

STANDARDS COMMITTEE

MINUTES OF THE STANDARDS COMMITTEE MEETING HELD ON 26 JANUARY 2017 AT THE KENNET ROOM - COUNTY HALL, TROWBRIDGE BA14 8JN.

Present:

Cllr Paul Oatway QPM (Chairman), Cllr Allison Bucknell (Vice Chairman), Cllr Trevor Carbin, Cllr Howard Greenman, Cllr Julian Johnson, Cllr Sheila Parker, Mr Philip Gill MBE JP, Mr John Scragg, Miss Pam Turner and Cllr Glenis Ansell (Substitute)

Also Present:

Cllr Stuart Wheeler

1 Apologies

Apologies were received from Councillors Desna Allen, Rosemary Brown, Horace Prickett and Mr Paul Neale.

Councillor Allen was substituted by Councillor Glenis Ansell.

2 Minutes

The minutes of the previous meeting held on 29 June 2016 were presented for consideration.

Also received were the minutes of the Hearing Sub-Committee on 1 September 2016, and the minutes of the Review Sub-Committees held on 21 June, 3 August, 21 November and 9 December 2016, and 10 January 2017.

In respect of the minutes of the Hearing Sub-Committee it was noted there had been a recommendation that within three months of election all Wiltshire councillors should attend training on confidentiality requirements, with group leaders informed where this was not the case with the recommendation no-one be appointed to a committee or position or responsibility without it. The hearing had been regarding a breach of the Code as a result of the disclosure of confidential information.

In response it was noted that the Committee that it was intended confidentiality requirements be included with general training on the Code of Conduct that would be offered to all members as part of their induction process and the Committee strongly urged to attend.

Resolved:

To approve and sign the minutes of the meeting held on 26 June 2016 as a true and correct record

To receive the minutes of the Hearing Sub-Committee on 1 September 2016, and the minutes of the Review Sub-Committees held on 21 June, 3 August, 21 November and 9 December 2016, and 10 January 2017.

3 Declarations of Interest

There were no declarations.

4 Chairman's Announcements

On behalf of the Committee before the meeting the Chairman paid tribute to his predecessor as Chairman Councillor Julian Johnson. He thanked Councillor Johnson for his work as Chairman and the example he set in seeking to improve high standards of conduct for elected representatives in Wiltshire.

5 Public Participation

Under Minute 6 Mr Francis Morland delivered a statement in which he criticised the council's procedure in respect of standards complaints as unfair to subject members, as well as highlighting what he regarded as errors on the council's website in respect of complaints.

6 Review of the Standards Complaints Procedure

The Monitoring Officer, Ian Gibbons, presented a report on the review of the Standards Complaints Procedure requested by the Committee on 29 June 2016 following recommendation to Council to adopt guidance on the Code of Conduct rather than make amendments directly to the Code itself.

As detailed in the report the Constitution Focus Group had examined three documents relating to the Standards Complaints Procedure: Protocol 12 of the Constitution (*Arrangements for dealing with Code of Conduct complaints*), the Local Assessment Criteria by which complaints were assessed, and a procedure document for the conduct of Review Sub-Committees, held when a subject member or complainant requested a review of an initial assessment by the Monitoring Officer or his representative.

Councillor Stuart Wheeler, Chairman of the Constitution Focus Group, was in attendance and confirmed that the Focus Group had considered a number of issues that had been raised by subject members, officers, independent persons and complainants, and considered that the procedure and associated documents had in general been operating effectively and appropriately, but did feel some redrafting on specific points in the interests of clarity would be beneficial.

The Committee considered and debated the proposed tracked changes to Protocol 12 of the Constitution as detailed in the agenda papers. They were supportive of additional wording to set the time limit for submission of a complaint to be from when a complainant 'became or ought reasonably to have become aware' of a matter giving rise to a complaint. While there would be circumstances where it might be reasonable to accept a complaint long after the event itself, particularly if the event was unknown to the complainant, there should a judgement made in any assessment as to that reasonableness, and that this should be further detailed in the Assessment Criteria.

The Committee also requested a definition of who could be a complainant be inserted to clarify that it was required to be an individual not a body corporate in order to prevent effectively anonymous allegations. Other changes discussed were minor amendments to make clear Review Sub-Committees also had the ability where appropriate in the interests of fair and just administration to depart from the arrangements, and power to determine whether to make public documents relating to a complaint.

In respect of the Assessment Criteria the Committee discussed the five initial tests that were undertaken by Monitoring Officer or Review-Sub-Committee, including a drafting correction to test c) and confirming for test d) that it was necessary for there to be a Code of Conduct provided for the assessment, but that it did not matter who provided it. Additional amendments debated included a paragraph specifying a limit to new correspondence at the assessment stage, whether further wording was necessary in relation to confidentiality requirements and other minor changes as detailed in the tracked change document in the report.

The proposed Review Procedure was also considered. It was noted the document had been developed over time in light of the experience of sub-committees that had been held, and was intended to provide guidance and clarity to members of the public, subject members and the sub-committee as to the purpose of the meeting and the expectations of all parties.

At the conclusion of debate, it was,

Resolved

- 1) To recommend Council adopt the proposed changes to Protocol 12 of the Constitution as attached to these minutes.**
- 2) To approve the changes to the Local Assessment Criteria as attached to these minutes.**
- 3) To adopt the proposed Review Procedure as attached to these minutes.**

7 **Status Report on Standards Complaints**

The Monitoring Officer, Ian Gibbons, presented the latest status report on Standards Complaints. It was noted that the number of complaints for 2016 had increased slightly from 2015, although remained below the level of 2014. It was also clarified that multiple complaints could be submitted against the same member regarding the same incident, which could impact the figures.

The Committee discussed the report, and in response to queries on complaints referred to the police it was confirmed a protocol was being prepared with Wiltshire Police and Swindon Borough Council to ensure a clear procedure for such referrals, where a potential Code of Conduct breach was also a potential criminal offence.

The Committee also requested for future updates details of the breakdown between complaints against members of Wiltshire Council and town and parish councils.

Resolved:

To note the report.

8 **Local Government Ombudsman's Annual Review Letter 2015 - 2016**

The Monitoring Officer, Ian Gibbons, presented a brief report on the Annual Review Letter from the Local Government Ombudsman for 2015-16 in respect of corporate complaints against the council. It was confirmed the number of complaints was similar to previous years, and that the council had been judged as 100% compliant in responding to comments from the Ombudsman in the cases it had deal with in 2015-16.

The Committee discussed the report, seeking details of how council services and the complaints team handled complaints at each stage of the process and how lessons were learned. It was also confirmed town and parish councils were exempt from referrals to the Ombudsman for corporate complaints, and that details would be provided to the Committee at its next meeting on restructuring of the complaints team within the Legal service area.

Resolved:

To note the report.

9 **Appointment of Independent Persons**

The Monitoring Officer, Ian Gibbons, presented a report on the appointment of Independent Persons to assist him with Code of Conduct Complaints. Under the Localism Act 2011 (the Act) the council was required to appoint at least one such Independent Person (IP). The council had chosen to appoint three IPs, and following an extension of their terms at Council on 10 May 2016, the current terms would conclude in May 2017.

Under the terms of the Act a majority of members of the Council were required to appoint the IPs, following advertisement and application by those interested. It was requested the Committee authorise the Monitoring Officer, in consultation with the Chairman, to oversee arrangements for the advertisement, interview and selection of candidates, to be confirmed at the next meeting for recommendation to Council on 16 May 2017. It was proposed to continue with appointing three IPs.

The Committee noted the exemplary work of the three current IPs Mr Colin Malcolm, Mrs Carolyn Baynes and Mr Stuart Middleton, and the comments of the Monitoring Officer that in addition to the wide range of assistance they had provided to himself, subject members and committees over more than 200 complaints and over 30 sub-committees, it was his intention to utilise the IPs for further work as appropriate such as mediation between parties.

It was noted that the original decision of Standards and Council in 2012 had been to appoint each IP to a term of different length to have staggered appointments in future, but that the Committee had recommended this not take place as in practice it had been felt the experience and expertise of the IPs should be retained for a full length of a council. It was recommended the job description and advertisement be amended accordingly to confirm all three appointments be for a four-year term.

In response to queries it was also confirmed that the current IPs would be able to reapply for the roles.

Resolved:

To authorise the Monitoring Officer in consultation with the Chairman, to take all necessary steps to secure the appointment of three Independent Persons at the meeting of Full Council on 16 May 2017.

10 **Forward Plan**

The proposed forward work plan of the Committee was received. In response to queries it was confirmed the report to April 2017 on appointment of Co-opted members of the Committee would be to establish the process for appointment following the May 2017 elections, and details were provided on the planned review of the Whistleblowing Policy.

Resolved:

To approve the forward plan.

11 **Date of Next Meeting**

The date of the next meeting was confirmed as 5 April 2017.

12 **Urgent Items**

There were no urgent items.

13 **Exclusion of the Public**

No members of the public being present, the Committee took no view on passing a motion to exclude.

14 **Minutes**

The Part II minutes of the Hearing Sub-Committee held on 1 September 2016 were received.

(Duration of meeting: 2.00 - 3.30 pm)

The Officer who has produced these minutes is Kieran Elliott of Democratic Services, direct line 01225 718504, e-mail kieran.elliott@wiltshire.gov.uk

Press enquiries to Communications, direct line (01225) 713114/713115

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 of the complaints process is attached at Annex 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 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 'Council' means Wiltshire Council.
- 2.3 'Investigating Officer' means the person appointed by the Monitoring Officer to undertake an investigation of an allegation of misconduct by a Member.
- 2.4 '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.

- 2.5 '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.
- 2.6 In order to avoid any conflict of interest two Independent Persons will be allocated to each complaint, one to advise and assist the Monitoring Officer and the Hearing Sub-Committee, and the other to be available for consultation by the Member.
- 2.7 'Parish Council' means a parish, town or city council within the area of Wiltshire Council.
- 2.8 '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.
- 2.9 'Days' means working days.
- 2.10 'Parties' includes the Complainant, Member and the Investigating Officer.
- 2.11 The 'Hearing Sub-Committee' is a sub-committee of the Council's Standards Committee appointed to determine complaints of member misconduct under these arrangements.
- 2.12 The 'Review Sub-Committee' is a sub-committee of the Council's Standards Committee appointed to review a decision of the Monitoring Officer under sections 4 and 6 of these arrangements.
- 2.13 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.
- 2.14 Documents will be deemed to have been received by the Parties on the seventh day after the date of posting.

2.15 'Complainant' does not include a body corporate

3 Making a Complaint

- 3.1 A complaint against a Member under the Code of Conduct ~~must~~should be made in writing on the Council's standard form (*available from the Council's web-site and offices*) and addressed to the Monitoring Officer [County Hall, Trowbridge / ian.gibbons@wiltshire.gov.uk / governance@wiltshire.gov.uk] 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.

- 3.2 The Monitoring Officer will acknowledge receipt of the complaint within 5 days of receiving it, and will send a copy to the Member.
- 3.3 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.
- 3.4 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.
- 3.5 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.
- 4.2 In reaching this decision 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.
- 4.4 The Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. This may involve mediation or other suitable action, including training or an apology by the Member.
- 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 merits formal investigation.
- 4.6 If the complaint identifies potential criminal conduct by any person, the Monitoring Officer may call in the Police or other regulatory agencies.
- 4.7 The Complainant or the Member may request a review of the Monitoring Officer's decision at the initial assessment stage.
- 4.8 A review will be determined by a Review Sub-Committee who 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, he/she will appoint an Investigating Officer within 2 days of the decision 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 and will send a copy of the investigation report, including all documents relied upon as evidence, to the Parties, in confidence, within 30 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 Monitoring Officer within 10 days of the date on which the report is sent to them. The Member may request an extension of this timescale.

6 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.
- 6.2 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 that no further action is required.
- 6.3 If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider his/her report and findings.
- 6.4 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.
- 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.

7. Alternative Resolution

7.1 Where the Monitoring Officer, in consultation with the Independent Person, considers that the matter can reasonably be resolved without the need for a hearing, he/she 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 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, 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 he/she 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 Annex 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 these arrangements

11.1 The Council may by resolution agree to amend these arrangements, and has delegated to the Monitoring Officer, [the Review 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. Reviews

12.1 Any request for a review must be made in writing to the Monitoring Officer within 5 days of the date of receipt 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.

13. Appeals

13.1 There is no right of appeal for the Complainant or the Member against a decision of the [Review or](#) Hearing Sub-Committees.

14. Confidentiality

- 13.2 All information regarding the complaint will remain confidential until determined otherwise by the Monitoring Officer, [Review Sub-Committee](#) or Hearing Sub-Committee.

Annex 1

Sanctions

Censure

1. Censure and report to the Council or relevant Parish Council; and/or

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

2. 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;
3. Recommend to the Leader of the Council that the Member is removed from the Cabinet, or removed from particular portfolio responsibilities;
4. Remove the Member from any or all outside appointments to which he/she has been appointed or nominated by the Council or relevant Parish Council.

Training

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

Publish

6. 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.

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STANDARDS COMMITTEE

PROCEDURAL RULES FOR REVIEWS OF INITIAL ASSESSMENT DECISIONS OF CODE OF CONDUCT COMPLAINTS

1 Purpose

- 1.1. These rules have been prepared to facilitate proper consideration by the Standards Committee's Review Sub-Committee, when conducting a review of initial assessment decisions by the Monitoring Officer in respect of Code of Conduct complaints ('the Review').
- 1.2. The rules set out a framework for how Reviews are to be conducted and explain the role of the participants at the Review.

2. Definitions

- 2.1 The following definitions describe the participants at and the subject matter of a Review:
 - **'Subject Member/Member'** means a member of Wiltshire Council, or of a parish, town or city council within the Wiltshire Local Authority area, against whom a complaint has been made under the Code of Conduct.
 - **'Complainant'** means the person(s) who have lodged a complaint against the conduct of a Member
 - **'Council'** means Wiltshire Council.
 - **'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.
 - **'Democratic Services Officer'** means the Council's Officer who is present at a Review Sub-Committee meeting to take minutes and advise on procedure.
 - **'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.
 - **Initial Assessment** means a review of the complaint and any written response by the subject member to consider whether on the papers the complaint merits a formal investigation as set out in paragraph 4.1 and the following provisions of Protocol 12 of the Wiltshire Council Constitution (Arrangements for dealing with Code of Conduct Complaints).

- **'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.
- **'Local Assessment Criteria'** are the arrangements 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.
- **'Party'** means the Subject Member and the Complainant
- The **'Hearing Sub-Committee'** is a sub-committee of the Council's Standards Committee appointed to determine complaints of member misconduct under the arrangements in Protocol 12 of the Constitution..
- The **'Review Sub-Committee'** is a sub-committee of the Council's Standards Committee appointed to review a decision of the Monitoring Officer under sections 4 and 6 of the arrangements in Protocol 12 of the Constitution.. This can include voting and co-opted non-voting members of the Standards Committee.
- The **'Constitution'** means the Constitution of Wiltshire Council, which includes rules on public participation at committees and the code of conduct complaints procedure.

3. The Review

- 3.1. The Review is dealt with on the papers and is not to be treated as a hearing of the complaint itself, which can only be convened after an investigation has been concluded and a decision has been made under paragraph 6.4 of the arrangements for dealing with Code of Conduct Complaints referring the matter for hearing.
- 3.2. Information submitted in a request for a review should be focused solely upon the substantive allegations of the original complaint.. If new allegations are raised in the review request, then these shall be dealt with in one of the following ways, to be determined by the Monitoring Officer:-
- 3.2.1. The new allegations may be considered as part of the Review of the original complaint, but only if they relate to the original complaint and all parties, including if appropriate, the officer who carried out the initial assessment of the original complaint, have had an opportunity to comment on them.
- 3.2.2. The Review of the original complaint may be postponed until there has been an initial assessment of the new complaints, so that, if appropriate, all of the complaints can be considered together.
- 3.2.3. The new complaints may be the subject of separate assessment and be dealt with independently from the Review of the original complaint

4. Attendance at Meetings

- 4.1. The Review Sub-Committee is a committee of the Council and as such the meeting shall take place in public, However, the Sub-Committee may exclude the public from all or part of the Review, by passing a resolution in accordance with Section

100A(4) of the Local Government Act 1972, where it considers that there is likely to be disclosure of exempt information and that it is in the public interest to do so . Given the nature of the issues to be considered by the Sub-Committee it is likely that such a resolution would normally be appropriate at this stage in the process.

- 4.2. The Complainant and the Subject Member, as parties to the Review, would not be covered by such a resolution to exclude the public and press and may attend the Review Sub-Committee. However, the Sub-Committee will normally retire to consider their decision and return to inform the parties of their decision.
- 4.3. If a party has informed the Council that they do not intend to attend the Sub-Committee meeting, or have not given any indication as to whether or not they intend to attend, the Review will proceed in their absence.
- 4.4. If a party has indicated an intention to attend the meeting, but is not present at the start of the meeting, the Review will proceed in the absence of that party, unless the Sub-Committee considers it necessary to adjourn the meeting to enable the party to attend and make their representations.
- 4.5. If a party does not intend to attend and speak to the meeting, they may submit short written representations that will be taken into account by the Sub-Committee in reaching their decision.
- 4.6. In addition to the Sub-Committee members and any co-opted member, the meeting may be attended by one or more Independent Persons, Democratic Services Officer(s) and the Monitoring Officer, being someone other than the officer who made the initial assessment under review.

5. Procedure

- 5.1. Prior to the Review commencing, the Chairman shall introduce the persons present and explain the procedure to be followed at the Review
- 5.2. The Complainant and the Subject Member (or their representative) will be permitted up to three minutes to make any statement. If there is more than one complainant present, then, subject to the discretion of the Chairman, the maximum total time for statements by all complainants shall be three minutes. Any statements made should relate to the specific issues being considered by the Review Sub-Committee and should not raise any new issues or allegations.
- 5.3. No new documentation is to be introduced at the Sub-Committee meeting without the agreement of the Sub-Committee. New documentation should only be admitted if is considered by the Sub-Committee to be essential to its consideration of the issues in the Review.
- 5.4. The Sub-Committee may take into account written representations made by, or correspondence from, a party that have been received since the publication of the agenda, where it is considered that this will assist the Review.
- 5.5. No questioning of the parties will be permitted, other than by the Sub-Committee with the agreement of the Chairman, to seek clarification of any point that has been made
- 5.6. Following any statements by the parties, the Review Sub-Committee will normally withdraw, with the Independent Person(s), and relevant officers, to consider the case.

5.7. Taking into consideration the documents provided, namely the original complaint, response of the Subject Member and any relevant additional material submitted in the request for a review of the initial assessment, the Sub-Committee will apply the tests required under paragraph 3 of the local assessment criteria, namely whether:

- a) the complaint is about the conduct of a member of a council within the area of Wiltshire Council;
- b) the member was a member at the time of the incident giving rise to the complaint;
- c) the member remains a member of the relevant council;
- d) a Code of Conduct is in force for the relevant council and provided;
- e) the matters giving rise to the complaint would, if proven, be capable of breaching that Code.

5.8. If the Sub-Committee are not satisfied that the criteria in a-e above are met, the complaint will be assessed as requiring no further action.

5.9. If the Sub -Committee are satisfied that a-e in para 5.7 above are met, they shall consider whether, under the rest of the local assessment criteria, the complaint should proceed to investigation. The Sub-Committee may also recommend any other suitable action, including mediation.

5.10. In reaching its decision the Sub-Committee will have regard to the initial assessment reasoning and decision.

6. Decision

6.1. The parties will be informed of the Sub-Committee's decision once it has been made and a full decision with written reasons shall be sent to the Complainant and Subject Member as soon as practicable thereafter.

Review Sub-Committee Meeting Procedure Summary

1. The Democratic Services Officer will request nominations for a Chairman for the Review.
2. The Chairman welcomes all those present and introduces the Review.
3. If appropriate, the Chairman invites the Sub-Committee Members, Council Officers, the complainant (if present), and the Subject Member (if present) to introduce themselves.
4. The Chairman outlines the Review Procedure as set out in the Agenda, makes any relevant announcements and asks for any declarations of interest.
5. The Sub-Committee determines whether to pass a resolution to exclude the press and the public from the rest of the meeting.
6. The Complainant and Subject Member are given the opportunity to make a statement to the Sub-Committee of up to three minutes for each party.
7. The Sub-Committee retires to consider their decision.
8. Taking into consideration the evidence, namely the original complaint, response of the Subject Member and any relevant additional material submitted in the request for a review of the initial assessment, the Sub-Committee will then apply the tests required under paragraph 3 of the local assessment criteria, namely whether:
 - a) The complaint is about the conduct of a member of a council within the area of Wiltshire Council;
 - b) That the member was a member at the time of the incident giving rise to the complaint;
 - c) That the member remains a member of the relevant council.
 - d) That a Code of Conduct for the relevant council is in force and provided;
 - e) That the matters giving rise to the complaint would, if proven, be capable of breaching that Code.
9. If the criteria in 8 a) to e) are met, the Sub-committee will consider whether, under the local assessment criteria, they feel the complaint should be referred for investigation or other suitable action, including mediation, or whether the complaint should be dismissed or no further action should be taken.
10. In reaching their decision the Sub-Committee will have regard to the initial assessment of the Monitoring Officer.

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STANDARDS COMPLAINTS ASSESSMENT CRITERIA

The Monitoring Officer will adopt the approach and apply the criteria set out below in the assessment of complaints under locally adopted Codes of Conduct for Members.

The Review Committee will use the same approach and criteria.

Relevance

1. It is likely that complaints will be received which do not relate to local codes of conduct for members. These might include complaints relating to the provision of services by local councils; matters relating to the local council as a corporate body; or matters which should be dealt with under a council's complaints procedure. They may be matters relating to council employees, other authorities or matters relating to a member's private life which do not fall within the remit of the Standards Committee. *The Monitoring Officer will advise the complainant in such matters that they cannot proceed under local codes of conduct, but that the complainant should contact the relevant council in order to bring a complaint under the appropriate complaints procedure.*

Alternative resolution

2. The Monitoring Officer will always consider whether an alternative means of resolving the complaint would be appropriate.

Initial Tests

3. Before the assessment of a complaint begins, the Monitoring Officer should be satisfied that:
 - a) The complaint is about the conduct of a member of a council within the area of Wiltshire Council;
 - b) That the member was a member at the time of the incident giving rise to the complaint;
 - c) That the member remains a member of the relevant council ~~at the time of the complaint~~;
 - d) That ~~the complainant has provided a copy of the~~ Code of Conduct ~~of for~~ the relevant council is in force and provided;
 - e) That the matters giving rise to the complaint would, if proven, be capable of breaching that Code.

If the complaint fails one or more of these tests it cannot be investigated and no further action will be taken.

Sufficiency of information

4. The complainant must provide sufficient information to enable the subject member and those responsible for assessing the complaint to understand the substance of the complaint. If insufficient information is provided, the Monitoring Officer will not normally proceed with assessment of the complaint.

If the complaint meets the criteria set out in 3. a-e above, and the complainant has provided sufficient information to enable the issues complained of to be understood, the Monitoring Officer will send a copy of the complaint to the subject member and ask for the subject member's comments. When these have been received, the Monitoring Person will assess the complaint, after consulting the Independent Person.

At this initial assessment stage the Monitoring Officer will not normally consider any further representations or correspondence from either the complainant or subject member

Seriousness of the Complaint

5. A complaint will not be referred for investigation if, on the available information, it- appears to be trivial, vexatious, malicious, politically motivated or 'tit for tat'.

A complaint will not normally be referred for investigation if the subject member has offered an apology, a reasonable explanation of the issues, or if the Monitoring Officer takes the view that the complaint can reasonably be addressed by other means.

Bearing in mind the public interest in the efficient use of resources, referral for investigation is generally reserved for serious complaints where alternative options for resolution are not considered by the Monitoring Officer to be appropriate.

Length of Time Elapsed

A complaint will not be referred for investigation when it is made more than 20 working days from the date upon which the complainant became, or ought reasonably to have become, aware of the matter giving rise to the complaint. [In any event, the Monitoring Officer may decide not to refer a complaint for investigation where, in his opinion, the length of time that has elapsed since the matter giving rise to the complaint means that it would not be in the interest of justice to proceed.]

Anonymous Complaints

Anonymous complaints will not be considered 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.

Multiple Complaints

6. A single event may give rise to similar complaints from a number of complainants. Where possible these complaints will be considered by the Monitoring Officer at the same time. Each complaint will, however, be considered separately. If an investigation is deemed to be appropriate the Monitoring Officer may determine that, in the interests of efficiency, only one complaint should go forward for investigation, with the other complainants being treated as potential witnesses in that investigation.

Confidentiality

7. All information regarding the complaint will remain confidential to the parties until determined otherwise by the Monitoring Officer, ~~or~~ Review Sub-Committee or Hearing Sub-Committee.

Withdrawing Complaints

8. A complainant may ask to withdraw their complaint before it has been assessed. In deciding whether to agree the request the Monitoring Officer will consider:
 - (a) the complainant's reasons for withdrawal;
 - (b) whether the public interest in taking some action on the complaint outweighs the complainant's wish to withdraw it;
 - (c) whether action, such as an investigation, may be taken without the complainant's participation.

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