

AGENDA

Meeting: Standards Assessment Sub-Committee

Place: Council Chamber, County Hall, Trowbridge, BA14 8JN

Date: Thursday 30 September 2021

Time: 2.30 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 Richard Britton
Cllr Ernie Clark (Vice-Chairman)
Cllr Ruth Hopkinson (Chairman)

Cllr Gordon King
Cllr Sam Pearce-Kearney
Joanne Cetti (non-voting)
Julie Phillips (non-voting)

Substitutes:

Cllr Allison Bucknell
Cllr Trevor Carbin
Cllr Andrew Davis
Cllr Matthew Dean
Cllr Howard Greenman
Cllr Jon Hubbard
Cllr Mel Jacob
Cllr Kathryn Macdermid

Cllr Dr Nick Murry
Cllr Paul Oatway QPM
Cllr Bill Parks
Cllr Pip Ridout
Cllr Mike Sankey
Cllr Iain Wallis
Cllr Derek Walters
Cllr Graham Wright

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Public Participation

Please see the agenda list on following pages for details of deadlines for submission of questions and statements for this meeting.

For extended details on meeting procedure, submission and scope of questions and other matters, please consult [Part 4 of the council's constitution](#).

The full constitution can be found at [this link](#).

For assistance on these and other matters please contact the officer named above for details

AGENDA

Part I

Items to be considered when the meeting is open to the public

1 **Apologies**

To receive any apologies or substitutions for the meeting.

2 **Minutes of the Previous Meeting** (Pages 5 - 8)

To approve the minutes of the meeting held on 26 August 2021.

3 **Declarations of Interest**

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

4 **Meeting Procedure and Assessment Criteria** (Pages 9 - 18)

To note the procedure and assessment criteria for the meeting.

5 **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 Agenda Item Numbers 6 onwards, 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

Part II

Items during consideration of which it is recommended that the public should be excluded because of the likelihood that exempt information would be disclosed.

6 **Assessment of Complaint: COC134813** (Pages 19 - 80)

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Standards Assessment Sub-Committee

MINUTES OF THE STANDARDS ASSESSMENT SUB-COMMITTEE MEETING HELD ON 26 AUGUST 2021 AT COUNCIL CHAMBER - COUNTY HALL, BYTHESEA ROAD, TROWBRIDGE, BA14 8JN.

Present:

Cllr Richard Britton, Cllr Ernie Clark (Vice-Chairman), Cllr Ruth Hopkison (Chairman), Cllr Sam Pearce-Kearney and Cllr Derek Walters (Substitute), Gordon Ball (Non-voting) and Julie Phillips (non-voting).

Also Present:

Complainant COC134813, Damian Kearney (Independent Person), Frank Cain (Head of Legal), Lisa Moore (Senior Democratic Services Officer) and Kathy Barnes (Observer Co-opted Member)

9 **Apologies**

Apologies were received from Councillor Gordon King. Councillor King was substituted by Councillor Derek Walters.

An apology was also received from Independent Person Pat Bunche.

10 **Minutes of the Previous Meeting**

The minutes of the meeting held on 23 June 2021 were presented for consideration, and it was,

Resolved:

To approve and sign the minutes as a true and correct record.

11 **Declarations of Interest**

There were no declarations.

12 **Meeting Procedure and Assessment Criteria**

The meeting procedure and assessment criteria were noted

13 **Exclusion of the Public**

It was,

Resolved:

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 Agenda Item Numbers 6-8, 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

14 **Assessment of Complaint: COC134813**

Due to the absence of the Independent Person assigned to consider the complaint with the Sub-Committee, after taking legal advice, It was determined that the assessment of the complaint should be deferred until the next meeting on 30 September 2021.

The Complainant who was in attendance, provided a written copy of his statement for inclusion in the papers for the next meeting.

Resolved:

To defer the assessment of COC134813 until 30 September 2021.

15 **Complaint: COC131452**

A complaint had been submitted on 11 October 2020 by Councillor Jon Hubbard (the Complainant) regarding the conduct of Councillor Vanessa Fiorelli (the Subject Member), then a Member of Melksham Town Council.

It was alleged that the Subject Member breached the town council's code of conduct in that she had, contrary to the financial regulations and standing orders of the Melksham Town Council, arranged for a locum Town Clerk to be employed when she had no authority to do so and by such demonstrated a disregard of the Nolan principles specifically integrity, objectivity, accountability openness, honesty and leadership which amounts to a breach of the Council's code of conduct.

The complaint was initially heard by the Assessment Sub-Committee on 19 November 2020, when it was determined to refer the complaint for investigation.

Following receipt of an Investigating Officer's report and comments from parties, the Monitoring Officer had recommended that no further action be taken in respect of this complaint.

In accordance with paragraph 7.2 of Protocol 11, the decision of the Monitoring Officer's recommendation was reported to the Sub-Committee for information. The Sub-Committee accepted the conclusion that the process followed in the investigation was sound, and noted the comments of the Independent Person, and found no reason to depart from the recommendation.

At the conclusion of discussion, it was,

Resolved:

In accordance with the approved arrangements for resolving standards complaints adopted by Council on 9 July 2019, which came into effect on 1 January 2020 and after hearing from the Independent Person, the Assessment Sub-Committee determined to take no further action in respect of the complaint.

16 **Complaint COC129729**

A complaint had been submitted on 25 June 2020 by Mr & Mrs Allsworth (the Complainants) regarding the conduct of Councillor Antonio Piazza (the Subject Member), a Member of Trowbridge Town Council.

It was alleged that the Subject Member has used his position as a Councillor to discourage a delivery company from making deliveries to the complainant's home address.

The Complainants alleged that by identifying himself as a Councillor of Trowbridge Town Council the Subject Member has breached the Trowbridge Town Council Code of Conduct by: -

- a. not promoting or supporting high standards in his public office (localism Act 2011 and general principles), and/or
- b. using his position for personal benefit he is not acting with integrity, (Nolan Principles) and/or
- c. using his position improperly to gain an advantage/confer a disadvantage in his private life over the Complainant.

The complaint was initially heard by the Assessment Sub-Committee on 18 August 2020, when the Committee determined to refer the complaint for investigation.

Following receipt of an Investigating Officer's report and comments from parties, the Monitoring determined the allegations required further enquiry, details of which were included as Appendix C to the Investigation report. At the completion of the Investigating Officer's additional enquiries, she confirmed that there was nothing within the information which altered her original conclusion in this matter that the actions had not risen to the level of a breach.

After Consideration of the Report and the additional enquiries, the Monitoring Officer determined to recommend to the Sub-Committee that no further action be taken in respect of the complaint.

The Sub Committee agreed with the observations of the Monitoring Officer, which were that they believed that the Subject Member should be reminded of his professional/personal boundaries and the potential for conflicts of interest. It was their view that the Subject Member should have handled the matter relating to his mother professionally and advised her to contact her local councillor or referred her to them. In addition, he should also have avoided using his councillor status in any way if he was making personal enquiries.

In accordance with paragraph 7.2 of Protocol 11, the decision of the Monitoring Officer's recommendation was reported to the Sub-Committee for information. They considered that there had been a fair and comprehensive investigation. At the conclusion of discussion, it was,

Resolved:

In accordance with the approved arrangements for resolving standards complaints adopted by Council on 9 July 2019, which came into effect on 1 January 2020 and after hearing from the Independent Person, the Assessment Sub-Committee determined to take no further action in respect of the complaint.

(Duration of meeting: 10.30 - 11.47 am)

The Officer who has produced these minutes is Lisa Moore of Democratic Services, direct line 01225 718504, e-mail lisa.moore@wiltshire.gov.uk

Press enquiries to Communications, direct line (01225) 713114 or email communications@wiltshire.gov.uk

STANDARDS COMMITTEE

PROCEDURAL RULES FOR THE ASSESSMENT SUB-COMMITTEE

1 Purpose

- 1.1. These rules have been prepared to facilitate proper consideration by the Standards Committee's Assessment Sub-Committee, when making assessment decisions in respect of Code of Conduct complaints ('the Assessment') and receiving details of completed investigations.
- 1.2. The rules set out a framework for how Assessments are to be conducted and explain the role of the participants at the Assessment.

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 an Assessment 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.
 - **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 **'Assessment Sub-Committee'** is a sub-committee of the Council's Standards Committee appointed to make determinations 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 Assessment

- 3.1. The Assessment 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 6.1 of the arrangements for dealing with Code of Conduct Complaints referring the matter for hearing.

4. Attendance at Meetings

- 4.1. The Assessment 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 Assessment, 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 very 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 Assessment 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 Assessment will proceed in their absence. As it is an assessment 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 Assessment 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 a short written representation 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.

5. Procedure

- 5.1. 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 or subject member 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 Assessment Sub-Committee and should not raise any new issues or allegations.
- 5.2. Complainants and subject members for each complaint will be brought before the sub-committee to make a statement separate from any other complaint, except in the case of the same complaint submitted against multiple members
- 5.3. The Monitoring Officer will provide reports on any complaint that is to be assessed.
- 5.4. The report shall contain a summary of the complaint, supporting evidence, and response of the subject member, which aspects of a relevant code are alleged to have been breached, and options on whether to refer the complaint for investigation, dismiss the complaint, refer for alternative resolution, with reasoning for any recommended outcome.
- 5.5. The reports will also include in full any relevant material and supporting evidence provided by the complainant or subject member
- 5.6. 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 Assessment
- 5.7. 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 Assessment.
- 5.8. 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
- 5.9. Following any statements by the parties, the Assessment Sub-Committee will normally withdraw, with the Independent Person(s) if in attendance, and relevant officers, to consider the case.
- 5.10. Taking into consideration the documents provided, namely the original complaint, response of the Subject Member and any relevant additional material, 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; or, if not, that there are exceptional circumstances to justify a decision that it is in the public interest to continue to consider the complaint;
- 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.

5.11. 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.

5.12. 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.

5.13. Before making any decision, the sub-committee will have regard to the views of an Independent Person. The Independent Person, if in attendance, may contribute to the discussion of the Sub-Committee at any time

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.

7. Post-Investigation

7.1. If , following an investigation, the outcome of that investigation is a finding of no breach, the Monitoring Officer will prepare a report and recommendation to the Assessment Sub-Committee. This will be considered using the same procedure as detailed above.

Assessment Sub-Committee Meeting Procedure Summary

1. If appropriate, the Chairman invites those present to introduce themselves.
2. The Chairman outlines the Assessment Procedure as set out in the Agenda, makes any relevant announcements and asks for any declarations of interest.
3. The Sub-Committee determines whether to pass a resolution to exclude the press and the public from the rest of the meeting.
4. Each complainant and subject member will be given the opportunity to make a statement to the Sub-Committee of up to three minutes for each party. In the interests of confidentiality the subject members and complainants for separate complaints will be brought before the assessment sub- committee separately. A complaint made multiple members may be considered together.
5. The Monitoring Officer presents a report for each complaint requiring assessment.
6. 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, or, if not, that there are exceptional circumstances to justify a decision 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.
7. If the criteria in 6 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.
8. The Sub-Committee will request and receive the views of an Independent person in person or in writing at the beginning of their discussion.

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STANDARDS COMPLAINTS ASSESSMENT CRITERIA

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

1. Relevance

1.1 The criteria and procedures set out in this document only apply to complaints made against individual members that fall within the relevant code of conduct. It is likely that complaints will be received by the Monitoring Officer which do not relate to local codes of conduct for members. These might include complaints relating to the provision of services by councils; matters relating to the council as a corporate body (including decisions made by the council); or matters which should be dealt with under a council's complaints procedure. They may be complaints 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.

1.2 Where complaints are received that are outside the scope of these procedures, the Monitoring Officer will advise the complainant 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 alternative complaints procedure, where available.

2. Alternative resolution

2.1 The Monitoring Officer or Assessment Sub-Committee will always consider whether an alternative means of resolving the complaint would be appropriate.

3. Initial Tests

3.1 Before the assessment of a complaint begins, the Assessment Sub-Committee 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 there are exceptional circumstances to justify a decision 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.

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

4. Sufficiency of information

4.1 As any assessment will be conducted solely on the papers provided, it is essential that the complainant 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 consideration of the complaint. It is the responsibility of the complainant to provide any supporting evidence for their complaint to justify a full investigation.

4.2 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 consider the complaint and provide a report and recommendation on it to the Assessment Sub-Committee, together with copies of the original complaint (and any supporting documentation) and the Subject Member's response.

4.3 At this assessment stage, the Assessment Sub-Committee will not normally consider any further representations or correspondence from either the complainant or subject member.

5. Seriousness of the Complaint

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

5.2 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 Assessment Sub-Committee takes the view that the complaint can reasonably be addressed by other means.

5.3 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 or Assessment Sub-Committee to be appropriate, particularly in

cases where a subject member is no longer a member of a relevant council.

6. Length of Time Elapsed

6.1 A complaint will not be referred for assessment 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. Any such complaint will be dismissed by the Monitoring Officer, and will not be referred to the Assessment Sub-Committee, although the Monitoring Officer retains the discretion to refer a complaint for assessment that would otherwise be out of time, in exceptional circumstances.

6.2 In any event, the Assessment Sub-Committee may decide not to refer a complaint for investigation where, in their opinion, the length of time that has elapsed since the matter giving rise to the complaint means that it would not be in the interests of justice to proceed.

7. Anonymous Complaints

7.1 Anonymous complaints will not be accepted for consideration 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.

8. Multiple Complaints

8.1 A single event 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 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.

9. Confidentiality

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

10. Withdrawing Complaints

10.1 A complainant may ask to withdraw their complaint before it has been assessed.

10.2 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.

By virtue of paragraph(s) 1 of Part 1 of Schedule 12A of the Local Government Act 1972.

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