

Code of Member Conduct Complaints Procedure

This protocol sets out the arrangements for dealing with complaints received under the Localism Act 2011 in relation to the Code of Member Conduct.

Making a complaint

- a) If someone wishes to complain about the behaviour of a member of Lancashire County Council, they must make their complaint by e-mailing or writing to the Monitoring Officer. A form is available on the Council's website: [Complaints about a county councillor \(lancashire.gov.uk\)](http://lancashire.gov.uk).
- b) A complaint must give sufficient information about why the complainant considers there has been a failure to comply with the Code.
- c) A complaint will be acknowledged within 5 working days. The acknowledgement will tell the complainant what happens next, and may, where required, ask for more information.

Anonymous complaints

- a) Complaints that contain a request for the complainant's identity to be withheld may be accepted, although the complainant's identity will only be withheld from the subject member in exceptional circumstances. If the Monitoring Officer does not consider it appropriate to withhold the complainant's identity, the complainant will be given the opportunity to withdraw their complaint before it proceeds to the next stage. Anonymous or any other complaints that reveal potential fraud or corruption will be referred to Internal Audit for consideration under the council's Whistleblowing Policy.

Public interest test

- a) Code of Conduct complaints are subject to the public interest test. The Monitoring Officer shall consider each of the public interest factors below in reviewing a complaint.
- b) The following public interest factors are not exhaustive and not all may be relevant in every case. The weight attached to each of these factors may also vary in each case.
- c) The public interest factors are:
 - (i) The seriousness of the alleged breach;
 - (ii) Whether the subject member is alleged to have deliberately sought personal gain for themselves or another person at the public expense;
 - (iii) Whether the allegation is that the subject members has misused a position of trust or authority and caused harm to a person;
 - (iv) Whether the alleged breach appears to have been motivated by any form of discrimination against a protected characteristic (see the Protocol on Language and Behaviour);
 - (v) Whether there is evidence of previous, similar behaviour on the part of the subject member;

- (vi) Whether the alleged breach is such that it may damage public confidence in elected members;
- (vii) The resources that would be required to undertake an investigation, compared to the seriousness of the alleged breach and the likely sanction if the subject member was found to have breached the Code;
- (viii) Any admission of guilt, apology or other action already taken by the subject members to resolve or mitigate the complaint; and
- (ix) Whether the complaint appears to be malicious, vexatious, political motivated or trivial retaliation.

Initial assessment

- a) The Monitoring Officer will consider the complaint, taking into account the Public Interest Test, and may decide to:
 - (i) Take no action;
 - (ii) Resolve the matter informally without investigation. Where possible, this will be done with the agreement of the complainant and the subject member, and may involve:
 - An apology being made;
 - Remedial action being taken;
 - A recommendation for training to be undertaken; or
 - Mediation.
 - (iii) Refer the matter to the relevant group leader as appropriate for informal action;
 - (iv) Arrange a formal investigation of the complaint; or
 - (v) Refer the matter to the police or other relevant regulatory agency.
- b) Where possible, the Monitoring Officer will seek to resolve complaints informally.
- c) The Monitoring Officer may consult with an Independent Person in reaching this decision, and may speak to the complainant, subject member and any other individual to help reach their decision.
- d) Once the Monitoring Officer has made a decision, they will inform the complainant and the subject member of that decision and the reasons for it. Where the subject member is a member of a political group on the Council, the decision will also be shared with the Group Leader and Group Whip.
- e) The Monitoring Officer's decision on a complaint is final. There is no right to have the decision reviewed.
- f) The Monitoring Officer will normally make their decision within 15 working days of receipt of the complaint.

Investigating a complaint

- a) If the Monitoring Officer decides that a complaint should be formally investigated, they will undertake the investigation themselves, or nominate another person to act as the investigator. This may be another officer of the council or an external person, as the Monitoring Officer considers appropriate.

Independent Persons

- a) The subject member will be provided with the contact details of one of the Council's Independent Persons at the start of an investigation. The Independent Person will act as a point of contact and liaison for the subject member through the process. The Independent Person will not act as the subject member's advocate or supporter.

Investigation process

- a) In investigating the complaint, the Monitoring Officer or their representative may take whatever steps they consider necessary to establish the details of the alleged incident and event, including, but not limited to:
 - (i) Interviews;
 - (ii) Requests for statements;
 - (iii) Requests for supporting evidence;
 - (iv) Reviewing electronic communications, including web pages and social media; and
 - (v) Seeking witnesses.
- b) The complainant and subject member, as well as any other members or officers, are expected to fully participate in the investigation, including responding to requests for information, taking part in an interview if required, and supplying such supporting information and evidence as if required.
- c) The Monitoring Officer or their representative will conduct the investigation in a timely fashion. Although the length of an investigation will depend on the complexity of the matter being investigated, it is expected this would normally be completed within three months. The complainant and subject member will be regularly kept informed of progress.

Investigation report

- a) The Monitoring Officer or their representative will prepare a written report at the end of their investigation to include the following:
 - (i) An outline of the allegation, including details of the relevant Code of Conduct provisions;
 - (ii) Summary of facts and evidence gathered; and
 - (iii) The Monitoring Officer's finding(s) as to whether there has been a failure to comply with the Code.
- b) A copy of the draft report will be shared with an Independent Person (who is not the same Independent Person who has acted as advisor to the subject member) for review and to provide an opportunity for comment. The Independent Person's comments will be recorded in writing.

Findings

- a) The Monitoring Officer, after investigation, may find that there has been a breach of the Code or that there has been no breach of the Code.
- b) No breach of the Code:
 - (i) Where the Monitoring Officer finds that there is no breach of the Code, they will consider whether any other actions are required, for example to provide advice or guidance or to review council policies. If other actions are required, instruction will be sent to the relevant officer or member for them to undertake.
 - (ii) The Monitoring Officer will provide a copy of the report to the complainant, the subject member and, where the subject member is a member of a political group on the council, the decision will also be shared with the group Leader and group Whip.
 - (iii) There is no appeal against the decision of the Monitoring Officer.
- c) Breach of the Code:
 - (i) Where the Monitoring Officer concludes that there has been a breach of the Code, a meeting of the Conduct Committee will be called to consider the report.

Conduct Committee

- a) Meetings of the Conduct Committee when conducting hearings will be subject to the normal rules for publication of agendas and access to information.
- b) The subject member will be invited to attend the meeting. They may be accompanied at the meeting by a colleague or representative.
- c) At the meeting, the Monitoring Officer will be invited to present their report, setting out their findings and reasons for them. The subject member (or their representative on their behalf) will be invited to address the committee. It is not the role of an Independent Person to accompany the subject member in this capacity.
- d) The committee may ask questions of the Monitoring Officer or subject member (or their representative).
- e) The Independent Person must be consulted and their views taken into account before any decision is made on an allegation which has been investigated. The Independent Person should be present at the hearing to present their views in person.
- f) The Conduct Committee will announce its 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 committee and send a copy to the complainant, the subject member and, where the subject member is a member of a political group on the council, the decision will also be shared with the group Leader and group Whip.
- g) The Conduct Committee may find that there has been a breach of the Code or that there has been no breach of the Code. Where the committee decides that there has been a breach of the Code, the sanctions available to the committee are:
 - (i) To require a written apology by the subject member to any person to whom the committee considers an apology should be given.
 - (ii) To require an apology by the subject member to be made at Full Council, or at another committee as may be appropriate. Such an apology will be delivered at the beginning of the meeting and with no debate.

- (iii) To require the subject member to undertake training, as appropriate.
- h) The Decision Notice will be available for public inspection and posted on the county council's website.
- i) A summary of the Conduct Committee's decision will be reported at the next Ordinary meeting of the Full Council.
- j) The Conduct Committee's decision is final and there is no right of appeal against the committee's decision.

Annual report

- a) A report will be presented to the Audit, Risk and Governance Committee annually to provide a summary of Code of Conduct complaints received in the last year. The annual summary of complaints will not contain any confidential information about the complainant(s) or subject member(s).

Definitions

- a) The Code: Lancashire County Council's Code of Member Conduct.
- b) Complainant: the person making the complaint.
- c) Subject member: the council member whose behaviour the complaint is about
- d) Independent Person: a person who is not a member or officer of Lancashire County Council and who has been appointed in accordance with section 28 of the Localism Act 2011.
- e) Monitoring Officer: Lancashire County Council's Monitoring Officer as defined in the Constitution.
- f) Relevant group leader: where the group leader 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), the matter will be referred to the relevant deputy group leader instead.