



## **Procedure for Considering Complaints Alleging a Breach of Nottingham City Council's Councillors' and Co-opted Members' Code of Conduct**

### **Introduction**

1. This procedure outlines how Nottingham City Council will manage complaints made against Councillors or voting co-opted members alleging they have breached the Council's Code of Conduct. The Councillors' and Co-opted Members' Code of conduct is available on the Council's website at <http://documents.nottinghamcity.gov.uk/download/3526> or on request from reception at Loxley House, Station Street, Nottingham, NG2 3NG.
2. The person making the complaint will be referred to as "the complainant" and the person against whom the complaint is made will be referred to as "the subject member".
3. The Council's Monitoring Officer (MO) is responsible for dealing with complaints under this procedure but may delegate responsibility for carrying out any of the functions listed below to any other appropriate colleague.

### **Making a Complaint**

4. Complaints must be submitted in writing to:

The Monitoring Officer  
Nottingham City Council  
Loxley House  
Station Street  
Nottingham  
NG2 3NG

[glen.oconnell@nottinghamcity.gov.uk](mailto:glen.oconnell@nottinghamcity.gov.uk)

5. The complaint must include:
  - a) the complainant's name and contact details,
  - b) the name(s) of the councillor or co-opted member to whom the complaint relates,
  - c) what the complainant is alleging the subject member has done which breaches the Code of Conduct,
  - d) what resolution the complainant is seeking,
  - e) where necessary, details of why the complainant believes their name and/ or details of the complaint should not be shared with the subject member. Such requests will only be granted in exceptional circumstances.

A form is available on the Council's website for the purpose of submitting complaints but provided the complaint contains the above information, complaints not using the form will be considered.

6. The MO will acknowledge the complaint within five working days of receipt.

### **Additional Information**

7. If the complainant has provided insufficient information to enable the MO to assess the complaint the MO may ask the complainant to provide further details. The MO may also carry out informal enquiries such as obtaining documents or requesting information from the subject member or the complainant. These enquiries do not amount to a formal investigation. If the complainant does not provide further information, the complaint may be rejected.

### **Confidentiality**

8. It will be usual practice for the MO to inform the subject member of the name of the complainant and the details of the complaint. The MO will consider requests for anonymity but these will only be granted in exceptional circumstances. If the MO decides to refuse a request for anonymity the complainant will be given the opportunity to withdraw their complaint prior to the subject member being informed.

### **Criminal Conduct**

9. If the complaint identifies criminal conduct by the subject member, including any allegation that the subject member has failed to disclose a disclosable pecuniary interest, the MO has the power to refer the matter to Nottinghamshire Police.

### **Stage 1 – Initial Filtering**

10. Following receipt of a complaint the MO will first review the complaint to decide whether it meets the essential criteria for consideration under this procedure. These criteria are:
  - a) The complaint must be about a current councillor or co-opted member of the City Council,
  - b) The subject member must have been in office at the time of the alleged misconduct,
  - c) The subject member must have been acting, or giving the impression that they are acting in their official capacity at the time of the alleged misconduct,
  - d) The aspect of the Code of Conduct the complaint alleges has been breached must have been in force at the time of the alleged misconduct,
  - e) If the complaint were proven, it would result in a breach of the Code of Conduct.

11. If the complaint fails to meet one or more of these criteria the MO will reject it and will inform the complainant of this decision. The MO does not need to inform the subject member or the Independent Person of the complaint prior to reaching a decision at this stage.

## **Stage 2 - Assessment**

12. A complaint which meets the above criteria will then be considered by the MO to determine whether the complaint should be investigated, dealt with informally or rejected. The MO may choose to consult the Independent Person in reaching a decision.
13. The MO will consider the following when deciding how to deal with the complaint:
- a) Is the complaint trivial, vexatious, malicious or politically motivated?
  - b) Does the complaint refer to alleged incidents which happened so long ago that there would be little benefit in taking action now?
  - c) Is an investigation likely to be able to reach a firm conclusion, for example, is there likely to be sufficient evidence to enable a firm conclusion to be reached?
  - d) Has the complaint, or a substantially similar complaint, been subject to a previous investigation leaving nothing to be gained from further investigation?
  - e) Does the complaint indicate a wider problem throughout the authority?
  - f) Has the subject member already made sufficient and reasonable attempts to remedy the issues raised by the complainant?
  - g) Is the complaint sufficiently trivial that the resources required to investigate it are disproportionate to the allegations meaning there is no public interest in carrying out an investigation?
14. Having reached a decision the MO will write to:
- a) the subject member,
  - b) their group whip (if relevant),
  - c) or their group leader (if the complaint relates to the group whip),
- to inform them that a complaint has been made, the nature of the allegations and his/ her decision as to how to proceed.
- d) the independent person
- to advise him/ her that a complaint has been received and of the MO's decision as to how to proceed.
- e) the complainant
- to advise of his/ her decision as to whether/ how the complaint will proceed.
15. There is no appeal process for decisions taken by the MO.

16. The number of complaints submitted but not investigated and the reasons why they were not investigated will be provided to the Independent Person and the Chair of the Standards Committee every six months for monitoring purposes.

### **Stage 3 - Informal resolution**

17. The MO will decide whether a case is appropriate for seeking informal resolution. Where appropriate, the MO, in conjunction with the relevant group whip and/ or leader, will provide the subject member with a reasonable timescale within which to attempt to resolve the complaint informally (usually this will be 28 calendar days). The MO will inform the subject member that they may contact the Independent Person for advice on how to respond to the complaint and will advise them of the Independent Person's role.
18. Informal resolution might include the subject member:
  - a) Providing an explanation of the circumstances surrounding the complaint,
  - b) Offering an apology,
  - c) Agreeing to participate in relevant training and/ or mentoring,
  - d) Engaging in a process of mediation or conciliation, or
  - e) Taking any other action capable of resolving the complaint informally.
19. Before deciding upon a course of action the subject member may seek guidance from their Group Whip/ Group Leader, the Independent Person, and/or the MO. The Independent Person can provide advice to the subject member on the severity of the complaint and what form of resolution they would consider appropriate. Providing this guidance will not prevent the Independent Person from giving their view to the Standards Committee about the complaint at a later stage.
20. Where the subject member makes a reasonable offer of informal resolution which is accepted by the complainant no further action will be taken in relation to the complaint. The MO will write to both parties confirming the informal resolution that has been reached and stating that no further action will be taken. The MO will inform the Independent Person and the relevant Group Whip/ Leader of the outcome.
21. Where the subject member makes a reasonable offer of resolution but the complainant is not willing to accept that offer, or where no offer of informal resolution is made, the MO will decide whether the complaint should be taken to the Formal Investigation stage of this process.
22. There will be no appeal process for decisions taken by the Monitoring Officer at this stage.

#### **Stage 4 – Formal Investigation**

23. If the MO decides that the complaint warrants formal investigation he/ she will appoint an investigating officer (IO). The IO will be another officer of the authority, an officer of another authority or an external investigator.
24. The IO will gather information from such parties as he/she sees fit, interviewing them where considered appropriate and will gather any other relevant information to establish the facts of the incident(s). Based upon the evidence, the IO will produce a report and will send copies to the complainant and the subject member for comment. Taking into account any comments received the IO will send his/ her final report to the MO.
25. Where the IO concludes that there is no evidence of a failure to comply with the Code of Conduct and the MO is satisfied that the report is sufficient the MO will share a copy of the final report to the complainant and the subject member, will confirm that no breach of the Code has been found and will confirm that no further action will be taken. If the MO is not satisfied with the IO's report he/ she may ask the IO to revisit the report or in exceptional circumstances, appoint a new IO.
26. Where the IO concludes that the Code of Conduct has been breached, the MO, where satisfied with the report, will decide whether to refer the complaint for Local Resolution or proceed to a Hearing of the Standards Committee. The MO will write to the complainant, the subject member, the Independent Person and the relevant Group Whip/ Leader to inform them of his/ her decision.

#### **Stage 5 – Local Resolution**

27. At this stage, the MO may decide that the complaint can be resolved without the need for a hearing. In such a case, he/she will consult with the Chair of the Standards Committee, the Independent Person and the complainant to establish what resolution the complainant would consider fair. Such resolutions could include the subject member:
  - a) Providing an explanation of the circumstances surrounding the complaint,
  - b) Offering an apology,
  - c) Agreeing to participate in relevant training and/ or mentoring,
  - d) Engaging in a process of mediation or conciliation, or
  - e) Taking any other action capable of resolving the complaint.
28. If the subject member complies with the resolution, the MO will inform the complainant and will report the matter to all members of the Standards Committee and the Independent Person but will take no further action. If the subject member does not accept the resolution the MO will refer the matter to the Standards Committee.

## **Stage 6 – Standards Committee**

29. The MO will arrange for a meeting of the Standards Committee (or a sub-committee of the Standards Committee if appropriate) to take place, usually within 28 days of the decision to refer the matter to this Committee. The MO will prepare a report for the Committee containing a summary of the complaint, the IO's report, any further written statements from the complainant and the subject member in response to the IO's report, and any efforts already made to resolve the matter informally.

30. The following people will be invited to attend the Committee meeting:

- a) The complainant,
- b) The subject member,
- c) Any witnesses identified by the complainant and the subject member,
- d) The Group Whip/ Leader (if relevant), and
- e) The Independent Person.

The IO may also be invited to attend the meeting to respond to questions about their report. The complainant and subject member may choose to be represented and/ or accompanied at the meeting. If they choose to do so, they must inform the MO of who will be attending the meeting.

31. The MO will also attend the meeting in order to present their report and a member of the Council's Constitutional Services Team will attend as clerk to the meeting.

32. After initial consideration of the MO's report, the Committee may receive brief submissions from the following parties:

- a) The complainant,
- b) The subject member, and
- c) Any witnesses called by the complainant or the subject member,
- d) The IO.

33. The Committee may ask questions of anyone present at the meeting in order to reach a conclusion on the complaint.

34. Before reaching a final decision on the complaint, the Committee must seek, and take account of, the views of the Independent Person in relation to the complaint.

35. The Committee must decide upon the following issues:

- a) Whether the subject member has failed to comply with the Councillors' and Co-opted Members' Code of Conduct,
- b) Whether further action is needed, and
- c) What form of action is appropriate.

36. If the Committee concludes that, on the balance of probabilities, there was no breach of the Councillors and Co-opted Members' Code of Conduct, no further

action will be taken under this procedure. The Committee may still make recommendations to the authority relating to promoting and maintaining high standards of conduct in general, and as arising out of specific issues relating to the case it has considered.

37. If the Committee concludes that, on the balance of probabilities, the Councillors' and Co-opted Members' Code of Conduct has been breached, the Committee must consider whether action should be taken in respect of the subject member, and what form of action to take.
38. The actions available to the Committee are:
  - a) Censuring the subject member via a formal letter from the Chair of the Standards Committee,
  - b) Formal censure by a motion of full Council,
  - c) Recommending to the relevant Group Whip that the subject member is removed from any committee, sub-committee or outside body,
  - d) In the case of co-opted members or un-grouped councillors, recommending to Full Council or the relevant committees that the subject member is removed from any committee or sub-committee,
  - e) In relation to members of the executive, recommending to the Leader, that the subject member is removed from the Executive,
  - f) Recommending that the Monitoring Officer arranges appropriate training for the subject member,
  - g) Requiring the withdrawal of Council facilities from the subject member e.g. use of computer or internet, office facilities and officer support,
  - h) Excluding the subject member from the Council's offices or other premises except for the purpose of attending formal meetings.

Where a breach is found, the Standards Committee's Decision Notice will be published on the Council's website.

39. The Committee may also make general recommendations to the MO requesting that action is taken to promote and maintain high standards of conduct within the Council. Recommendations may include proposed changes to internal procedures and practices or training for Councillors and/ or voting Co-optees in general.
40. Within five working days of the meeting the Chair of the Committee will write to the complainant and the subject member explaining the final decision of the Committee and detailing any recommendations made.
41. There will be no right of appeal against a decision of the Committee. If the complainant feels that the Council has failed to deal with the complaint properly, he/she may complain to the Local Government Ombudsman.