee of the authority, has failed to comply with that authority’s Code of Conduct can be investigated and decisions made on such allegations.

Such arrangements must provide for the authority to appoint at least one Independent Person, whose views must be sought by the authority before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the authority at any other stage, or by a member or a member or co-opted member of a parish council against whom an allegation as been made.

2 The Code of Conduct

The Council has adopted a Code of Conduct for members, which is attached as Appendix 1 to these arrangements and available for inspection on the authority’s website and on request from the Member Services Team at East Lindsey District Council.

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 request the parish clerk to allow you to inspect the parish council’s Code of Conduct.

3 Making a complaint

Complaints must be submitted in writing. If you wish to make a complaint, please write to:

The Monitoring Officer
East Lindsey District Council
The Hub & Willow House
Mareham Road
Horncastle
Lincolnshire
LN9 6PH

Or email:

monitoring.officer@e-lindsey.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.

In order to ensure that we have all the information which we need to be able to process your complaint, please provide us with the name of the member(s) you believe have breached the Code of Conduct and the name of their authority. Please explain what the member has done that you believe breaches the Code of Conduct. If you are complaining about more than one member you should clearly explain what each individual person has done that you believe breaches the Code of Conduct.

It is important that you provide all the information you wish to have taken into account regarding your complaint. For example:

You should be specific, wherever possible, about exactly what you are alleging the member said or did. For instance, instead of writing that the member insulted you, you should state what it was they said.

You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.

You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.

You should provide any relevant background information.

Whilst not acknowledging that your complaint is justified and without prejudice, it would help in dealing with your complaint to know what your desired outcome of this complaint might be. If you feel able to provide this information please do so.

Please do 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 which case we will not disclose your name and address to the member against whom you make the complaint, without your prior consent. The authority may investigate anonymous complaints, but will generally only do so where there is a clear public interest in doing so.

The Monitoring Officer will acknowledge receipt of your complaint within 5 working days of receiving it, and will keep you informed of the progress of your complaint.

4 Will your complaint be investigated?

The Monitoring Officer will review every complaint received and, after consultation with the Independent Person, take a decision as to whether it merits formal investigation. This decision will normally be taken within 14 days of receipt of your complaint. Where the Monitoring Officer has taken a decision, he/she will inform you of his/her decision and the reasons for that decision.

Where he/she requires additional information in order to come to a decision, he/she may come back to you for such information, and may request information from 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 of your complaint and seek the views of the Parish Council before deciding whether the complaint merits formal investigation.

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 authority. Where the member or the authority 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.

If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police and other regulatory agencies.

5 How is the investigation conducted?

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/she 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.

6 What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer will review the Investigating Officer's report and, if he/she is 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, notifying you that he/she is satisfied that no further action is required, and give 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, he/she may ask the Investigating Officer to reconsider his/her report.

7 What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer will review the Investigating Officer's report and will then either send the matter for local hearing before the Hearings Panel or, after consulting the Independent Person, seek local resolution.

7.1 Local Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with the

Independent Person and with you as complainant and seek to agree what you consider to be 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 authority. If the member complies with the suggested resolution, the Monitoring Officer will report the matter to the Audit and Governance Committee and the Parish Council for information, but will take no further action. However, if you tell the Monitoring Officer that any suggested resolution would not be adequate, the Monitoring Officer **may** (but is not required to) refer the matter for a local hearing.

7.2 Local Hearing

If the Monitoring Officer considers that local resolution is not appropriate, or the member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigating Officer's report to the Hearings Panel which will conduct a local hearing before deciding 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.

The procedure for a Hearings Panel is attached as Appendix 2 to these arrangements.

Essentially, 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.

If 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. 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 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, but will then decide what action, if any, to take in respect of the matter.

8 What action can the Hearings Panel take where a member has failed to comply with the Code of Conduct?

The Council has delegated to the 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 the Hearings Panel may –

8.1 Publish its findings in respect of the member's conduct;

- 8.2 Report its findings to Council or to the Parish Council for information;
- 8.3 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;
- 8.4 Recommend to the Leader of the Council that the member be removed from the Executive, or removed from particular Portfolio responsibilities;
- 8.5 Instruct the Monitoring Officer to or recommend that the Parish Council arrange training for the member;
- 8.6 Remove, or recommend to the Parish Council that removes, the member from all outside appointments to which he/she has been appointed or nominated by the authority or by the Parish Council;
- 8.7 Withdraw, or recommend to the Parish Council that it withdraws, facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
- 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 Hearings Panel has no power to suspend or disqualify the member or to withdraw members' or special responsibility allowances.

9 What happens at the end of the hearing?

At the end of the hearing, the Chair 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.

As soon as reasonably practicable thereafter, the Monitoring Officer will prepare a formal decision notice in consultation with the Chair of the Hearings Panel, and send a copy to you, to the member, and to the Parish Council, make that decision notice available for public inspection and report the decision to the next convenient meeting of the Audit and Governance Committee.

10 Who are the Hearings Panel?

The Hearings Panel is a Sub-Committee of the Council's Audit and Governance Committee. The Council has decided that it will comprise a minimum of three and a maximum of five members of the Council, including not more than one member of the authority's Cabinet and comprising members drawn from at least 2 different political parties. Subject to those requirements, it is appointed on the nomination of party group leaders in proportion to the strengths of each party group on the Council.

The Independent Person is invited to attend all meetings of the Hearings Panel and his 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 following a finding of failure to comply with the Code of Conduct.

11 Who is the Independent Person?

The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the members of Council.

A person cannot be “independent” if he/she –

- 11.1 Is, or has been within the past 5 years, a member, co-opted member or officer of the authority;
- 11.2 Is or has been within the past 5 years, a member, co-opted member or officer of a parish council within the authority’s area, or
- 11.3 Is a relative or close friend, of a person within paragraph 11.1 or 11.2 above. For this purpose, “relative” means –
 - 11.3.1 Spouse or civil partner;
 - 11.3.2 Living with the other person as husband and wife or as if they were civil partners;
 - 11.3.3 Grandparent of the other person;
 - 11.3.4 A lineal descendent of a grandparent of the other person;
 - 11.3.5 A parent, sibling or child of a person within paragraphs 11.3.1 or 11.3.2;
 - 11.3.6 A spouse or civil partner of a person within paragraphs 11.3.3, 11.3.4 or 11.3.5; or
 - 11.3.7 Living with a person within paragraphs 11.3.3, 11.3.4 or 11.3.5 as husband and wife or as if they were civil partners.

12 Revision of these arrangements

The Chair of the Hearings Panel has the right to depart from the Hearing Panel procedure, in consultation with the Monitoring Officer, at any hearing where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

13 Appeals

There is no right of appeal for you as complainant or for the member against a decision of the Monitoring Officer or of the Hearings Panel

If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.

Appendix One East Lindsey District Council Code of Conduct

Appendix Two Procedure for Local Hearings

Arrangements adopted by Council on 16 May 2012

CODE OF CONDUCT

East Lindsey District Council has adopted this Code setting out the expected behaviours required of its members or co-opted members, acknowledging that they each have a responsibility to represent the community and work constructively with our staff and partner organisations to secure better social, economic and environmental outcomes for all.

In accordance with the Localism Act provisions, when acting in this capacity all Councillors must be committed to behaving in a manner that is consistent with the following principles to achieve best value for our residents and maintain public confidence in this authority.

SELFLESSNESS: Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

INTEGRITY: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

OBJECTIVITY: In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

ACCOUNTABILITY: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

OPENNESS: Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

HONESTY: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

LEADERSHIP: Holders of public office should promote and support these principles by leadership and example.

The Act further provides for registration and disclosure of interests and in East Lindsey District Council this will be done as follows:

On taking up office a member or co-opted member must, within 28 days of becoming such, notify the Monitoring Officer of any 'disclosable pecuniary interests', as prescribed by the Secretary of State.

On re-election or re-appointments, a member or co-opted member must, within 28 days, notify the Monitoring Officer of any 'disclosable pecuniary interests' not already included in his or her register of interests.

The Council has considered but decided at this stage not to adopt any Council Procedure Rules requiring registration of non-disclosable pecuniary interests and/or non-pecuniary interests.

If a member or co-opted member is aware that they have a 'disclosable pecuniary interest' in a matter they must not participate in any discussion or vote on the matter at a meeting.

If a member or co-opted member is aware of a 'disclosable pecuniary interest' in a matter under consideration at a meeting but such interest is not already on the Council's register of interests or in the process of entry onto the register having been notified to the Monitoring Officer, the member or co-opted member must disclose the 'disclosable pecuniary interest' to the meeting and register it within 28 days of the meeting at which it is first disclosed.

The Council has adopted Council Procedure Rules requiring a member or co-opted member with a 'disclosable pecuniary interest' to withdraw from the meeting while any discussion or vote on any matter relating to it takes place, taking no part in the debate or vote.

The Council has considered but decided not at this stage to adopt any Council Procedure Rules requiring disclosure of non-disclosable pecuniary interests and/or non-pecuniary interests at meetings.

PROCEDURE FOR A HEARINGS PANEL

1. Ensure at least 3 members are present. Take any declarations of interest.
2. Consider whether to adjourn or proceed in the absence of a Member, if the Member is not present.
3. Introductions
4. Take any representations by the Investigator or the Member as to why the Hearing should exclude press and public from any part of the hearing and determine whether or not to exclude the press and public. (This only applies if either party has previously indicated that they wish any part of the Hearing to be held in private).
5. If oral evidence is to be presented:-

Investigator introduces the report, makes representations to support any relevant findings of fact in the report that are in dispute and whether there has been a breach of the code.

Investigator calls any supporting witnesses if previously notified.

Questions may be put by the Panel to the witnesses and the Investigator.

Questions may be put to the witnesses and the investigator by the member, through the Chair.

The Member makes any representations to support his or her version of the facts and whether or not there has been a breach of the code. He or she may call supporting witnesses as previously agreed by the Chairman.

Questions may be asked by the Panel of the Member and his or her witnesses and of the Investigator and his or her witnesses.

6. Written representations

If either party does not attend then the Panel will consider the Investigator's report together with any written response from the Member to the report.

7. Decision by the Hearing Panel

The Hearing Panel will retire from the Committee to consider

- i) what are the findings of fact
- ii) whether there has been any breach of the Code of Conduct

8. The Panel will return to announce the findings of fact and whether there has been any breach of the code
9. If the Member has failed to follow the code the Panel should consider any representations from the Investigator and the Member as to whether or not the Panel should set a penalty and what form any penalty should take. The Panel may question either the Investigator and/or the Member. The Panel will then retire to consider what if any penalty to impose. When the Panel returns the Chairman will announce the Committee's decision and a short written decision will be produced on the day of the hearing.

If the Panel determines that the Member has failed to comply with the Code of Conduct the Monitoring Officer shall inform the Member of his or her right to appeal against the determination to an Appeal Tribunal drawn from the Adjudication Panel.

10. The Hearing Panel will then consider in open session whether there are any recommendations to be made to the Authority taking into account any representations made by the Investigator.
11. A full written decision with reasons will be circulated as soon as practicable after the end of the hearing

Procedure adopted by Audit and Governance Committee on 21 November 2012