

**Wiltshire Council
Constitution
Protocol 11
Arrangements for dealing
with Code of Conduct
complaints under the
Localism Act 2011**

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PROTOCOL 11

ARRANGEMENTS FOR DEALING WITH CODE OF CONDUCT COMPLAINTS UNDER THE LOCALISM ACT 2011

1. Context

- 1.1 These arrangements are made under Section 28 of the Localism Act 2011. They set out the process for dealing with a complaint that an elected or co-opted member of Wiltshire Council, or of a parish, town or city council within its area, has failed to comply with their Code of Conduct.
- 1.2 A flowchart of the complaints processed is attached at [Schedule 2](#).
- 1.3 These arrangements are subject to the Council's [procedure](#) for dealing with vexatious complaints.
- 1.4 The Monitoring Officer will determine as a preliminary issue whether a complaint relates to the Code of Conduct and is to be dealt with under these arrangements.
- 1.5 The Monitoring Officer will encourage complainants to explore whether the matter can be resolved without the need to submit a formal complaint under this process.

2. Interpretation

- 2.1 'Member' means a member or co-opted member of Wiltshire Council, or of a parish, town or city council within its area, against whom a complaint has been made under the Code of Conduct.
- 2.2 'Complainant' means the individual who has submitted a complaint against a Member. 'Complainant' does not include a body corporate.
- 2.3 'Council' means Wiltshire Council.
- 2.4 'Investigating Officer' means the person appointed by the Monitoring Officer to undertake an investigation of an allegation of misconduct by a Member.
- 2.5 '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 arrangements for dealing with complaints of member misconduct. It includes any officer nominated by the Monitoring Officer to act on his or her behalf in that capacity.
- 2.6 'Independent Person' means a person appointed under Section 28(7) of the Localism Act 2011:

- 2.6.1 whose views must be sought and taken into account before a decision is made on an allegation of Member misconduct under these arrangements.
- 2.6.2 who may be consulted by the Member about the complaint.
- 2.7 In order to avoid any conflict of interest at least two Independent Persons will be allocated to each complaint: One to advise and assist the Monitoring Officer or the Assessment Sub-Committee and Hearing Sub-Committee (as appropriate), and the other to be available for consultation by the Member.
- 2.8 'Parish Council' means a parish, town or city council within the area of Wiltshire Council.
- 2.9 'Code of Conduct' means the Code of Conduct for Members which the Council and Parish Councils are required to adopt under Section 27 of the Localism Act 2011.
- 2.10 'Days' means working days.
- 2.11 'Parties' includes the Complainant, Member and the Investigating Officer.
- 2.12 The 'Hearing Sub-Committee' is a sub-committee of the Council's Standards Committee appointed to determine complaints of Member misconduct under these arrangements.
- 2.13 The 'Assessment Sub-Committee' is a sub-committee of the Council's Standards Committee appointed to undertake the initial assessment of complaints and consideration of investigation reports under sections 4 and 6 of these arrangements respectively. The sub-committee shall operate in accordance with procedural arrangements agreed by the Standards Committee.
- 2.14 'Valid receipt' means formal receipt of a complaint and any information requirement from the Council, if any, for processing of that complaint.
- 2.15 The 'Assessment Criteria' means the criteria approved by the Standards Committee and Council for the assessment of complaints, and which is attach with guidance to the Code of Conduct at [this link](#).
- 2.16 Where a complaint is made against a Member of a Parish Council the Clerk to the Parish Council will be notified of the complaint and kept informed of the progress and outcome of the matter.
- 2.17 Documents sent by post will be deemed to have been received by the Parties on the second day after the date of posting.

3 Making a Complaint

- 3.1 A complaint against a Member under the Code of Conduct should be made in writing on the Council's standards form (*available from the Council's website at [this link](#) and*

from Council offices) and addressed to the Monitoring Officer (*County Hall, Trowbridge, BA14 8JN/ governance@wiltshire.gov.uk*) and must be made within 20 days of date on which the complainant became or ought reasonably to have become aware of the matter giving rise to the complaint, Any timescales for processing the complaint will run from valid receipt by council officers.

- 3.2 If the complaint does not meet the requirements of the Assessment Criteria, eg the complaint is out of time or insufficient evidence has been provided, then the complaint will not be taken forward for assessment.
- 3.3 The Monitoring Officer will acknowledge receipt of the complaint within five days of receiving it, and will send a copy to the Member.
- 3.4 The Member will be invited to submit a written response to the complaint within ten days of the date on which it is sent to them. No adverse inference should be drawn from a lack of response as there is no statutory requirement to respond, although this is recommended to assist the process and assessment.
- 3.5 At any time during the complaints process the Member may seek advice and assistance in connection with the complaint from a friend or professional legal adviser, in confidence, and/or consult the Independent Person designated for that purpose.
- 3.6 Anonymous complaints will not be accepted for assessment unless the Monitoring Officer is satisfied that there would otherwise be a serious risk to the complainant's personal safety, in which case the Monitoring Officer will decide how the complaint should be taken forward.

4 Initial Assessment

- 4.1 The Monitoring Officer will review the complaint within five days of receiving the Member's response and prepare a recommendation for the Assessment Sub-Committee
- 4.2 In reaching this recommendation the Monitoring Officer will have regard to the Standards Committee Assessment Criteria.
- 4.3 The Monitoring Officer may seek to resolve the complaint informally, without the need for a formal decision by the Assessment Sub-Committee. This may involve mediation or other suitable action, including training or an apology by the Member.
- 4.4 When the matter is referred for informal resolution the Monitoring Officer will identify the time the complaint will be suspended for under [paragraph 11](#).
- 4.5 Where the Member or the Council make a reasonable offer of local resolution, but the complainant is not willing to accept that offer, the Monitoring Officer may take this into account in deciding whether the complaint requires formal determination.

- 4.6 The Monitoring Officer may decide not to take any further action on a complaint where, on the available information, it appears to be trivial, vexatious, malicious, politically motivated or 'tit for tat', and it would not be in the public interest, including particularly the efficient use of resources.
- 4.7 If the complaint identified potential criminal conduct by any person, the Monitoring Officer may notify the Police or other regulatory agencies. The usual timescales for accepting a complaint may be disapplied in such cases.
- 4.8 If the complaint is not determined by alternative resolution or referral to the police or other regulatory agencies, or otherwise not taken forward, the recommendation of the Monitoring Officer on whether the complaint merits formal investigation shall be taken to a meeting of the Assessment Sub-Committee.
- 4.9 The Assessment Sub-Committee may decide:
- 4.9.1 to dismiss the complaint or take no further action on the complaint;
 - 4.9.2 to refer the complaint to the Monitoring Officer for investigation or other suitable action, including mediation.

5 Investigation

- 5.1 If the Assessment Sub-Committee decides that a complaint merits formal investigation they will appoint an Investigating Officer within five days of the decision notice to investigate and inform the Parties of the appointment.
- 5.2 The Investigating Officer will investigate the complaint in accordance with guidelines produced by the Monitoring Officer. They will send a copy of the investigation report, including all documents relied upon as evidence, to the Parties, in confidence, within 35 days of the notification of the Investigating Officer's appointment.
- 5.3 The Parties will be invited to submit any written comments on the report to the Investigating Officer within ten days of the date on which the report is sent to them. This provides a total of 45 days from the beginning of the investigating in paragraph 5.2 to the receipt of any comments on the investigation report. The Investigating Officer will then amend their report or incorporate any comments within it as appropriate, before submitting it to the Monitoring Officer.

6 Consideration of Investigating Officer's Report

- 6.1 The Monitoring Officer will, as soon as reasonably practicable, review the Investigating Officer's report in consultation with the Independent Person.
- 6.2 If the Monitoring Officer is not satisfied that the investigation has been conducted properly, they may ask the Investigating Officer to reconsider their report and findings.

- 6.3 Where the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct and the Monitoring Officer is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will report to the Assessment Sub-Committee with a recommendation that no further action is required.
- 6.4 The Assessment Sub-Committee may decide:
- 6.4.1 to dismiss the complaint or take no further action on the complaint;
 - 6.4.2 to refer the complaint to the Hearing Sub-Committee or seek alternative resolution.
- 6.5 The decision of the Assessment Sub-Committee at this stage shall be final.
- 6.6 Where the Investigating Officer concludes that there is evidence of a failure to comply with the Code of conduct the Monitoring Officer will, after consulting the Independent Person, either refer the matter for hearing before the Hearing Sub-Committee or seek alternative resolution.

7 Alternative Resolution

- 7.1 Following receipt of an investigation report, where the Monitoring Officer in consultation with the Independent person considers that the matter can reasonably be resolved without the need for a hearing, they will consult with the Parties to seek to agree a fair resolution which also helps to ensure higher standards of conduct for the future.
- 7.2 Alternative resolution may involve mediation and may include the Member accepting that their conduct was unacceptable and offering an apology, and/or remedial action by the Council or the Parish Council as the case may be. If the Member complies with the suggested resolution the Monitoring Officer will report the matter to the Assessment Sub-Committee and the relevant Parish Council where appropriate, for information, but will take no further action.
- 7.3 The Member may elect to proceed to a hearing rather than accept alternative resolution.

8 Hearing

- 8.1 If the Monitoring Officer, after consultation with the Independent Person, considers that alternative resolution is not appropriate or, after exploring the possibility, concludes that it is unlikely to be achieved they will refer the matter to the Hearing Sub-Committee to conduct a local hearing to determine the complaint. A hearing will be held within 20 days of the date on which the Monitoring Officer refers the matter to the Hearing Sub-Committee for determination, subject to the Member's right to request an extension of time.
- 8.2 The Member may be represented at the hearing by a friend or legal representative.

- 8.3 The Hearing Sub-Committee, supported by the Monitoring Officer, will conduct a pre-hearing review to identify the issues, areas of agreement and disagreement, and to give directions for the efficient conduct of the hearing. This may either be conducted in writing or by a meeting with the Parties.
- 8.4 The Monitoring Officer will notify the Parties in writing of the directions for the hearing.
- 8.5 The Sub-Committee may exclude the press and public from the hearing where it appears likely that confidential or exempt information will be disclosed and the public interest in withholding the information outweighs the public interest in disclosing the information to the public.
- 8.6 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.
- 8.7 The Complainant will have the right to make a statement in support of their complaint.
- 8.8 The Members of the Hearing Sub-Committee and the Member may ask questions of the Investigating Officer and any witnesses called.
- 8.9 The Member will have an opportunity to give their evidence, to call witnesses and to make representations as to why they consider that they did not fail to comply with the Code of Conduct.
- 8.10 The Members of the Hearing Sub-Committee and the Investigating Officer will have the opportunity to ask questions of the Member and any witnesses called.
- 8.11 The Parties may each make a concluding statement.
- 8.12 The Members of the Hearing Sub-Committee will then withdraw, with the Independent Person, to consider the case, taking advice from the Independent Person and, where necessary, from the Monitoring Officer on law and procedure.
- 8.13 The Hearing Sub-Committee may conclude that the Member did not fail to comply with the Code of Conduct, and so dismiss the complaint.
- 8.14 If the Hearing Sub-Committee concludes that the Member did fail to comply with the Code of Conduct, the Chairman will inform the Parties of this finding and the Hearing Sub-Committee will then consider what action, if any, should be taken as a result of the breach.
- 8.15 The Investigating Officer and the Member will be invited to make representations on the question of sanctions.

- 8.16 The Hearing Sub-Committee will, after consulting the Independent Person, determine what action, if any, to take (or recommend in the case of a parish councillor) in respect of the matter.

9 Sanctions

- 9.1 The Council has delegated to the Hearing Sub-Committee such of its powers to take action in respect of individual members of the Council as may be necessary to promote and maintain high standards of conduct. The Hearing Sub-Committee may therefore impose (or, in the case of a parish, town or city councillor, recommend) one or more of the sanctions set out in [Schedule 1](#).

10 Decision

- 10.1 At the end of the hearing, the Chairman will announce the decision of the Hearing Sub-Committee in summary form.
- 10.2 The Monitoring Officer will send the Parties, and where appropriate the relevant Parish Council, a formal decision notice, which will be published on the Council's web-site and made available for public inspection.

11 Revision of and departure from these arrangements

- 11.1 The Council may by resolution agree to amend these arrangements, and has delegated to the Monitoring Officer, Assessment Sub-Committee and the Hearing Sub-Committee, the right to depart from these arrangements where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

12 Appeals

- 12.1 There is no right of appeal for the complaint or the Member against a decision of the Assessment or Hearing Sub-Committees.

13 Confidentiality

- 13.1 All information regarding the complaint will remain confidential until determined otherwise by the Monitoring officer, Assessment Sub-Committee or Hearing Sub-Committee.

Schedule 1 – Sanctions

1. Censure

- 1.1 Censure and report to the Council or relevant Parish Council; and/or

2. Removal from Committees, Sub-Committees, Cabinet and Outside Bodies

- 2.1 Recommend to the Member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that the Member is removed from any Committee or Sub-Committee of the Council;
- 2.2 Recommend to the Leader of the Council that the Member is removed from the Cabinet, or removed from particular portfolio responsibilities;
- 2.3 Remove the Member from any or all outside appointments to which they has been appointed or nominated by the Council or relevant Parish Council.

3. Training

- 3.1 Instruct the Monitoring Officer to arrange training for the Member.

4. Publish

- 4.1 Publish its findings in respect of the Member's conduct in the minutes of the Council or relevant Parish Council.

Note:

In the case of R v Broadland District Council ex parte Lashley the Court of Appeal recognised that it was within the Council's powers to take action that was calculated to facilitate and was conducive or incidental to, the council's functions (1) of maintaining its administration and internal workings in a state of efficiency and (2) of maintaining and furthering the welfare of its employees.

This may enable a Hearing Sub-Committee to impose restrictions on a member for the purpose of securing the efficient and effective discharge of the Council's functions. These might, for instance, include the withdrawal of certain facilities, such as a computer, e-mail and/or internet access, or exclusion from certain parts of the council's premises, provided that the measures do not interfere with the democratic process. However, this may not be used as a punitive measure nor, in particular, to justify the suspension or disqualification of a member.

Legal advice will need to be taken on the extent to which this potential option may be available in the particular circumstances of each case.

Protocol 11 Schedule 2 – Flowchart of arrangements for dealing with Code of Conduct Complaints under the Localism Act 2011

For full details of each stage, refer to the main protocol.

