

Protocol 12

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 ~~An overview~~ ~~A flowchart~~ of the complaints process is attached at ~~Annex Schedule 2~~.
- 1.3 These arrangements are subject to the Council's Procedure for dealing with vexatious complaints ~~(link)~~.
- 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.

Commented [EK1]: More appropriate description

Commented [EK2]: For consistent referencing

Commented [EK3]: For ease of access

2 Interpretation

- 2.1 'Member' means a member or a 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.

Commented [EK4]: Was not previously defined

Commented [EK5]: Moved to be next to definition of complainant

- 2.6 'Independent Person' means a person appointed under Section 28(7) of the Localism Act:
- a. whose views must be sought and taken into account before a decision is made on an allegation of member misconduct under these arrangements;
 - b. 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 the 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 'ReviewAssessment 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 review a decision of the Monitoring Officer 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 complaint and any information required from the Council, if any, for processing of that complaint.
- 2.15 The 'assessment criteria' means the criteria approved by Standards Committee and Council for the assessment of complaints by officers or members, and which is attached 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 seventhsecond day after the date of posting.

Commented [EK6]: IP to be involved for Assessment Sub-Committee, MO consideration of Investigation report and Hearing

Commented [EK7]: To reflect that Assessment Sub now making the determination to investigate

Commented [EK8]: To ensure any complaint is properly logged

Commented [EK9]: Not previously defined

Commented [EK10]: In line with court procedure rules

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 standard form (available from the Council's web-site [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 the 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 be not be taken forward for assessment.~~
- 3.3 The Monitoring Officer will acknowledge receipt of the complaint within 5 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 10 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 5 days of receiving the Member's response and, ~~after consultation with the Independent Person, will decide whether it merits formal investigation prepare a recommendation for the Assessment Sub-Committee.~~
- 4.2 In reaching this ~~decision recommendation~~ the Monitoring Officer will have regard to the Standards Committee's assessment criteria.

~~4.3 The Monitoring Officer will inform the Parties of his or her decision and the reasons for it in writing.~~

Commented [EK11]: For ease of access

Commented [EK12]: To ensure complaint is properly logged. Read in conjunction with 3.2

Commented [EK13]: To ensure complainants submit necessary information with their complaint

Commented [EK14]: To recognise not all subject members will respond

Commented [EK16R15]: MO no longer undertaking assessment

Commented [EK17]: As above

4.3 The Monitoring Officer may seek to resolve the complaint informally, without the need for a formal ~~investigation decision by the Assessment Sub-committee~~. This may involve mediation or other suitable action, including training or an apology by the Member.

Commented [EK18]: As above

4.4 ~~When the matter is referred informally for informal resolution the Monitoring Officer will identify the time the complaint will be suspended for under paragraph 4.1~~

Commented [EK19]: To ensure that departure from standard arrangements under paragraph 11 is for a set period and not open ended

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 ~~investigation-determination~~.

Commented [EK20]: MO deciding if to progress the complaint to assessment sub, not for inv

4.6 If the complaint identifies 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 disappled in such cases.~~

Commented [EK21]: To recognise necessary time delays in this situation

4.7 ~~If the complaint is not determined by alternative resolution or referral to the police or other regulatory agencies, the recommendation of the Monitoring Officer on whether the complaint merits formal investigation shall be taken to a meeting of the Assessment Sub-Committee.~~

4.8 ~~The Complainant or the Member may request a review of the Monitoring Officer's decision at the initial assessment stage.~~

4.9 ~~A review will be determined by a Review Sub-Committee who The Assessment Sub-committee may decide:~~

- a. to dismiss the complaint or take no further action on the complaint;
- b. to refer the complaint to the Monitoring Officer for investigation or other suitable action, including mediation.

5 Investigation

5.1 If the Monitoring Officer decides that a complaint merits formal investigation, they will appoint an Investigating Officer within ~~25~~ days of the decision to investigate and inform the Parties of the appointment.

Commented [EK22]: More realistic timescale. Agreed at last meeting

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 ~~30~~35 days of the notification of the Investigating Officer's appointment.

Commented [EK23]: As above

~~5.3~~ The Parties will be invited to submit any written comments on the report to the ~~Monitoring Investigating~~ Officer within 10 days of the date on which the report is sent to them. ~~The Member may request an extension, of this timescale. This provides a total of 45 days from the beginning of the investigation in paragraph 5.2 to 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.~~

Commented [EK1]: Unnecessary as covered under para 11

Consideration of Investigating Officer's Report

6.1 The Monitoring Officer will, as soon as reasonably practicable, review the Investigating Officer's report ~~and any comments submitted by the Parties~~, in consultation with the Independent Person.

Commented [EK2]: Comments incorporated into report

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.

Commented [EK3]: Moved from 6.3

~~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 after consultation with the Independent Person, inform the parties report prepare a recommendation to the Assessment Sub-Committee with a recommendation that no further action is required.~~

6.4 The Assessment Sub-committee may decide:

- a) to dismiss the complaint or take no further action on the complaint, ~~as recommended;~~
- b) 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.

~~6.5 The Complainant may request a review of a decision by the Monitoring Officer, following consideration of the Investigating Officer's report, to dismiss the complaint.~~

~~6.6 A review will be determined by the Review Sub-Committee who may decide:~~

- a. ~~To dismiss the complaint;~~
- b. ~~To refer the complaint for hearing by the hearing sub-committee~~
- c. ~~To refer the complaint to the Monitoring Officer to seek alternative resolution~~

Commented [EK26]: No longer any reviews

~~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 an alternative resolution.~~

Moved from 6.4

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.

Commented [EK28]: To make clear this section applies post investigation

7.2 Alternative resolution may involve mediation and may include the Member

accepting that their conduct was unacceptable and offering an apology, and/or other 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 ~~Standards Committee~~ 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.

Commented [EK29]: More appropriate to refer to Assessment sub

- 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 [Annex Schedule 1](#).

Commented [EK30]: For consistency

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, ~~the Review 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.

Reviews

~~12.1 Any request for a review must be made in writing to the Monitoring Officer within 5 days of the receipt of his/her decision and must set out the grounds for the review.~~

~~12.2 A review request will be determined by the Review Sub-Committee after consulting the Independent Person, within 14 days of receipt of the request.~~

12. Appeals

- 12.1 There is no right of appeal for the Complainant 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, ~~ReviewAssessment~~ Sub- Committee or Hearing Sub-Committee.

Commented [EK31]: New procedure

Commented [EK32]: As above

Commented [EK33]: As above

Schedule Annex 1

Sanctions

Censure

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

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

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

Training

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

Publish

- 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.

Commented [EK34]: For consistency

Protocol 12 Schedule 2 – Flowchart of arrangements for dealing with Code of Conduct Complaints under the Localism Act 2011

