

AGENDA

Meeting: Standards Review Sub-Committee

Place: [Access the online meeting here](#)

Date: Thursday 10 December 2020

Time: 3.00 pm

Please direct any enquiries on this Agenda to Kieran Elliott, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 718504 or email kieran.elliott@wiltshire.gov.uk

Press enquiries to Communications on direct lines (01225) 713114/713115.

This Agenda and all the documents referred to within it are available on the Council's website at www.wiltshire.gov.uk

Membership:

Cllr Andrew Bryant
Cllr Trevor Carbin

Cllr Howard Greenman

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AGENDA

1 **Election of Chairman**

To elect a Chairman for this meeting only.

2 **Declarations of Interest**

To receive any declarations of disclosable interests or dispensations granted by the Standards Committee.

3 **Meeting Procedure and Assessment Criteria** (*Pages 5 - 14*)

To note the procedure and assessment criteria for the meeting.

4 **Exclusion of the Public**

To consider passing the following resolution:

To agree that in accordance with Section 100A(4) of the Local Government Act 1972 to exclude the public from the meeting for the business specified in Item Number 5 because it is likely that if members of the public were present there would be disclosure to them of exempt information as defined in paragraph 1 of Part I of Schedule 12A to the Act and the public interest in withholding the information outweighs the public interest in disclosing the information to the public.

Paragraph 1 - information relating to an individual

5 **Review of the consideration of an Investigating Officer's Report:
COC126112** (*Pages 15 - 80*)

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STANDARDS COMMITTEE

PROCEDURAL RULES FOR REVIEWS OF DECISIONS BY MONITORING OFFICER TO DISMISS A CODE OF CONDUCT COMPLAINT FOLLOWING INVESTIGATION

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 a decision by the Monitoring Officer to dismiss a Code of Conduct complaint, following his/her consideration of the Investigating Officer's report. ('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.
 - **Investigating Officer** means the officer appointed by the Monitoring Officer to carry out an investigation into the conduct of a Subject Member, pursuant to a Code of Conduct complaint under paragraph 5 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.
- **‘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 of the local assessment criteria.
- 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 Protocol 12 of the Council’s Constitution. This can include voting and non-voting members of the Standards Committee.
- The **‘Constitution’** means the Constitution of Wiltshire Council, which includes rules on public speaking 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 into the complaint itself. A hearing which can only be convened if, after an investigation has been concluded, a decision has been made either under paragraph 6.4 of the arrangements for dealing with Code of Conduct Complaints to refer the matter for hearing, or this Review has determined that the matter should be referred for a hearing.

3.2. Information submitted in a request for a review should be focused only upon the substantive allegations of the original complaint and the evidence taken into account by the Monitoring Officer when reaching his/her decision on the Investigating Officer’s report. If new allegations are raised in the review request subsequent to that decision, then these shall be dealt with in one of the following ways, to be determined by the Monitoring Officer:

- The new allegations may be considered as part of the Review of the Monitoring Officer’s decision on the Investigating Officer’s report , but only if they relate to the original complaint and all parties, including if appropriate, the Monitoring Officer and Investigating Officer t, have had an opportunity to comment on them
- The new complaints may be the subject of separate assessment and be dealt with independently from this Review

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 Section 100A(4) of the Local Government Act 1972, where it considers there is likely to be disclosure of exempt information and 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 its decision and return to inform the parties of that decision.
- 4.3. If a party has informed the Council that it does not intend to attend the Sub-committee meeting, or has not given any indications as to whether or not it intends to attend, the Review will proceed in their absence. As it is a review on the papers no adverse inference will be drawn from any parties' non-attendance at a meeting.
- 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.
- 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 a representative of the Monitoring Officer, wherever possible being someone other than:
 - the officer who considered the Investigating Officer's report and made the decision to take no further action.
 - The officer who made the initial assessment on the complaint

5. Procedure

- 5.1. Prior to the Review commencing, the Chairperson 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 a maximum of 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 it 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 Chairperson, to seek clarification of a comment that has been made

5.6. Following any statements by the parties, the Members of 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, the Review Sub-Committee shall determine one of the following:

- To uphold the decision of the Monitoring Officer to dismiss the complaint
- To refer the complaint for hearing by the Hearing Sub-Committee

5.8. To refer the complaint to the Monitoring Officer to seek alternative resolution

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 Chairperson welcomes all those present and introduces the Review.
3. If appropriate, the Chairperson invites the Sub-Committee Members, Council Officers, the complainant (if present), and the subject member (if present) to introduce themselves.
4. The Chairperson 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 to determine whether to pass a resolution to exclude the public from the rest of the meeting.
6. The Complainant and Subject Member are given the opportunity to make a brief statement to the Sub-Committee.
7. The Complainant and Subject Member are asked to leave the meeting whilst the Sub-Committee conducts the Review
8. Taking into consideration the evidence, including the Investigating Officer's Report, the Monitoring Officer's decision and the Complainant's request for a review of the Sub-Committee will then consider whether:
 - To uphold the decision of the Monitoring Officer to dismiss the complaint
 - To refer the complaint for hearing by the Hearing Sub-Committee
 - To refer the complaint to the Monitoring Officer to seek alternative resolution

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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 Sub-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, or, if not, that it is in the public interest to continue to consider the complaint;
 - d) That a Code of Conduct for the relevant council is in force and has been 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 Officer 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

6. 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

7. 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

8. 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

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

Withdrawing Complaints

10. 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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