

Barrow Borough 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/town 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/town 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/town 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 One to these arrangements and available for inspection on the authority’s website www.barrowbc.gov.uk and on request from Committee Services, Town Hall, Duke Street, Barrow-in-Furness.

Town and Parish Councils are also required to adopt a Code of Conduct. If you wish to inspect a Town/Parish Council’s Code of Conduct, you should inspect any website operated by the Town or Parish council and request the Parish clerk to allow you to inspect the Parish Council’s Code of Conduct.

The Council’s code of conduct will have application when a Member acts in their official capacity, namely where they are conducting the business of the Borough Council or otherwise acting, claiming to act or giving the impression that they are acting as a representative of the Borough Council. Further, that at the time of the alleged misconduct, they were an elected or co-opted member of the Borough Council.

3 Making a complaint

If you wish to make a complaint, please write or email to –

The Monitoring Officer
Barrow Borough Council,
Town Hall,
Duke Street,
Barrow-in-Furness,
Cumbria, LA14 2AD

Or –

monitoring@barrowbc.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 complete and send us the model complaint form, which can be downloaded from the authority's website, (next to the code of conduct), and is available on request from Committee Services at the main council Offices.

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 the space provided on the complaint form, 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 does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

The Monitoring Officer will acknowledge receipt of your complaint within five working days of receiving it.

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. The Monitoring Officer will undertake this consultation, by email or other electronic means or via a face to face meeting.

This decision will normally be taken within 20 working days of receipt of your complaint. Where the Monitoring Officer has taken a decision, they will inform you of their decision and the reasons for that decision.

In making this assessment the following factors will be determined:

1. That the complaint is against one or more named members of the Borough Council or a parish/town council within the Borough
2. That the member was in office at the time of the alleged breach
3. That the member was acting in their capacity when the alleged breach occurred.
4. That the complaint, if proven, would constitute a breach of the Code.

If the complaint fails one or more of these tests then the decision of the Monitoring Officer will be that no further action can be taken.

Once the initial assessment has been conducted and if the complaint meets all of the tests set out above then the Monitoring Officer will need to decide whether the complaint will be investigated further. In reaching this decision the following factors will be taken into consideration.

1. Does the alleged breach relate to a Disclosable Pecuniary Interest (DPI)? If so then the matter will be referred to the police for investigation

2. Is there any scope for reaching a local resolution? If the Monitoring Officer believes that an agreement can be reached between both parties to resolve the matter without the need for a formal investigation then that should be explored before a decision is taken to investigate. The decision may be taken to explore a local resolution and that if this proves unachievable then an investigation may commence.
3. Is the alleged breach trivial, or the complaint vexatious or politically motivated? If so then Monitoring Officer may decide to take no further action.
4. The public interest test: The Monitoring Officer will apply the public interest considerations (see Appendix 2) in determining whether to refer a complaint for investigation, taking into consideration the seriousness of the alleged breach, the level of culpability of the Member, the harm caused to the complainant and whether an investigation is a proportionate response.

This decision will normally be taken within 20 working days of receipt of your complaint. Where the Monitoring Officer has taken a decision, they will inform you of their decision and the reasons for that decision.

Where the Monitoring Officer requires additional information in order to come to a decision, they 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 Town/Parish Councillor, the Monitoring Officer may also inform the Parish Council of your complaint and seek the views of the Town or Parish Clerk before deciding whether the complaint merits formal investigation.

As explained above, 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.

In some cases at his/her discretion, the Monitoring Officer may refer the complaint to the Audit and Governance Committee to decide whether or not it should be investigated or other action taken.

If at any point of the process the Monitoring Officer identifies potential conflicts of interest then alternative arrangements will be put in place as appropriate. If there are any conflicts of interests which can not be resolved internally then the Monitoring Officer may ask a Monitoring Officer from a different authority to undertake the investigation.

5 How is the investigation conducted?

The Council has adopted a procedure for the investigation of misconduct complaints, which is attached as Appendix Two to these arrangements.

If the Monitoring Officer decides that a complaint merits formal investigation, they 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 they need 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 them with a copy of your complaint, and ask the member to provide their explanation of events, and to identify what documents they need to see and who they need 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 their 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 their final report to the Monitoring Officer.

Timescales

If a complaint has been referred for investigation it will be conducted and completed as soon as possible and this generally will be within six months of the start of the investigation.

If an investigation is likely to exceed this six month timescale then the reason for this will be provided.

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, (following consultation with the Independent Person), if they are satisfied that it is sufficient, the Monitoring Officer will write to you and to the member concerned and to the Town or Parish Council, where your complaint relates to a Town or Parish Councillor, notifying you that they are 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, they may ask the Investigating Officer to reconsider their 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 Sub-Committee or, after consulting the Independent Person, seek local resolution. The Public Interest test will be applied to these considerations.

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, they 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 their 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 Town or 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 does not have to) refer the matter for a local hearing.

7.2 Local Hearing

If the Monitoring Officer considers that local resolution is not appropriate, or you are not satisfied by the proposed resolution (unless the Monitoring Officer considers that you are acting unreasonably, 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 Sub-Committee 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 Council has agreed a procedure for local hearings, which is attached as Appendix Three to these arrangements.

Essentially, the Monitoring Officer will conduct a "pre-hearing process", requiring the member to give their 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 Sub-Committee may issue directions as to the manner in which the hearing will be conducted. At the hearing, the Investigating Officer will present their report, call such witnesses as they consider necessary and make representations to substantiate their 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 Sub-Committee. The member will then have an opportunity to give their evidence, to call witnesses and to make representations to the Hearings Sub-Committee as to why they consider that they did not fail to comply with the Code of Conduct.

The Hearings Sub-Committee, 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 Sub-Committee 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 Sub-Committee will then consider what action, if any, the Hearings Sub-Committee should take as a result of the member's failure to comply with the Code of Conduct. In doing this, the Hearings Sub-Committee will give the member an opportunity to make representations to the Sub-Committee 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 Sub-Committee take where a member has failed to comply with the Code of Conduct?

The Council has delegated to the Hearings Sub-Committee 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 Sub-Committee may –

- 8.1 Publish its findings in respect of the member's conduct;
- 8.2 Send a formal letter to the Member;
- 8.3 Report its findings to Council or to the Town or Parish Council for information;
- 8.4 Recommend to the member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that they be removed from any or all Committees or Sub-Committees of the Council;
- 8.5 Instruct the Monitoring Officer to or recommend that the Town or Parish Council arrange training for the member;
- 8.6 Remove or recommend to the Town or Parish Council that the member be removed from all outside appointments to which they have been appointed or nominated by the authority or by the Town or Parish Council;
- 8.7 Withdraw or recommend to the Town or Parish Council that it withdraws certain 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 Town or 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.

NOTE - The Hearings Sub-Committee 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 Sub-Committee as to whether the member failed to comply with the Code of Conduct and as to any actions which the Hearings Sub-Committee resolves to take.

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Hearings Sub-Committee, and send a copy to you, to the member (and to the Town or Parish Council in appropriate), make that decision notice available for public inspection and report the decision to the next convenient meeting of the Council. The decision notice will include a brief statement of facts, the provisions of the code engaged by the allegations, the views of the Independent Person, the reasoning of the decision-maker and any sanction applied.

10 Who are the Hearings Sub-Committee?

The Hearings Sub-Committee is a Sub-Committee of the Council's Audit and Governance Committee. It will comprise of 3 Members drawn from at least 2 different political parties. Subject to those requirements, a Member is appointed on the nomination of party group leaders in proportion to the strengths of each party group on the Authority.

The Independent Person is invited to attend all meetings of the Hearings Sub-Committee and their views are sought and taken into consideration before the Hearings Sub-Committee 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.

Details of the Council's Independent Person(s) can be found on the Council's website.

A person cannot be "independent" if he/she:-

- 1 Is, or has been within the past 5 years, a member, co-opted member or officer of the authority;
- 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
- 3 Is a relative, or close friend, of a person within paragraph 1 or 2 above. For this purpose, "relative" means –
 - 3.1 Spouse or civil partner;
 - 3.2 Living with the other person as husband and wife or as if they were civil partners;
 - 3.3 Grandparent of the other person;
 - 3.4 A lineal descendent of a grandparent of the other person;
 - 3.5 A parent, sibling or child of a person within paragraphs 3.1 or 3.2;
 - 3.6 A spouse or civil partner of a person within paragraphs 3.3, 3.4 or 3.5; or
 - 3.7 Living with a person within paragraphs 3.3, 3.4 or 3.5 as husband and wife or as if they were civil partners.

12 Revision of these arrangements

The Council may by resolution agree to amend these arrangements, and the Council has delegated to the Chair of the Hearings Sub-Committee the right to depart from these arrangements where they 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 Sub-Committee, but reasons for the decision will be provided.

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 1 The authority's Code of Conduct
- Appendix 2 Public Interest Considerations
- Appendix 3 Procedure for Investigations
- Appendix 4 Procedure for Hearings