

WEST SOMERSET COUNCIL

ARRANGEMENTS FOR DEALING WITH COMPLAINTS ABOUT THE CODE OF CONDUCT FOR COUNCILLORS

1. Introduction

- a. This procedure applies when a complaint is received that a Member, Co-opted Member or Town or Parish Councillor has or may have failed to comply with the Code of Conduct for Members.
- b. 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".
- c. No Member or Officer will participate in any stage of the arrangements if he or she has, or may have, any personal conflict of interest in the matter.

2. Making a Complaint

A complaint must be made in writing by post or email to:

The Monitoring Officer
West Somerset Council
West Somerset House
Killick Way
Williton
Somerset TA4 4QA

or

bdlang@westsomerset.gov.uk

A complaint form is available and can be obtained from the Council's web-site on www.westsomersetonline.gov.uk or by contacting the Monitoring Officer.

The Monitoring Officer will acknowledge receipt of the complaint within 10 working days of receiving it and, at the same time, write to the Subject Member (and in the case of a complaint about a Town/Parish Councillor, to the Clerk of the Town/Parish Council as well) with details of the allegations (subject to any representations from the Complainant on confidentiality, which are accepted as valid by the Monitoring Officer). The Subject Member may, within 10 working days of receipt, make written representations to the Monitoring Officer which must be taken into account when decided how the complaint will be dealt with. Representations received after this time may be taken into account, at the discretion of the Monitoring Officer, but will in any event not be considered after the Monitoring Officer has issued the Complaint Initial Assessment. Additional information may be requested from the Subject Member of the Complainant before an Initial Assessment is made.

If a Complainant has asked for their identity to be withheld, this request will be considered by the Monitoring Officer in consultation with the Standards Advisory Committee at the Complaint Initial Assessment stage.

As a matter of fairness and natural justice, the Subject Member should usually be told who has complained against them and receive details of the complaint. However, in exceptional circumstances, it may be agreed to withhold the Complainant's identity if on request from the Complainant, or otherwise, it is considered that the Complainant has reasonable grounds for believing that they or any witness relevant to the complaint may be at risk of physical harm, or his or her employment may be jeopardised if their identity is disclosed, or where there are medical risks (supported by medical evidence) associated with the Complainant's identity disclosed.

If it is decided to refuse a request by a Complainant for confidentiality, the Complainant will be offered the option to withdraw the complaint, rather than proceed with his or her identity being disclosed. A view will be taken to balance whether the public interest in taking action on a complaint will outweigh the Complainant's wish to have his or her identity withheld from the Subject Member.

3. Complaint Initial Assessment

The Monitoring Officer will, in consultation with the Standards Advisory Committee, take a decision (a Complaint Initial Assessment) which can take the following forms: to take no action, to attempt to resolve the complaint informally or to instigate a formal investigation. At this stage the presumption will be to try to seek a resolution if at all possible without resorting to the formal route. This decision will normally be taken within 30 working days of receipt of a complaint.

If the complaint fails one or more of the following tests, it will be rejected:

- The complaint is against one or more named Members or Co-opted Members of the Council or a Town/Parish Council within its district;
- The Subject Member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time;
- The complaint, if proven, would be a breach of the Code of Conduct under which the Subject Member was operating at the time of the alleged misconduct.

If appropriate, the following criteria will apply in deciding whether a complaint should be accepted for investigation, dealt with informally, or rejected:

- Whether a substantially similar allegation has previously been made by the Complainant to Standards for England, or the Standards Committee, or the complaint has been the subject of an investigation by another regulatory authority;
- Whether the complaint is about something that happened so long ago that those involved are unlikely to remember it clearly enough to provide credible evidence, or where the lapse of time means there would be little benefit or point in taking action now;
- Whether the allegation is anonymous;
- Whether the allegation discloses a potential breach of the Code of Conduct, but the complaint is not serious enough to merit any action and:

- (i) The resources needed to investigate and determine the complaint are wholly disproportionate to the allegations;
- (ii) Whether, in all the circumstances, there is no overriding public benefit in carrying out an investigation;
- (iii) Whether the complaint appears to be malicious, vexatious, politically motivated or tit-for-tat;
- (iv) Whether the complaint suggests that there is a wider problem throughout the authority;
- (v) Whether it is apparent that the subject of the allegation is relatively inexperienced as a Member, or has admitted making an error and the matter would not warrant a more serious sanction;
- (vi) Whether training or conciliation would be the appropriate response;

If it is agreed that no action should be taken on the complaint, the Subject Member, Complainant and, if appropriate, Town/Parish Council will be advised, giving the reasons for the decision and the action will be reported to the next formal meeting of the Standards Advisory Committee.

It may be agreed that another course of action is applicable/should be explored. Such action may include the Member accepting that their conduct was unacceptable and offer an apology, and/or other remedial action. If the Member and complainant accept the suggested resolution, the Monitoring Officer will report the outcome to the Standards Advisory Committee – which will release the information into the public domain – and the Clerk to the Town/Parish Council (if appropriate) for information and the matter will be considered closed. Up until this stage, all matters relating to processing the complaint will be treated as confidential.

If the Complainant and/or the Subject Member do not accept the proposed other action/local resolution, this will need to be taken into consideration in deciding whether to refer the matter for investigation or to take no action on the complaint.

In appropriate cases, it may be decided to seek to resolve the complaint informally, without the need for an investigation. Such informal resolution may involve the Subject Member accepting that his/her conduct was unacceptable and offering an apology, or taking other steps. Where the Subject Member or the authority (in appropriate cases) make a reasonable offer of local resolution, but it is rejected by the Complainant, that will be taken into account in deciding whether the complaint merits formal investigation.

If at any stage in the process the complaint identifies criminal conduct or breach of other regulations by any person, the matter will be referred to the Police or other prosecuting or regulatory authorities.

4. Investigation

The Monitoring Officer will appoint an Investigating Officer where a complaint merits formal investigation and other options are not applicable. The Investigating Officer may be a Council Officer, an Officer or another Council, or an external investigator.

The Investigating Officer will follow guidance issued by the Monitoring Officer on the investigation of complaints. The guidance will follow the principles of proportionality and the cost-effective use of Council resources and shall be interpreted in line with these principles.

The Investigating Officer will ensure that the Subject Member receives a copy of the complaint – subject to a decision on confidentiality.

At the end of their investigation, the Investigating Officer will produce a draft report and will send copies of that draft report to the Complainant and to the Subject Member, for comments. The Investigating Officer will take such comments into account, before issuing their final report to the Monitoring Officer.

5. Investigating Officer Finding of Insufficient Evidence of Failure to Comply with the Code of Conduct

The Monitoring Officer will, in consultation with the Standards Advisory Committee and the Independent Person, review the Investigating Officer's report and if it is considered to be satisfactory, will make a Confirmation Decision to confirm the finding of no failure to comply with the Code of Conduct.

The Monitoring Officer will write to the Complainant and the Subject Member (and to the Clerk of the Town/Parish Council, where a complaint relates to a Town/Parish Councillor), with a copy of the Confirmation Decision and the Investigating Officer's final report and the outcome will be reported to the next formal meeting of the Standards Advisory Committee.

If it is agreed that the investigation has not been conducted satisfactorily, the Investigating Officer may be asked to reconsider their report and conclusion.

6. Investigating Officer Finding of Sufficient Evidence of Failure to Comply with the Code of Conduct

The Monitoring Officer will, in consultation with the Standards Advisory Committee and the Independent Person, review the Investigating Officer's report and will then either send the matter for a Local Hearing or seek Local Resolution which would be the preferred option if at all possible.

7. Local Resolution

Such resolution may include the Member accepting that their conduct was unacceptable and offer an apology, and/or other remedial action. If the Member accepts the suggested resolution, the Monitoring Officer will report the outcome to the Standards Advisory Committee – which will release the information into the public domain - and the Clerk to the Town/Parish Council (if appropriate) for information, but will take no further action. Up until this stage, all matters relating to processing the complaint will be treated as confidential.

If the Complainant or the Subject Member refuses Local Resolution in principle or to engage with the agreed outcome, the complaint will be referred to a Local Hearing without further reference to the Complainant or the Subject Member.

8. Local Hearing

Where it is agreed that a Local Resolution is not appropriate or the Complainant and/or Subject Member refuses to co-operate, then the Investigating Officer's report will be referred 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. A Hearing Panel will be held in public although under certain circumstances some elements of the proceedings may be held in closed session.

The Independent Person is invited to attend all meetings of the Hearings Panel and their views must be sought and taken into consideration before the Hearings Panel makes any recommendation to Full Council 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.

9. Constitution of the Hearings Panel

The Hearings Panel consists of the Council's Standards Advisory Committee. The Council has decided that it will comprise 3 Independent Members, 3 Town/Parish Councillors and 3 Members of Council (who will be politically balanced).

10. The Independent Person

The Independent Person must be a person who has applied for the post following advertisement of a vacancy for the post, and appointed by a positive vote from a majority of all the Members of Council at a meeting of the Full Council.

A person is not eligible for appointment if they:

- a) Are, or have been within the past 5 years, a Member, co-opted Member or Officer of the Council;
- b) Are, or have been within the past 5 years, a Member, co-opted Member or Officer of a Town/Parish Council with the District, or
- c) Are a relative or close friend of a person within a) or b) above. For this purpose relative means:
 - (i) Spouse or Civil partner;
 - (ii) Living with the other person as husband and wife or as if they were civil partners;
 - (iii) Grandparent of the other person;
 - (iv) A lineal descendent of a grandparent of the other person;
 - (v) A parent, sibling or child of a person with (i) or (ii) above;
 - (vi) A spouse or civil partner of a person within (iii), (iv) or (v) above; or
 - (vii) Living with a person within (iii), (iv) or (v) above as husband and wife or as if they were civil partners.

11. Action the Hearings Panel may take where a Member has Failed to Comply with the Code of Conduct

Where a Hearings Panel find that a Member has failed to comply with the Code of Conduct, the Panel may recommend to the Council one of the following:

- a) Publish its findings in respect of the Member's conduct;
- b) Report its findings to Council (or to the Town/Parish Council) for information;
- c) Recommend to Council that the Member be censured;
- d) Recommend to the Member's Group Leader (or in the case of un-grouped Members, recommend to Council) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- e) Recommend to the Leader of the Council that the Member be removed from the Executive, or removed from their Portfolio responsibilities;
- f) Instruct the Monitoring Officer to (or recommend that the Town/Parish Council) arrange training for the Member;
- g) Recommend to Council (or recommend to the Town/Parish Council) that the Member be removed from all outside body appointments to which they have been appointed or nominated by the Council (or by the Town/Parish Council);
- h) Withdraw (or recommend to the Town/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
- i) Exclude (or recommend that the Town/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.

12. Revision of These Arrangements

The Council may by resolution agree to amend these arrangements.

13. Appeals

Subject to Judicial Review, or a decision of the Local Government Ombudsman, there is no right of appeal against a decision of the Monitoring Officer in consultation with the Standards Advisory Committee or of the Council following a recommendation from the Hearings Panel.

Adopted by West Somerset Council at its meeting held on 27th June, 2012.