

## 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 for the review of initial assessment decisions by the Monitoring Officer in respect of Code of Conduct complaints.
- 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 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.
  - **'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.
  - **'Committee Lawyer'** means the Council's Lawyer (including an external Lawyer instructed by the Council's Head of Legal Services) who is present at a Hearing to advise the Chairperson and the Members.
  - **'Committee Clerk'** means the Council's Officer who is present at a Hearing 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 following of Protocol 12 of the Wiltshire Council Constitution (Arrangements for dealing with Code of Conduct Complaints).

- **'Parish Council'** means a parish, town or city council within the area of Wiltshire Council.
- **'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.
- **'Parties'** includes the Complainant, Subject Member and the Investigating Officer (if applicable).
- **'Local Assessment Criteria'** are the 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.
- 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 (The 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 local assessment criteria. 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 Sub-Committee is a public body and as such the meeting shall take place in public.
- 3.1.1 The Committee may exclude the public from all or part of the Review where it considers it to be in the public interest to do so and pass a resolution in accordance Section 100A(4) of the Local Government Act 1972.
- 3.1.2 The Committee may require any person attending the Review who, in its opinion, is behaving in a disruptive manner, to leave the Review and may:
- a refuse to permit them to return;
  - b permit them to return only on such conditions as the Committee may specify;
- 3.2 Prior to the Review commencing, the Chairperson shall advise the parties of the procedure it proposes to follow at the Review.
- 3.3 In accordance with paragraphs 24-26 of Part 4 of the Constitution, speakers will be permitted a maximum of three minutes to make any statement.
- 3.4 Taking into consideration the documents provided, namely the original complaint, response of the subject member and any 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 at the time of the complaint;
- d) That the complainant has provided a copy of the Code of Conduct of the relevant council;
- e) That the matters giving rise to the complaint would, if proven, be capable of breaching that Code.

3.5 If the committee are satisfied a-e are met, it shall consider if under the rest of the local assessment criteria the complaint should proceed to investigation. If it is not satisfied the criteria are met, the complaint will be assessed as for no further action.

3.6 The committee will also consider the initial assessment reasoning and decision.

3.7 The Members of the Review Sub-Committee may withdraw, with the Independent Person, the Committee Lawyer and the Committee Clerk, to consider the case.

3.8 The review is dealt with on the papers and is not to be treated as a hearing into the complaint itself which can only be convened after an investigation has been concluded and decision has been made under paragraph 6.4 of the arrangements for dealing with Code of Conduct Complaints referring the matter for hearing

#### **4 Documentation**

4.1 No party shall present new documentation to the Committee at the Review. This does not preclude the Officers from correcting errors

#### **5 Intervention**

The Chairperson shall permit the following interventions at any point in the Review:

5.1 The Committee Lawyer to advise the Committee on issues of law, procedure and relevant considerations on decision making. If necessary, the Chairperson may require the Committee, the Committee Lawyer and the Committee Clerk to leave the Review so that advice can be given.

5.2 The Committee Clerk to advise the Committee on procedure generally, or to request that statements made are repeated for reasons of clarity and so that they can be properly recorded.

#### **6 Failure of Parties to Attend Review**

- 6.1 If a party has informed the Council that it does not intend to attend a Review, the Review may proceed in its absence.
- 6.2 If a party has not indicated that it does not intend to attend or be represented at a Review and fails to attend the Review then the Council may:
  - 6.2.1 where it considers it be necessary in the public interest, adjourn the Review to a specified date; or
  - 6.2.2 hold the Review in the party's absence.
- 6.3 Where the Council holds a Review in the absence of a party, it shall consider at the Review the review, representations or notice made by that party.

## **7 Decision**

- 7.1 Written reasons for any decision shall be provided to all parties soon after the deliberations of the Review.

## **Review Procedure Summary**

1. The Democratic Services Officer/Committee Clerk will request nominations for a Chairman for the Review
2. The Chairperson welcomes all those present and introduces the Review.
3. 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 can choose 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 Members of the Review Sub-Committee will withdraw, with the Independent Person, the Committee Lawyer and the Committee Clerk, to consider the case.
8. Taking into consideration the evidence, namely the original complaint, response of the subject member and any 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 at the time of the complaint;
  - d) That the complainant has provided a copy of the Code of Conduct of the relevant council;
  - e) That the matters giving rise to the complaint would, if proven, be capable of breaching that Code.
9. Depending on the outcome of 7. the sub-committee will consider whether, under the local assessment criteria, they feel the complaint should be referred for investigation or if no further action should be taken.
10. The sub-committee will then consider the initial assessment of the monitoring officer, and if in their view, on the basis of available information, it was reasonable.