

# **Procedure for the handling of allegations under the Code of Conduct against Members of the Buckinghamshire and Milton Keynes Fire Authority (“the Authority”)**

## **Introduction**

This procedure applies to complaints about alleged breaches of the Code of Conduct by Members of the Buckinghamshire and Milton Keynes Fire Authority, pursuant to section 28 of the Localism Act 2011.

For the purposes of this procedure the person who makes the complaint is described as “the Complainant” and the person about whom the complaint is made is “the Member”. In this procedure “Member” includes “Co-opted Member”.

## **Summary of how the procedure works**

### *Stage 1 - Making a complaint*

In order to make a complaint you must send your complaint in writing to the Monitoring Officer (see paragraph 1.1 below for details of how to do this and where to send your complaint).

### *Stage 2 - Assessment of your complaint*

If informal resolution is not possible the Monitoring Officer will assess the complaint and decide whether to investigate the allegations contained in it. If the Monitoring Officer decides that the complaint should be investigated, he/she will undertake a process (details of which are set out below) to determine whether or not the complaint is upheld. If the complaint is not to be investigated the Monitoring Officer will write to you to explain why. In some cases the Monitoring Officer may consider informal resolution of your complaint is appropriate.

### *Stage 3 - Investigation of the complaint*

If the Monitoring Officer does investigate your complaint the final summary investigation report and finding will be published on the Authority’s website. In cases where the Monitoring Officer upholds your complaint he/she can apply no formal sanction other than to provide an opinion on the conduct of the Member concerned as compared to the expectations of the Code of Conduct.

There are no appeal mechanisms within this procedure. Should you be dissatisfied with the Monitoring Officer’s decisions and/or actions at any point, you may complain to the Local Government Ombudsman or to the courts.

## **STAGE 1 - HOW TO COMPLAIN ABOUT MEMBER CONDUCT AND WHAT YOU AND THE MEMBER ARE TOLD AFTER YOU HAVE MADE A COMPLAINT**

### **1.1 How to complain**

- 1.1.1. If you want to complain that a Member of the Authority has breached the Authority's Code of Conduct you must make your complaint in writing. The Code of Conduct is only applicable to Members of the Authority when they are acting in that capacity.<sup>i</sup>
- 1.1.2 You can do this by completing a complaint form. A complaint form can be obtained from the Authority's website or by emailing [enquiries@bucksfire.gov.uk](mailto:enquiries@bucksfire.gov.uk) or by calling 01296 744441. The complaint form explains what information you should include in the form.
- 1.1.3 You are not, however, required to use the complaint form, and can make your complaint by writing to: The Monitoring Officer, Buckinghamshire and Milton Keynes Fire Authority, Brigade HQ, Stocklake, Aylesbury, Bucks, HP20 1BD or The Monitoring Officer via [enquiries@bucksfire.gov.uk](mailto:enquiries@bucksfire.gov.uk).
- 1.1.4 If you do not use the complaint form and write to the Monitoring Officer instead you should clearly set out the following information in your letter:
  - The name of the Member you believe has breached the Code of Conduct;
  - What the Member has done that you believe breaches the Code of Conduct, and which paragraphs of the Code you believe they have breached. (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);
  - You should be specific, wherever possible, about exactly what you are alleging the Member said or did;
  - 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 were any witnesses to the alleged conduct and provide their names and contact details if possible;
  - You should provide any relevant background information;
  - You should say what action you think would be appropriate to resolve your complaint;
  - You should say whether you would like your identity and the details of your complaint to be kept from the Member(s) you are complaining about and, if so, explain why. Any such request will be taken into account but your anonymity cannot be guaranteed.

### **1.2. What happens once you submit a complaint?**

- 1.2.1 All complaints about Member conduct will be dealt with by the Authority's Monitoring Officer.

1.2.2 If the Monitoring Officer is unsure whether you are actually making a complaint, or any details of your complaint, (s) he will contact you to clarify.

### **1.3. What you and the Member are told next**

1.3.1 If the Monitoring Officer is clear that you are making a complaint that a Member of the Authority has breached the Authority's Code of Conduct, where the Monitoring Officer considers it appropriate, s/he will try to resolve your complaint informally (see Stage 2 below).

1.3.2 If informal resolution is not appropriate or is unsuccessful the Monitoring Officer will:

- (i) write to you to acknowledge that (s)he has received your formal complaint and to inform you that the Member you are complaining about will usually be provided with your identity, unless you write back within 5 working days asking for this not to happen; and
- (ii) unless there are good reasons not to, write to the Member you are complaining about:
  - (a) stating that a formal complaint has been made against them;
  - (b) providing them with your name (unless you have asked that this information is not provided and/or the Monitoring Officer considers there are good reasons not to provide it);
  - (c) stating the relevant paragraphs of the Code you believe the Member has breached; and
  - (d) stating that the complaint will be considered by the Monitoring

## **STAGE 2 – ASSESSMENT**

### **2.1 Assessing your complaint and making a decision**

- 2.1.1 The Monitoring Officer will assess all complaints on a case by case basis and, in doing this, will also take into account relevant guidance and professional advice and may seek the views of the Independent Person (see paragraphs 3.1.2 and 3.2 below).
- 2.1.2 The Monitoring Officer will also take into account any relevant criteria and factors.
- 2.1.3 In the absence of formal sanctions available to the Monitoring Officer to apply in the event of a breach of the Code the Authority expects this complaints procedure to be proportionate to the issues raised and the expected outcomes. The Monitoring Officer will therefore take into account the wider public interest<sup>ii</sup> and the cost to the public purse of undertaking any investigation into alleged breaches of the Code. Complaints are, therefore, only likely to be taken forward for investigation where the allegations are reasonably considered to be serious matters.
- 2.1.4 After reviewing your complaint, the Monitoring Officer will do one of the following:
- (a) decide that no action should be taken on your complaint (and inform you of this decision and the related reasons); or
  - (b) decide to investigate your complaint (and inform you of this decision and the related reasons); or
  - (c) decide that informal resolution is appropriate.

### **2.2 How are you told about the Monitoring Officer’s decision?**

- 2.2.1 Within 5 working days of making a decision, the Monitoring Officer will provide you and the Member you are complaining about with a written document, containing his/her decision. This is called a “Decision Notice.”

### **2.3 What information will the Decision Notice contain?**

- 2.3.1 This will be prepared having regard to any professional advice and the information it contains will depend upon what information the Monitoring Officer decides should be provided. Normally, however, the Decision Notice will:
- contain your name and a written summary of your complaint;
  - contain the Monitoring Officer’s decision;
  - record the main points the Monitoring Officer considered, the conclusion and the reasons.
- 2.3.2 The Monitoring Officer will first consider whether providing these or any details is in the public interest or would undermine a person’s ability to investigate your complaint (as this may be necessary at a later stage).

2.3.3 If there has been no finding against the Member, the Decision Notice will not contain the name of the Member.

## **2.4. Decision Notices are made public**

2.4.1 After the Decision Notice has been sent to you and the Member you are complaining about, the Authority will publish the Decision Notice on its website.

## **2.5. A decision of 'no action' and your right to ask for a review of that decision**

2.5.1 The Monitoring Officer's decision is final. Where the Monitoring Officer has decided that no action should be taken on your complaint, there is no right to ask for a review of the decision. In these circumstances, your recourse is to complain to the Local Government Ombudsman (10th Floor, Millbank Tower, Millbank, London, SW1P 4QP, Tel: 020 7217 4620).

## **2.6 What is informal resolution?**

2.6.1 Where the Monitoring Officer decides that it would be appropriate to seek informal resolution, s/he will contact you to find out if your complaint can be resolved immediately, without recourse to formal investigation.

2.6.2 Unless there are good reasons not to, the Monitoring Officer will normally advise the Member at this stage that a complaint has been received and provide the Member with such details as the Monitoring Officer considers appropriate.

2.6.3 There will be a whole range of actions that may be appropriate to try and resolve your complaint informally. Some examples are: the Monitoring Officer having a discussion with the Member you have complained about; arranging for the Member to do something which you have asked them to do; arranging a discussion between you and the Member; obtaining an apology from a Member.

2.6.4 It is important, therefore, that you tell us in your complaint what action you think would be appropriate to resolve your complaint.

## **STAGE 3 - INVESTIGATION FOLLOWING ASSESSMENT**

### **3.1 Monitoring Officer decides to investigate your complaint**

- 3.1.1 Where the Monitoring Officer decides that a complaint should be investigated further, s/he may ask you, the Member, any witnesses and any other relevant people to provide them with detailed information or explanations, possibly by way of an interview.
- 3.1.2 The Monitoring Officer may arrange for the investigation to be carried out on her or his behalf by another person. In determining the complaint the Monitoring Officer will seek and take into account the views of at least one Independent Person appointed by the Authority for such purposes. The Monitoring Officer may take into account the views of an Independent Person on any other matter concerning the investigation.
- 3.1.3 Information obtained in conducting the investigation will only be released to third parties where this will allow your complaint to be dealt with properly.
- 3.1.4 In addition to taking into account the views of the Independent Person, the Monitoring Officer will, when seeking to reach a finding on the complaint, take into account relevant guidance and professional advice.

### **3.2 The role of the Independent Person**

- 3.2.1 The role of the independent Person, under section 28(7) Localism Act 2011, is:
- To give views, which must be taken into account by the Monitoring Officer before s/he makes a decision on an investigation s/he has decided to investigate;
  - Give views, if requested by the Monitoring Officer, on any other allegation;
  - To give views to a Member if that person's behaviour is the subject of an allegation.
- 3.2.2 What happens when your complaint is investigated and the investigation is completed?
- 3.2.3 Once the investigation is completed, the Monitoring Officer will:
- (i) find that the Member has failed to comply with the Authority's Code of Conduct ("a finding of failure"); OR find that the Member has not failed to comply with the Authority's Code of Conduct ("a finding of no failure");
  - (ii) prepare a written summary report of the investigation which contains a statement of the finding;
  - (iii) send a copy of the report to you and the Member as soon as is reasonably practicable after making the decision; and

- (iv) publish a summary report and finding on the Authority's web site. The name of the Member will only be published where there is a finding of failure on the part of the Member.

3.2.4 In cases where the Monitoring Officer upholds your complaint, s/he has no legal powers to apply formal sanctions other than to provide an opinion on the conduct of the Member as compared with the expectations of the Code of Conduct.

3.2.5 The decision of the Monitoring Officer is final. There is no entitlement to appeal against the Monitoring Officer's decision on a complaint. In these circumstances, you may be able to complain to the Local Government Ombudsman (10th Floor, Millbank Tower, Millbank, London, SW1P 4QP, Tel: 020 7217 4620).

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<sup>i</sup> A person is not bound by the Code of Conduct simply by being a Member of the Authority or by being known to be a Member of the Authority. The Member must be bound when acting in the Member's official capacity. "Official capacity" or "private capacity" will be determined according to the facts which form the basis of any allegation. Criteria taken into account may include evidence of conducting the business of the Authority or the business of the Member's office; or was acting, claiming to act or giving the impression of acting as a representative of the Authority.

See for example: John Fareham v Standards Committee of Hull City Council (2012) Cllr Fareham posted a tweet after a council meeting which stated, "15 hours in Council today very hard hitting day and the usual collection of retards in the public gallery spoiling it for real people." The First Tier Tribunal overturned the decision of the Standards Committee that Cllr Fareham had posted the tweet in his official capacity. The Tribunal concluded: the Tribunal finds as material facts that the tweet does not refer to [Cllr Fareham] as a councillor, does not refer to the Council, does not identify the issues discussed by the Council, does not (as also found by the [Standards Committee]) refer to identifiable persons. Nothing expressly contained in the tweet could reasonably be considered to be a comment by a Hull Councillor on a Hull Council meeting without drawing inferences based on the personal knowledge of the reader.

<sup>ii</sup> a non-exhaustive list of criteria that will be taken into account by the Monitoring Officer and the Independent Person includes whether:

- a member has deliberately sought a personal gain at the public expense for the member or others, misused a position of trust;
- there is evidence of previous similar behaviour on the part of the member;
- an investigation is required to maintain public confidence in elected members or whether an investigation is proportionate in the circumstances; and
- the breach motivated by any form of discrimination against ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity.