

**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 when acting in their official capacity.
- 1.2 A flowchart of the complaints processed is attached at [Schedule 2](#).
- 1.3 These arrangements are subject to the Council's [procedures](#) for dealing with unreasonable and vexatious communications and unwanted behaviour.
- 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. Where a complaint is outside the scope of this Protocol, the Complainant will be directed to the relevant procedure as appropriate.
- 1.5 Where appropriate, 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.
- 1.6 Where a complaint could, under the Localism Act 2011, also be assessed by another local authority, the Monitoring Officers will agree which authority will deal with the complaint.

2 Interpretation

- 2.1 'Subject 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 Subject Member.
- 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 Subject 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 Subject Member misconduct under these arrangements.
 - 2.6.2 who may be consulted by the Subject 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, Assessment Sub-Committee and Hearing Sub-Committee as appropriate, and the other to be available for consultation in confidence by the Subject Member. The Independent Person assigned to the Subject Member can answer questions regarding the complaints process, offer an impartial view and may, where appropriate, suggest options for resolving the matter informally.
- 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 'Parties' includes the Complainant, Member and the Investigating Officer.
- 2.11 The 'Assessment Sub-Committee' is a sub-committee of the Council's Standards Committee appointed to undertake the assessment of complaints and the consideration of investigation reports under sections 6 and 8 of these arrangements respectively when requested to by the Monitoring Officer.
- 2.12 The 'Hearing Sub-Committee' is a sub-committee of the Council's Standards Committee appointed to determine complaints of Subject Member misconduct under these arrangements. The Assessment and Hearing Sub-Committees shall operate in accordance with any procedural arrangements agreed by the Standards Committee.
- 2.13 'Valid receipt' means formal receipt of a complaint and any associated information necessary for processing that complaint.
- 2.14 Where a complaint is made against a member of a Parish Council the Clerk to the Parish Council will be notified of the complaint, the date of any hearing and the outcome of the matter.
- 2.15 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 regarding a Member under their council's Code of Conduct should be submitted in writing on the appropriate Wiltshire Council form available digitally from its website at this [link](#) and in hard copy from Council offices. The complaint should be addressed to the Monitoring Officer (County Hall, Trowbridge, BA14 8JN or MonitoringOfficer@wiltshire.gov.uk).

- 3.2 Complaints must be made within **20 working days** of the date on which the Complainant became, or ought reasonably to have become, aware of the matter giving rise to the complaint. In cases where the Complainant could not reasonably have become aware of the matter giving rise to complaint within 20 working days, it must in any case be submitted within **6 months** of the incident giving rise to the complaint. Any timescales for processing the complaint will run from valid receipt by Council officers.
- 3.3 Complainants must include details of the specific incident(s) giving rise to their complaint, providing relevant information such as direct quotes, correspondence and dates. Complaints should also specify the sections of the Code of Conduct that the Complainant believes the Subject Member has breached through their actions. If insufficient information is provided, the complaint cannot be assessed, and no further action may be taken.
- 3.4 To be considered under this procedure, the complaint must meet the following initial tests:
 - 3.4.1. The complaint is regarding a member of the Council, or a member of a Parish Council within the area of Wiltshire Council;
 - 3.4.2. They were a member, and were acting in their official capacity (rather than in their private capacity), at the time of the incident giving rise to the complaint;
 - 3.4.3. The Subject Member remains a member of the relevant council, or, if not, there are exceptional circumstances to justify a decision that it is in the public interest to consider the complaint;
 - 3.4.4. A Code of Conduct for the relevant council is in force.
- 3.5 If the complaint fails one or more of these tests, then no further action will be taken.
- 3.6 Anonymous complaints will not be accepted for assessment unless the Monitoring Officer considers that allegations are of sufficient seriousness to justify this and that action could be taken without the Complainant's participation.
- 3.7 Where the Complainant's name is provided, but the Complainant wishes their identity to be withheld from the Subject Member, the complaint will not be accepted unless the Monitoring Officer considers 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.
- 3.8 The Monitoring Officer will acknowledge receipt of the complaint within five days of receiving it and will send a copy to the Subject Member.
- 3.9 Where it will support the assessment of a complaint, and in all cases where a complaint will go forward for assessment by the Assessment Sub-Committee, a copy of the complaint will be sent to the Subject Member and they will be invited to submit a written response to the allegations within ten working days of the date on which it is sent to them. No adverse inference will be drawn from a lack of response as there is no statutory requirement to respond. However, a response is recommended to assist with the Council's assessment of the complaint.

- 3.10 At any time during the complaints process the Subject 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, where one is assigned to them.
- 3.11 Where a Complainant wishes to withdraw their complaint, the Monitoring Officer will take into account the following considerations:
- 3.11.1. The Complainant's reasons for wishing to withdraw the complaint;
 - 3.11.2. Is the complaint such that action can be taken on it, such as an investigation, without the Complainant's participation;
 - 3.11.3. Does the public interest in taking some action on the complaint outweigh the Complainant's wish to withdraw it.

4 Initial assessment

- 4.1 Within five working days of receiving the complaint, or of receiving the Subject Member's response to it where one is provided, or of the expiry of the Subject Member's deadline for providing a response (whichever is appropriate), the Monitoring Officer will undertake an initial assessment of the complaint, consulting an Independent Person when appropriate.
- 4.2 Where the Monitoring Officer determines that any of the following criteria apply, no further action will be taken and the Complainant will be informed of this decision:
- 4.2.1 The complaint is 'out of time' (see paragraph 3.2);
 - 4.2.2 Insufficient information has been provided to assess whether a breach of the Code of Conduct has potentially occurred (see paragraph 3.3);
 - 4.2.3 The complaint does not meet one or more of the initial tests set out at paragraph 3.4;
 - 4.2.4 The complaint is submitted anonymously but the allegations are not exceptionally seriousness in nature (see paragraph 3.6);
 - 4.2.5 The Complainant requests that their identity be withheld from the Subject Member, but a serious risk to the Complainant's safety has not been demonstrated (see paragraph 3.7);
 - 4.2.6 The same, or substantially the same, incident has been the subject of a previous Code of Conduct complaint that has either been determined or has been referred to the Assessment Sub-Committee;
 - 4.2.7 The complaint is essentially regarding the actions of the relevant council as a whole, rather than about an individual members' conduct;
 - 4.2.8 It would not be in the public interest to proceed as defined under paragraph 4.4.
- 4.3 Where the matter has been, or will be, referred to the Police or other regulatory agency, the Monitoring Officer may determine no further action will be taken or its assessment may be paused pending the outcome of the relevant agency's investigation.
- 4.4 The Monitoring Officer may decide not to take any further action on a complaint where, on the available information, it appears to be vexatious, malicious, politically motivated, retaliatory or if proven it would **not** reach the threshold of breaching of the Code of Conduct, and it would therefore not be in the public interest to take further action having mind to the efficient use of resources.

- 4.5 Where none of the criteria under paragraph 4.2 apply, the Monitoring Officer will either seek to resolve the complaint through alternative resolution or refer the complaint for assessment by the Assessment Sub-Committee.

5 Alternative resolution

- 5.1 At any point prior to a complaint being referred to the Hearing Sub-Committee, the Monitoring Officer may seek to resolve the matter through alternative resolution to encourage higher standards of conduct in the future and ensure the efficient use of resources. This may involve mediation, training, the Subject Member providing an apology, or other suitable action. Where appropriate, the Monitoring Officer may also recommend remedial action by the relevant council.
- 5.2 When the Monitoring Officer seeks alternative resolution, they may identify a timeframe within which the complaint will be suspended for in order that alternative resolution can be explored and, where appropriate, completed.
- 5.3 Where the Subject Member makes an offer of alternative resolution that the Monitoring Officer considers to be reasonable, but the Complainant is not willing to accept that offer, this may be taken into account when determining whether further action is taken with regard to the complaint.
- 5.4 Where it becomes clear during an investigation that alternative resolution is an appropriate resolution to the matter, the Monitoring Officer will only do so following consultation with an Independent Person.
- 5.5 In all cases where alternative resolution is attempted, the Monitoring Officer will determine if it has satisfactorily resolved the complaint.

6 Assessment Sub-Committee

- 6.1 If the complaint is not dismissed under paragraph 4.2, and is not successfully resolved through alternative resolution, the Monitoring Officer will refer the complaint for assessment by the Assessment Sub-Committee. In doing so, the Assessment Sub-Committee will consider the original complaint, the Subject Member's response, other relevant documentation, any prior attempts to resolve the complaint through alternative resolution and any further statement submitted to them by the Parties.
- 6.2 Having consulted the Independent Person, the Assessment Sub-Committee may decide:
- 6.2.1 That no further action should be taken on the complaint;
 - 6.2.2 To refer the complaint to the Monitoring Officer for investigation;
 - 6.2.3 To refer the complaint to the Monitoring Officer for alternative resolution (except where this has already been attempted).
- 6.3 Complaints will not normally be referred for investigation where the Subject Member has offered an apology, a reasonable explanation of the issues, or where the Assessment Sub-Committee considers that the matter can reasonably be addressed by other means. Investigation is normally reserved for serious complaints where alternative options for resolution are not considered appropriate. Investigation may not be appropriate where the Subject Member is seriously ill.

- 6.4 A single incident may give rise to similar complaints from a number of Complainants. Where possible these complaints will be considered by the Assessment Sub-Committee at the same time. Each complaint will, however, be determined separately. If an investigation is deemed to be appropriate the Monitoring Officer may determine that, in the interests of efficiency, only one complaint should be investigated, with other Complainants being treated as potential witnesses in that investigation.
- 6.5 Where the Assessment Sub-Committee refers a complaint to the Monitoring Officer for alternative resolution, the provisions under paragraph 5 will apply.
- 6.6 Where, following a referral by the Assessment Sub-Committee, alternative resolution is **unsuccessful** the Monitoring Officer may determine that no further action will be taken or refer the complaint back to the Assessment Sub-Committee for further consideration.
- 6.7 Where, following a referral by the Assessment Sub-Committee, alternative resolution is **successful**, the Monitoring Officer will report this to the Assessment Sub-Committee for information, but no further action will be taken.

7 Investigation

- 7.1 If the Assessment Sub-Committee decides, taking into account paragraph 6.3, that a complaint merits formal investigation, the Monitoring Officer will appoint an Investigating Officer within five working days of the decision notice to investigate and inform the Parties of the appointment.
- 7.2 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.
- 7.3 The Parties will be invited to submit any written comments on the report to the Investigating Officer within working ten days of the date on which the report is sent to them. This provides a total of 45 days for the investigation process. The Investigating Officer will then amend their report or incorporate any comments within it as appropriate, before submitting it to the Monitoring Officer.

8. Consideration of Investigating Officer's report

- 8.1 The Monitoring Officer will, as soon as reasonably practicable, review the Investigating Officer's report in consultation with the Independent Person.
- 8.2 If the Monitoring Officer considers that the investigation or report are not sufficient, they may ask the Investigating Officer to undertake further work.
- 8.3 Where the Investigating Officer concludes that, on the balance of probabilities, the Code of Conduct has **not** been breached, and the Monitoring Officer is satisfied that the Investigating Officer's investigation and report are sufficient, the Monitoring Officer will report to the Assessment Sub-Committee with a recommendation that no further action is taken.
- 8.4 The Assessment Sub-Committee may decide:

- 8.4.1 to dismiss the complaint; or
 - 8.4.2 to refer the complaint to the Hearing Sub-Committee.
- 8.5 Where the Investigating Officer concludes that, on the balance of probabilities, the Code of Conduct **has** been breached, the Monitoring Officer will, after consulting the Independent Person, either conclude that no further action is necessary, seek alternative resolution, or refer the matter for hearing before the Hearing Sub-Committee.
- 8.6 Where the Investigating Officer concludes that the Code of Conduct **has** been breached, but the Monitoring Officer determines that no further action is necessary, the Monitoring Officer will report to the Assessment Sub-Committee with a recommendation that no further action is taken.
- 8.7 The Assessment Sub-Committee may determine that:
 - 8.7.1 No further action will be taken with respect to the complaint; or
 - 8.7.2 The complaint will be referred to the Hearing Sub-Committee.
- 8.8 Where, following receipt of an investigation report, the Monitoring Officer seeks alternative resolution, the provisions under paragraph 5 will apply.
- 8.9 Where alternative resolution is **successful** at this stage, the Monitoring Officer will report this to the Assessment Sub-Committee for information, but no further action will be taken.
- 8.10 Where alternative resolution is **unsuccessful** at this stage, the Monitoring Officer will refer the matter for hearing before the Hearing Sub-Committee.
- 8.11 The Subject Member may elect to proceed to a hearing rather than accept alternative resolution.

9 Hearing

- 9.1 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 reasonable requests from the Parties for an extension, or other reasons for delay, as determined by the Monitoring Officer.

Before the hearing

- 9.2 The date of the hearing and the process to be followed will be provided to the Subject Member, Investigating Officer, relevant Independent Persons, Complainant and, for information, the Clerk of any relevant parish council.
- 9.3 The Subject Member will be asked if they:
 - 9.3.1 will attend the hearing;
 - 9.3.2 wish to be represented at the hearing, or wish to be accompanied by someone who will not represent them;
 - 9.3.3 disagree with any of the findings of fact in the investigation report, including reasons for any of these disagreements;
 - 9.3.4 wish to give evidence to the hearing, either verbally or in writing;
 - 9.3.5 wish to call relevant witnesses to give evidence to the Hearing Sub-Committee;

- 9.3.6 wish to request any part of the hearing to be held in private;
 - 9.3.7 wish to request any part of the investigation report or other relevant documents to be withheld from the public.
- 9.4 The Investigating Officer will be asked if they:
- 9.4.1 will attend the hearing;
 - 9.4.2 wish to be represented at the hearing;
 - 9.4.3 wish to invite such witnesses to attend the hearing as they consider appropriate;
 - 9.4.4 wish to request any part of the hearing to be held in private.
- 9.5 To support the efficient conduct of the hearing, members of the Hearing Sub-Committee, supported by the Monitoring Officer, will:
- 9.5.1 Identify areas of agreement and disagreement;
 - 9.5.2 Consider any additional evidence required for the hearing;
 - 9.5.3 Decide if any additional evidence submitted, or witnesses called, by the Investigating Officer and Subject Member are proportionate and directly relevant to the complaint;
 - 9.5.4 Identify any additional witnesses they wish to hear from;
 - 9.5.5 Determine timescales for the submission of any relevant further information in advance of the hearing;
 - 9.5.6 Finalise the date of the hearing, taking into account requests from the Parties for extension and any pre-hearing matters still to be resolved;
 - 9.5.7 Any other matters considered relevant.
- 9.6 This pre-hearing process may be conducted in writing and/or through a meeting, involving the parties where appropriate. If a meeting is required, it will not be in public, will not represent a formal meeting of the Hearing Sub-Committee, and the merits of the complaint will not be discussed. The outcome of any pre-hearing meeting in terms of directions for the hearing will be sent to the Parties in writing as soon as practicable.

During the hearing

- 9.7 The Hearing 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.
- 9.8 The Investigating Officer will present their report and make representations to support their conclusions.
- 9.9 The Complainant may make a statement to support their complaint.
- 9.10 The Hearing Sub-Committee and Subject Member may ask questions of the Investigating Officer, with the Independent Person able to raise points for clarification and suggest areas for exploration by the Hearing Sub-Committee.
- 9.11 The Investigating Officer will ask questions of any witnesses they have called in turn.
- 9.12 The Hearing Sub-Committee and Subject Member may ask questions of any witnesses called by the Investigating Officer, with the Independent Person able to

raise points for clarification and suggest areas for exploration by the Hearing Sub-Committee.

- 9.13 The Subject Member may make representations to support their response to the complaint.
- 9.14 The Hearing Sub-Committee and Investigating Officer may ask questions of the Subject Member, with the Independent Person able to raise points for clarification and suggest areas for exploration by the Hearing Sub-Committee.
- 9.15 The Subject Member will ask questions of any witnesses they have called in turn.
- 9.16 The Hearing Sub-Committee and Investigating Officer may ask questions of any witnesses called by the Subject Member, with the Independent Person able to raise points for clarification and suggest areas for exploration by the Hearing Sub-Committee.
- 9.17 The Parties may each make a concluding statement in the following order:
Investigating Officer, Complainant, Subject Member.
- 9.18 The Independent Person will be invited to give their views and raise any further points of clarification, which the Hearing Sub-Committee must have regard to.
- 9.19 The Hearing Sub-Committee will then withdraw to consider the case.
- 9.20 If the Independent Person withdraws with the Hearing Sub-Committee, they will not take part in any decision making as they are not part of the formal decision-making process. They will ensure that any views they give to the Hearing Sub-Committee are also conveyed back to the full meeting.
- 9.21 Any officer who retires with the Hearing Sub-Committee is there to advise on matters of procedure and law and any advice given must be conveyed back to the full meeting.
- 9.22 The Hearing Sub-Committee may conclude that the Subject Member did **not** breach the Code of Conduct, and, if so, dismiss the complaint.
- 9.23 If the Hearing Sub-Committee concludes that the Subject Member **did** breach 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.
- 9.24 The Investigating Officer and the Subject Member will be invited to make representations on the question of sanctions.
- 9.25 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.

10 Sanctions

- 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 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](#).

11 Decision

11.1 At the end of the hearing, the Chairman will announce the decision of the Hearing Sub-Committee in summary form.

11.2 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 website and made available for public inspection.

11.3 Where the decision relates to the Subject Member's role as a parish councillor, the Parish Council must be asked to meet to consider the sanction(s) recommended by the Hearing Sub-Committee and impose it. The Parish Council cannot overturn the finding that there has been a breach of the Code or impose a different or additional sanction. The Parish Council will be asked to report back to the Monitoring Officer within three months to confirm that they have met to impose the sanction(s), and if necessary, to write again once the sanction(s) has/have been fulfilled.

12 Revision of and departure from these arrangements

12.1 The Council may by resolution agree to amend the arrangements set out in this Protocol, and has delegated to the Monitoring Officer, Assessment Sub-Committee and the Hearing Sub-Committee, following consultation with an Independent Person, 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.

13 Appeals

13.1 There is no right of appeal for the complaint or the Member against a decision of the Monitoring Officer, Assessment Sub-Committee or Hearing Sub-Committee. However, members and members of the public can contact the Local Government and Social Care Ombudsman (LGSCO) if they are dissatisfied with the process followed. The LGSCO does not offer a right of appeal against a decision on member conduct complaints, but it can consider if there was fault in the way the Council considered the complaint.

[Local Government and Social Care Ombudsman](#)

Tel. 0300 061 0614

14 Confidentiality

14.1 All information regarding the complaint will remain confidential until determined otherwise by the Monitoring officer, Assessment Sub-Committee or Hearing Sub-Committee. Except where confidentiality has been agreed by the Monitoring Officer, Assessment or Hearing Sub-Committee under paragraph 3.7, the published minutes of any Sub-Committee meetings will include details of the complaints discussed.

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.

