

AGENDA

Meeting: Standards Committee

Place: Kennet Room - County Hall, Bythesea Road, Trowbridge, BA14 8JN

Date: Tuesday 2 July 2024

Time: 1.30 pm

Please direct any enquiries on this Agenda to Lisa Alexander of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01722 434560 or email lisa.alexander@wiltshire.gov.uk

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

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Membership

Cllr Paul Oatway QPM (Chairman)

Cllr Allison Bucknell (Vice-Chairman)

Cllr Andrew Davis

Cllr Matthew Dean

Cllr Ruth Hopkinson

Cllr Bill Parks

Cllr Sam Pearce-Kearney

Cllr Pip Ridout

Cllr Mike Sankey

Cllr James Sheppard

Cllr Derek Walters

Substitutes:

Cllr Trevor Carbin

Cllr Ernie Clark

Cllr Howard Greenman

Cllr Jon Hubbard

Cllr Mel Jacob

Cllr Gordon King

Cllr Kathryn Macdermid

Cllr Dr Nick Murry

Cllr Graham Wright

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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](#).

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AGENDA

Part I

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

1 **Apologies for Absence**

2 **Minutes (Pages 5 - 18)**

To confirm the minutes of the meeting held on 18 April 2024.

To confirm the minutes of the Standards Hearing Sub-Committee meetings held on 11 October 2023, 16 November 2023, 8 February 2024 and 15 May 2024.

3 **Declarations of Interest**

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

4 **Chairman's Announcements**

5 **Public Participation**

The Council welcomes contributions from members of the public.

Statements

If you would like to make a statement at this meeting on any item on this agenda, please register to do so at least 10 minutes prior to the meeting. Up to 3 speakers are permitted to speak for up to 3 minutes each on any agenda item. Please contact the officer named on the front of the agenda for any further clarification.

Questions

To receive any questions from members of the public or members of the Council received in accordance with the constitution.

Those wishing to ask questions are required to give notice of any such questions in writing to the officer named on the front of this agenda no later than 5pm on Tuesday 25 June 2024, in order to be guaranteed of a written response. In order to receive a verbal response questions must be submitted no later than 5pm on Thursday 27 June 2024. Please contact the officer named on the front of this agenda for further advice. Questions may be asked without notice if the Chairman decides that the matter is urgent.

Details of any questions received will be circulated to Committee members prior to the meeting and made available at the meeting and on the Council's website.

6 **Status Report on Code of Conduct Complaints (Pages 49 - 54)**

To note the Status Report on the current position on Code of Conduct Complaints.

7 **Changes to Protocol 11 - Arrangements for Dealing with Code of Conduct Complaints** *(Pages 55 - 126)*

8 **Constitutional Changes** *(Pages 127 - 130)*

The Committee considered the recommendations of the Constitution Focus Group.

9 **Appointment of Members to the Sub-Committees and Working Groups** *(Pages 131 - 136)*

To consider a report from the Director, Legal and Governance.

10 **Urgent Items**

Part II

Item(s) during consideration of which it is recommended that the public should be excluded because of the likelihood that exempt information would be disclosed

Standards Committee

MINUTES OF THE STANDARDS COMMITTEE MEETING HELD ON 18 APRIL 2024 AT KENNET ROOM - COUNTY HALL, BYTHESEA ROAD, TROWBRIDGE, BA14 8JN.

Present:

Cllr Paul Oatway QPM (Chairman), Cllr Allison Bucknell (Vice-Chairman), Cllr Andrew Davis, Cllr Matthew Dean, Cllr Ruth Hopkinson and Gordon Ball (non-voting)

86 **Apologies for Absence**

Apologies were received from:

Cllr Mike Sankey
Cllr Bill Parks

87 **Minutes**

The minutes of the previous meeting held on 3 October 2023 were presented for consideration.

It was;

Resolved

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

88 **Declarations of Interest**

There were no declarations of Interest.

89 **Chairman's Announcements**

There were no announcements.

90 **Public Participation**

There were no questions or statements at the meeting.

The Chairman noted that one question had been rejected on the Monitoring Officer's advice in accordance with the constitution for legal reasons.

91 **Status Report on Code of Conduct Complaints**

The Committee received the status report, updating on the number and outcome of Code of Conduct complaints received since the last meeting and a summary of the complaints considered by the Assessment Sub-Committee (ASC).

There had been 44 Code of Conduct complaints received by the Monitoring Officer during the period of 23 September 2023 to 8 April 2024. Of these, 31 were determined No Further Action (NFA) by the Monitoring Officer, 2 were determined NFA by the ASC, 1 was resolved via Informal Resolution, 3 were referred to the Monitoring Officer for Investigation by the ASC, 1 was dismissed as 'out of time' by the Monitoring Officer, 2 were withdrawn by the Complainant and 4 were unable to proceed due to insufficient information being provided by the Complainant.

A new section had been included within the report which provided a breakdown of the findings of the ASC and the number of Hearing Sub-Committee meetings had been held.

A table of current cases had been provided to the Chairman on 15 January 2024 for a dip sample of cases to be undertaken to enable oversight.

The Committee discussed the proportion of complaints received which related to social media behaviour and whether there was merit in providing new guidance for members on the use of social media to set out more clearly some simple rules which were more accessible and user friendly.

After a discussion, it was,

Resolved:

To note the position on Code of Conduct Complaints.

92 **New Complaint Handling Codes from the Local Government and Social Care Ombudsman (LGSCO) and Housing Ombudsman (HO)**

The Committee received the report which set out the implications on the council's complaints handling processes, of the Local Government and Social Care Ombudsman (LGSCO) and Housing Ombudsman (HO) new Complaint Handling Codes.

The Committee noted the different legal powers of the two Ombudsmen, in that the HO was a legal requirement which the council must comply to and the LGSCO was guidance which if not complied to would require the council to explain why it had chosen not to do so.

The changes were set to be enforceable from April 2026, however the proposal was that the council adopted the new timescales in autumn 2024.

The Committee discussed how the timescale changes would impact the council, noting that some services would find the new timescales to be quite challenging to adhere, with the proposed adoption to give time for them to prepare.

It was considered that to achieve the timescale would require additional support to services in responding to complaints, however with limited resources this would require a system of prioritisation and efficient use of the limited dedicated complaint response officers.

The Monitoring Officer confirmed that service heads had been briefed on the changes and the timeframe for implementation.

After a discussion, it was,

Resolved:

The Standards Committee noted that:

- 1. The new Complaint Handling Codes published by the Local Government and Social Care Ombudsman (LGSCO) and Housing Ombudsman (HO) and the associated changes required to the council's complaint handling practices.**
- 2. The council's current complaint handling processes are already largely compliant with the new Codes and that all the changes required – excepting those relating to complaint response timescales – are being actioned immediately.**
- 3. The Standards Committee, at its 3 October 2024 meeting would consider an amended Protocol 6 – Complaints Procedure reflecting the complaint response timescales required under the new LGSCO and HO Codes (set out at paragraphs 11 and 19) and would be asked to recommend these for adoption by Full Council on 21 October 2024.**

93 **Constitutional Changes**

The Committee received a report on the proposed changes to:

- Part 11A – Corporate Parenting Panel
- Part 5 – Access to Information Procedure Rules
- Part 7 – Cabinet Procedure Rules
- Part 8 – Overview and Scrutiny Procedure Rules

All changes had been recommended by the Constitution Focus Group following several meetings reviewing the sections.

The Committee discussed the proposed changes as set out in the appendices to the report and highlighted some areas where minor tweaks were required.

In addition to any grammatical corrections, the Committee requested wherever possible consistent terminology for example in reference to the position of Chairman.

Under Part 7 – Cabinet procedure rules, the Committee approved the changes subject to confirming the written record of Cabinet Member delegations, being the detail of their portfolios, be provided to the next available meeting of Full Council.

The Committee also discussed the wide range of terminology used for senior officer roles, including the proper officer, chief executive and monitoring officer and sought some clarity on how members of the public could more easily understand who these roles related to, as this could be unclear where a person occupied multiple roles.

It was agreed that where possible reference to such roles would be simplified , possibly with linking to Part 2 of the Constitution which sets out which officers occupy which statutory Posts.

Subject to the minor additions and amendments discussed, it was,

Resolved:

To recommend Full Council approve changes to the following sections of the Constitution:

- **Part 11A – Corporate Parenting Panel**
- **Part 5 – Access to Information Procedure Rules**
- **Part 7 – Cabinet Procedure Rules**
- **Part 8 – Overview and Scrutiny Procedure Rules**

94 **Annual Update**

The Committee considered the report proposing delegating authority to the Director, Legal and Governance, after consultation with the Chairman, to prepare an annual update to Full Council.

After discussing the benefits of an annual report, it was,

Resolved:

To delegate authority to the Director, Legal and Governance, after consultation with the Chairman, to prepare an annual update to Full Council

95 **Urgent Items**

There were no urgent items.

(Duration of meeting: 10.30 - 11.40 am)

The Officer who has produced these minutes is Lisa Alexander of Democratic Services, direct line 01722 434560, e-mail lisa.alexander@wiltshire.gov.uk

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Standards Hearing Sub-Committee

MINUTES OF THE STANDARDS HEARING SUB-COMMITTEE MEETING HELD ON 11 OCTOBER 2023 AT COUNCIL CHAMBER - COUNTY HALL, BYTHESEA ROAD, TROWBRIDGE, BA14 8JN.

Present:

Cllr Allison Bucknell (Chairman), Cllr Bill Parks, Julie Phillips (non-voting) and Cllr Graham Wright

Also Present:

Jed Matthews (Investigating Officer), Cllr John Eaton (Southwick Parish Council – Complainant), Cllr Elizabeth Snell (Southwick Parish Council – Subject Member), Kieran Elliott (Democracy Manager – Democratic Services), Perry Holmes (Monitoring Officer), Lisa Alexander (Senior Democratic Services Officer), John Baker (Witness), John McAllister (Independent Person), Henry Powell (Virtual), Jane Eaton.

1 Election of Chairman

Nominations for a Chairman of the Standards Hearing Sub-Committee were sought, and it was,

Resolved:

To elect Councillor Allison Bucknell as Chairman for this meeting only.

2 Declarations of Interest

There were no declarations.

3 Meeting Procedure

The procedure listed within the agenda papers was noted.

Introductions of all those present were made.

4 Exclusion of the Press and Public

After seeking views from the Investigating Officer, Subject Member, and Monitoring Officer in accordance with procedure, the Sub-Committee did not resolve to move into Part II private session for the conducting of the Hearing.

5 **Determination of a Code of Conduct Complaint COC145647 in respect of Councillor P.E Snell, Southwick Parish Council**

The Hearing was in relation to complaint COC145647 made by Councillor John Eaton of Southwick Parish Council (The Complainant) regarding the alleged conduct of Councillor P.E Snell, to be referred to as Elizabeth Snell, also of Southwick Parish Council (The Subject Member).

Investigating Officer Representations

Jed Matthews, Investigating Officer, presented his investigation report into the alleged conduct, as set out with the agenda papers circulated to all parties.

It had been alleged that on 28 April 2023 the Subject Member made claims of improper behaviour and a lack of transparency by the Complainant in respect of a local planning matter to a local news reporter during a phone conversation. It was further alleged she had then sought to coerce the newspaper from giving evidence.

In doing so it had been alleged that the Subject Member breached the following sections of the Southwick Parish Council Code of Conduct:

Paragraph 2.1 I do not bully any person.

Paragraph 5.1 I do not bring my role or local authority into disrepute.

Paragraph 8.3 I do not intimidate or attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings.

The Investigating Officer briefly summarised the detail of the report, and his conclusion there had been a breach in respect of Paragraphs 2.1 and 5.1 as detailed above. He noted the Subject Member's stated perception that she had been acting in a personal capacity during the phone conversation with the local reporter but drew attention to the guidance within the Code approved by the Parish Council, on acting in a way which would give a reasonable member of the public with knowledge of all the facts that someone was acting as a councillor.

John Baker was then called as a witness by the Investigating Officer. Mr Baker was the local reporter who had spoken to the Subject Member and perceiving there to be serious accusations made regarding the Complainant, had sought his comments in relation to a potential news story, which had prompted the formal complaint.

Mr Baker confirmed that his statement and submissions as detailed in the agenda papers were in his view accurate. In response to questions from the Investigating Officer he provided details on why he had considered the Subject Member to be acting in an official capacity, and the nature of the conversation involving other parish councillors and matters involving the Parish Council.

Complainant Statement

Councillor Eaton, as the Complainant, then made a statement in accordance with procedure. He stated that the unevidenced allegations made against him had caused significant personal distress to himself and his family. He detailed what he considered a history of animosity from the Subject Member, which he believed arose due to their disagreements over potential development within the parish, and provided alleged examples of other actions he believed demonstrated that animosity. In summary of the complaint, he stated that false allegations had been made to a Wiltshire Times reporter, and that the Subject Member had not shown any contrition for her actions.

Questioning of Investigating Officer and Witness

The Subject Member was then able to ask questions of the witness and Investigating Officer.

Councillor Snell sought details about the content of the reporter's notes, contending that some elements of the discussion had not been included and other matters had been embellished. Mr Baker provided details from his notes about her stating she had a personal interest in the application on the nearby site, about a suggestion villagers might receive a discount on some properties, and other matters relating to the developers. The Subject Member also asked whether the notes stated she had made it clear she lived opposite the potential development site and that was the reason for her concerns, as she recalled doing, but Mr Baker stated that was not in his notes.

The Sub-Committee then had the opportunity to ask questions of the Investigating Officer and the witness, supported by the Independent Person.

Details were sought from the witness about the words alleged used by the photographer who had alerted him to the Subject Member wishing to speak to a reporter about certain parish matters, and what she had asked the photographer. Mr Baker stated he had asked the photographer ahead of the Hearing, and he had not been able to recall the exact words used, though had felt the Subject Member was concerned about improper actions in respect of the development.

Further questions were asked about the accuracy of the reporter's notes, which he confirmed, the Subject Member's demeanour, and whether he had addressed her as Councillor Snell during the conversation, which he stated he had. He confirmed he had not met either Complainant or Subject member prior to the incident in question, though had spoken on the phone with the Complainant before regarding the Neighbourhood Plan. In response to queries he stated the photographer was known to more people locally, and alerted him to the Subject Member wanting to speak to a reporter, and he contacted her a few days later.

Subject Member Representations

Councillor Snell then made her representations to the Sub-Committee. She stated the complaint had been embellished with innuendo which the Investigating Officer appeared to have accepted. She denied that she had

threatened the editor of the Wiltshire Times or the reporter Mr Baker, only that she had contacted them after being aware their conversation had been recorded, stating this was without her knowledge or consent and sought detail of if it had been relayed to a third party. She denied allegations by the Complainant she had sent letters anonymously to a charity to which he was involved.

In respect of the phone conversation with the reporter she stated this was also embellished and missing key details. She reiterated that in her mind at that time of speaking she had been speaking as a private individual and not as a parish councillor, and that this had been disregarded by the Investigating Officer. She said as with any member of the public she had a right to speak about a local planning matter, and she had raised with the reporter that she had a personal interest.

Councillor Snell further stated in hindsight she regretted speaking with the reporter and should have been more explicit about the capacity in which she was speaking. She considered the inclusion of unsubstantiated allegations by the Complainant within the report should not have been included and were prejudicial, and suggested unconscious bias was a factor.

She stated she made no allegation of corruption by the Complainant but referred to rumours in the village about the supposed discount for villagers, and the reporter had put his own extravagant construction on that comment, which she regretted making.

She denied she was motivated to make her comments due to hatred as s alleged by the Complainant, but considered his actions suggested he was so motivated, and he would not accept her apology. She referenced an incident around the time of the parish elections in May 2021 regarding a misleading election leaflet she had reported to Wiltshire Council, which she then sent as advised to the Police. She sought to introduce a document regarding that statement but was advised new evidence could not be submitted at this stage.

In summary Councillor Snell says her land interest had been stated to not be relevant in another complaint, and that Councillor Eaton's own actions had not been open and transparent regarding contact with developers and planning officers. She accepted she should not have spoken with Mr Baker but denied making any threats to him or making any degrading comments regarding Councillor Eaton, whom she felt had embellished many details.

Questioning of the Subject Member

The Investigating Officer followed by the Sub-Committee then had the opportunity to ask questions of Councillor Snell.

The Investigating Officer asked why she had contacted a reporter whom she had confirmed she had never met to have a private conversation if there was no intention to publish any story. The Subject Member stated she had spoken to him as independent, unbiased and open view to what she thought was incorrect behaviour.

The Sub-Committee supported by the Independent Person then questioned the Subject Member.

In response to queries it was confirmed she had not been a parish councillor before being elected in May 2021. Details were asked about why she had stood, and concerns around planning in the village. The level of training provided as a parish council, which was only a few online seminars, was asked about.

The Subject Member was asked how she felt about her stated assumption that a conversation with a reporter would be private, and she replied that in hindsight it may have been silly but it had not occurred to her at the time that he would think she was a councillor. She was also asked about a meeting of local people referred to in the evidence, which was stated to be an informal gathering, and details of the application site which had been a cause of dispute.

The Subject Member was asked if she stated to the reporter she was speaking as a private individual, and she stated she did not as she assumed he would think she was speaking as an individual. Clarity was sought on if he referred to her as Councillor Snell, and she replied she thought he had said Elizabeth, but could not recall.

There were further questions on her purpose in speaking to a reporter about the local planning matter and the Complainant, who was Chairman of the Parish Council. Councillor Snell stated she had thought he would put his view forward, not in an article, but as part of a personal conversation, and that she had not expected a publication. She stated she had never had cause to contact a member of the press as a councillor before.

She was asked if she had been seeking a conversation from an independent person, why she had chosen a Wiltshire Times reporter. She stated she had spoken with the photographer, who she stated lived in the parish, and he had suggested speaking to Mr Baker, whom she did not know.

Questions were asked about events leading up to the conversation with the reporter. The Subject Member provided details of a parish council meeting about whether to request the Unitary Councillor to call-in the planning application over when she and others were concerned, where a casting vote was used by the Complainant, as Chairman, to not do so.

Details were sought on the alleged rumour that villagers might receive a discount for some of the properties proposed to be built. In response to queries it was stated that the rumour was that any villager might receive such a discount, and she had heard a rumour the Complainant might. She was asked whether during the conversation with Mr Baker she referred to the rumour about the Complainant possibly receiving a discount, which was confirmed, and whether it was mentioned the alleged rumour also applied to others, which the Subject Member stated she was not sure if she had mentioned.

Concluding Statements

The Investigating Officer made a concluding statement, in which he explained he was guided by individuals on how they preferred to be addressed in communications, and that the manner of that address did not indicate any unconscious bias as suggested by the Subject Member.

The Subject Member made a concluding statement that matters had been exaggerated upon, and she accepted she had made a mistake in contacting the press.

Deliberations

Following the concluding statements, and preceding that the hearing from the parties, the witness in accordance with the agreed procedure, including a statement from the Complainant, the Sub-Committee withdrew into private session at 1100, together with the Independent Person, the representative of the Monitoring Officer, and other supporting officers.

The Independent Person was consulted throughout the process and her contributions were taken into account by the Sub-Committee in reaching their decision.

The Hearing resumed at 1210 at the conclusion of deliberations and the decision of the Sub-Committee was announced to those present as detailed below.

Decision:

Having considered all relevant matters and evidence, including the complaint, the Investigating Officer's report, the submissions made by the parties as detailed in the agenda papers and at the Hearing, testimony from the witness, and the statement of the Complainant, the Sub-Committee concluded on the balance of probabilities that Councillor Elizabeth Snell of Southwick Parish Council breached the Parish Council's Code of Conduct under the following provisions:

Paragraph 2.1 I do not bully any person.

Paragraph 5.1 I do not bring my role or local authority into disrepute.

Reasons for Decision

Background

1. Both the Subject Member and Complainant are Members of Southwick Parish Council, with the Complainant currently serving as Chairman.
2. Following the phone discussion between a local reporter and the Subject Member on 28 April 2023 regarding a local planning matter and other issues, the local reporter contacted the Complainant for comment on allegations they believed had been made regarding the Complainant in his role as a Parish Councillor. This led to the submission of a complaint on 21 May 2023.

3. The differing accounts of the phone discussion will be explored in the next section, but the basic situation was that in discussing a local planning matter it was allegedly suggested that the Complainant was, as a Councillor, behaving improperly in a way which had caused others concern, in particular some councillors, in relation to that matter, and that he might receive a discount on a large property from developers. The Subject Member disputed that such an allegation was made.
4. Southwick Parish Council have adopted the model LGA Code of Conduct. This includes the provisions which were alleged to have been breached as detailed above, as well as explanatory text to aid in the interpretation of whether a specific action or behaviour meets the requirements of those provisions, as well as generalised text on when the Code applies and in what situations.

Scope

5. It was apparent from submissions to the Investigating Officer that there was some history of disagreement between the Subject Member and Complainant on a variety of local matters, in particular relating to planning and potential development within the parish. This had caused a degree of dispute between them which had on occasion spilled over into personal disagreement and accusations of poor behaviour, and the submissions included some detail and additional allegations on that past disagreement to seek to provide additional context.
6. However, notwithstanding that history the Hearing focused upon the allegations specifically relating to the phone discussion on 28 April 2023 which was the principal subject of complaint. Details of other matters raised by either party will be included within the minutes.

Acting in a capacity as a Councillor

7. In order for there to be a finding that the Subject Member was in breach of the Parish Council Code of Conduct it was necessary to establish whether the Code applied during the discussion with the local reporter.
8. The Subject Member maintained in her submissions and at the Hearing that she had regarded the conversation as a personal, private matter, as she lived near to the application site to which she had concerns. In response to the complaint, she stated she had accepted it was a mistake to speak to the reporter about the matter and should have been more explicit about speaking as a member of the public.
9. The Sub-Committee noted the following from the Code of Conduct:

This Code of Conduct applies to you when you are acting in your capacity as a councillor which may include when:

- *you misuse your position as a councillor*
- *Your actions would give the impression to a reasonable member of the public with knowledge of all the facts that you are acting as a councillor;*

10. Although some aspects of the phone conversation were disputed, such as whether the Subject Member had been addressed as Councillor during the call, whether she had confirmed her living close to the site, and whether all detail of other matters was included within the reporter's notes of the conversation, it was not in dispute that the Subject Member had discussed other parish councillors and parish council relevant business during the call as well, and by her own account had not taken any steps to clarify the role in which she was speaking.
11. The witness testimony of the local reporter and his notes made clear that his impression was that the Subject Member had been speaking in her capacity as a councillor. Further, that she had raised matters about parish council business and possible complaints about the Complainant in his role as Chairman of the Parish Council, in addition to matters specifically relating to planning concerns about an application.
12. It was accepted that the Subject Member had been on the Parish Council for only not quite two years at the time of the phone conversation, and inexperience or naivety may have contributed to her not realising she needed to be more explicit about the capacity in which she was making comments. It was acknowledged that the line between personal and official business could at times be unclear.
13. Nonetheless, whatever the Subject Member's sincere personal feelings about the nature of the conversation, the requirement of the Code was whether her actions would give the impression to a reasonable member of the public with knowledge of all the facts that she was acting as a councillor, not whether she considered herself to be acting so.
14. In discussing parish council relevant business and the conduct of the Complainant in his role as a fellow councillor and Chairman of the Parish Council, the Sub-Committee agreed that a reasonable person would have had the impression the Subject Member was acting as a councillor, as indeed the local reporter confirmed at the Hearing he had so considered.
15. Accordingly, the Sub-Committee was satisfied the Code was in effect and they needed to establish on the balance of probabilities the facts of the conversation between the Subject Member and the local reporter.

Phone Conversation

16. The Subject Member had raised the matter of the contentious planning application with a photographer who worked for the newspaper, and who was also a resident in the village and an acquaintance of some degree.
17. The local reporter testified the photographer had asked him to contact the Subject member in relation to concerns about the Chairman of the Parish Council and the Neighbourhood Plan, and in relation to a planning application.
18. The local reporter had provided details from his notes of his conversation with the Subject Member. These included that a number of councillors were unhappy

about the Complainant, they had held a meeting to discuss making a formal complaint about his conduct, made vague allusions to 'something going on' which could not be pinpointed, that he was not informing the parish council of everything he was doing, and similar allegations relating to parish councillors and the Chairman.

19. The notes and testimony were that the complaints seemed to relate to a planning application in the village, and that the Subject Member stated there had been lots of comments about the plans and she had a personal interest in the matter.
20. The Subject Member stated that the reporter's account was embellished and included innuendo not of her making. She further stated the account did not include all details, and that she had been motivated by concerns about planning development and how it was being handled. She refuted that she had made any allegation of corruption, only that she had mentioned a rumour about villagers and discounts, and the reporter had added his own extravagant construction to that, and she regretted mentioning it.
21. It is noted for the decision notice that in her initial response to the complaint the Subject Member stated she contacted the reporter as a "concerned parishioner regarding a planning matter in the hope that the Wiltshire Times could help to highlight the issues". Whilst disputing she made any allegation of corruption and other matters, she concluded that "I did email the reporter as I was unable to speak to him on the phone and asked him not to do anything as I had second thoughts about it". The reporter's notes confirm the day after conversation he was asked not to publish a story at that moment by the Subject Member. Subsequent interviews with the Subject Member state she had not expected the reporter to take the matter further or expected any publication from her discussion with him.

Conclusions

22. The notes from the reporter suggested a direct accusation had been made that the Complainant was being offered a discount by a developer if he wished to purchase one of the houses proposed to be built. The Subject Member disputed this in submissions and at the Hearing, as detailed above. The notes as provided by the reporter do not use the words corruption but refer to a 'serious allegation' about the Complainant specifically receiving a discount.
23. The Sub-Committee felt it could not establish with certainty the precise words used, given the disputed accounts. Nonetheless, from the accounts it appeared there had been accusations regarding the conduct of the Complainant in addition to the raising of issues to do with the planning application, and mention of a rumour of villagers getting discounts for properties. The Subject Member could not confirm at the Hearing if she had mentioned the existence of the rumour generally or only specifically in relation to the Complainant. The reporter stated the implication he received was that the Complainant might be receiving one of the properties, though the Subject Member stated she did not believe she had said anything which might be considered degrading regarding the Complainant.

24. On balance, the Sub-Committee was satisfied that in the course of the discussion with the local reporter the Subject Member had given the impression to the reporter that the Complainant had been behaving in an improper manner regarding the planning application, and this had included potentially taking up an offer of a discount on a property. Whatever the precise words that were used, and notwithstanding other topics being included in the discussion as confirmed by both accounts, a professional reporter had understood the comments to include such an accusation.

25. In considering whether the action amounted to a breach of Paragraph 2.1, the Sub-Committee considered the Code guidance on bullying.

The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or phone calls, happen in the workplace or at work social events and may not always be obvious or noticed by others.

26. Bullying behaviour could, in some cases, be the result of a one-off incident, and was not necessarily obvious or blunt. The Sub-Committee found that the comments made had the effect of either undermining, humiliating, denigrating, or injuring the recipient, particularly as they could have been reported widely, even if neither the denigration nor the potential publication had been the Subject Member's intention.

27. The Sub-Committee therefore resolved that there had been a breach of Paragraph 2.1.

28. The Sub-Committee was also unpersuaded by the Subject Member's explanation at the Hearing that she had wished to discuss the planning matter with the local reporter, without any expectation of a report or publication following the conversation.

29. The Subject Member had never met the local reporter and stated at the Hearing she had not known who he was prior to their phone conversation. It was therefore unclear to the Sub-Committee for what reason the Subject Member would wish to have a private conversation about a local planning matter and concerns about the conduct of the Chairman of the Parish Council with a local reporter unknown to her personally, in the absence of any intention for the matter to potentially be reported. Even supposing the conversation had not been solicited and there was no wish for a publication to emerge as a result, a reporter unknown to the Subject Member phoning about a contentious local matter would reasonably have been presumed to have been doing so regarding a potential news item, even if only on the specifics of the planning matter.

30. Although the Subject Member had subsequently requested the story not be published and made complaints to the editor of the newspaper about the

conversation she said she believed to have been private being relayed to a third party, her actions could have resulted in serious accusations about another member of the Council being widely distributed. Had the reporter not contacted the Complainant for comment on the accusations he believed to have been made, and in reaction to that the newspaper deciding not to proceed with the story, there would have been dissemination of damaging allegations without accompanying foundation, bringing the Complainant and Parish Council into disrepute as a result of the Subject Member's comments.

31. Whilst Paragraph 5.1 of the Code makes clear a councillor can hold their council and fellow councillors to account, including expressing concern about decisions and processes, the Sub-Committee considered that the actions of the Subject Member in this instance were reckless and exceeded that function.
32. As the Code sets out holders of public office should be aware that their actions might have an adverse impact on themselves, other councillors, their authority or council, and may lower the public's confidence in their ability to discharge their function. In making comments to a reporter which were taken to be serious accusations of improper behaviour by the Complainant, the Subject Member had brought her role and that of the Council into disrepute.
33. The Sub-Committee therefore resolved that there had been a breach of Paragraph 5.1.
34. In relation to whether there had been a breach of Paragraph 8.3 of the Code, the Sub-Committee noted this was in the context of Paragraph 8.2 relating to co-operating with a Code of Conduct investigation or determination.
35. The Subject Member had contacted the local newspaper to complain about the conduct of the local reporter in respect of their conversation. The Investigating Officer had concluded that there was no evidence to indicate the complaint was made with the intention of affecting any Code of Conduct investigation.
36. Accordingly, the Sub-Committee agreed with the finding of the Investigating Officer that no breach of Paragraph 8.3 had occurred.

Sanctions

1. The Sub-Committee sought the view of the Investigating Officer in relation to recommendation of any sanction. The Investigating Officer made no comment.
2. The Subject Member had not returned to the Hearing following the Sub-Committee withdrawing into deliberation, as she had work matters which required her attention. The clerk to the Hearing contacted her by telephone to advise her that in the event the Sub-Committee determined a finding of a breach of the Code of Conduct, as Subject Member she was entitled to be asked her view of an appropriate sanction.
3. The Subject Member confirmed verbally that she was not able to return to the Hearing, and that matters could proceed in her absence without a comment on appropriate sanction, in the event a breach was determined.

4. The Sub-Committee withdrew once more into private session at 1215 for deliberation and, after consulting the Independent Person, resolved to recommend that Southwick Parish Council impose the following sanctions as a result of the finding of a breach of the Code of Conduct:

- i) That the Parish Council arrange training for Councillor Snell regarding Code of Conduct matters, in particular relating to the role of a Councillor and when they could be considered acting in an official capacity, and regarding interactions with the media.**
- ii) That Councillor Snell not be appointed to or remain on any planning related sub-committees or working groups established by the Parish Council, until such training has taken place.**
- iii) That the Parish Council publish the findings of the Hearing Sub-Committee, in the form of the decision notice, in the minutes of the next Parish Council meeting.**

(Duration of meeting: 10:00-12:40)

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 or email communications@wiltshire.gov.uk

Standards Hearing Sub-Committee

MINUTES OF THE STANDARDS HEARING SUB-COMMITTEE MEETING HELD ON 16 NOVEMBER 2023 AT KENNET ROOM - COUNTY HALL, BYTHESEA ROAD, TROWBRIDGE, BA14 8JN.

Present:

Cllr Trevor Carbin, Cllr Bill Parks, Cllr Derek Walters (Chairman) and Julie Phillips (non-voting)

Also Present:

Lisa Alexander (Senior Democratic Services Officer), Kieran Elliott (Democracy Manager – Democratic Services), Lisa Hayward (Complaints Officer), Matthew Hitch (Democratic Services Officer), Jo Madeley (Deputy Monitoring Officer), John McAllister (Independent Person), Henry Powell (Democracy and Complaints Manager)

6 **Election of Chairman**

Nominations for a Chairman of the Standards Sub-Committee were sought and it was

Resolved:

To elect Councillor Derek Walters as Chairman for this meeting only.

7 **Declarations of Interest**

There were no Declarations of Interest.

8 **Meeting Procedure**

The procedure listed within the agenda papers was noted.

Introductions of all those present were made.

9 **Exclusion of the Press and Public**

After seeking views from the Investigating Officer, Subject Member, and Monitoring Officer in accordance with procedure, the Sub-Committee did not resolve to move into Part II private session for the conducting of the Hearing.

10 **Determination of a Code of Complaint COC144873 in respect of Councillor G. Peacock, Redlynch Parish Council**

The Hearing was in relation to complaint COC144873 made by Mr Nicholas Morgan (The Complainant) regarding the alleged conduct of Councillor Gary Peacock, of Redlynch Parish Council (The Subject Member).

The Sub-Committee had received prior notification from both the Complainant and the Subject Member that they would not be attending the Hearing in person.

Investigating Officer Representations

The Investigating Officer, Lisa Hayward, presented their Report and confirmed that no witnesses would be called. In accordance with the procedure the Sub-Committee were invited to ask questions of the Investigating Officer to assist with their assessment of the complaint.

It was alleged that on 7 March 2023, the Subject Member attended the Complainant's property to cut back a hedge and reposition a street name sign. This was after visiting the complainant two months previously and allegedly introducing himself as a parish councillor and asking permission to cut back the hedge for the purpose of exposing a drain cover to assist flood prevention on behalf of Redlynch Parish Council.

In doing so it was alleged that the Subject Member breached the following sections of the Redlynch Parish Council Code of Conduct:

Paragraph 5.1 I do not bring my role or local authority into disrepute.

Complainant Statement

In accordance with the procedure the Sub-Committee received a written statement from the Complainant in support of their complaint.

Questioning of Investigating Officer

The Sub-Committee then had the opportunity to ask questions of the Investigating Officer, supported by the Independent Person.

Clarification was sought from the Investigating Officer on the detail of the black and white photograph / letterhead mentioned by the complainant. The Investigating Officer confirmed that she had not requested further details on this during the investigation, however the document was said to have been a standard letter produced by the Parish Council, which could be sent to residents when there were situations where there were obstructions of hedges etc.

The Sub-Committee asked for clarification on the nature of the alleged trespass, noting the location of the hedge in Chapel Lane where the Subject Member was also a resident. It was confirmed that Chapel Lane was not an adopted road. The Sub-Committee was advised that the crux of the complaint related to whether there was an element of deceit to the actions, and if so, what impact that had on the individual.

The Sub-Committee noted the explanation in the Code of Conduct on when the code applied.

The Sub-Committee also queried the reason for the Complainant not accepting the offer of an apology and restitution.

Subject Member Representations

In accordance with the procedure the Sub-Committee received a written statement from the Subject Member as evidence and to make representations as to why they consider that they did not fail to comply with the Code of Conduct.

Questioning of the Subject Member

No questions could be asked as the Subject Member was not in attendance.

Concluding Statements

The Investigating Officer made a concluding statement, in which they highlighted their findings as detailed above.

The Subject Member had not provided a concluding statement.

Deliberations

Following the concluding statement, the Sub-Committee withdrew into private session at 10:20, together with the Independent Person, the Deputy Monitoring Officer, and other supporting officers.

The Independent Person was consulted throughout the process and her contributions were taken into account by the Sub-Committee in reaching their decision.

The Hearing resumed at 10:50 at the conclusion of deliberations and the decision of the Sub-Committee was announced to those present as detailed below.

Decision:

Having considered all relevant matters and evidence, including the complaint, the Investigating Officer's report, the submissions made by the parties as detailed in the agenda papers and in written statements prior to the Hearing, the Sub-Committee concluded on the balance of probabilities that Councillor Gary Peacock of Redlynch Parish Council breached the Parish Council's Code of Conduct under the following provisions

Paragraph 5.1 - I do not bring my role or the Parish Council into disrepute.

Reasons for Decision

Background

The Subject Member is a Member of Redlynch Parish Council. The Subject Member and the Complainant are neighbours, living on the same road in Redlynch.

The Complaint relates to the Subject Member's actions to remove part of the Complainant's hedge, for drainage clearance purposes and to relocate a road name plate on to the Complainant's property.

There were differing accounts of the initial discussion between the Complainant and the Subject Member, with regards to the nature of the request and to which role the Subject Member was acting in at the time of the request and subsequently when the works were carried out.

The Complainant and his wife believed the Subject Member to have introduced himself as a Redlynch Parish Councillor and to have stated that the hedge removal was for drain clearance works and part of a programme which the Parish Council was undertaking. There was no mention of the intention to move the road sign from across the road and to fix it to their property. As the Complainant and his wife believed the hedge works to have been scheduled by the Parish Council permission was granted, with the proviso that prior notice be given by way of a note through the door, of the date of the works.

The Subject Member did not recall hearing the request for prior notification and believed that consent for the hedge to be trimmed back had been given. He also disputed that he introduced himself as a Parish Councillor.

Redlynch Parish Council's Code of Conduct includes the provisions which were alleged to have been breached as detailed above, as well as explanatory text to aid in the interpretation of whether a specific action or behaviour meets the requirements of those provisions, as well as generalised text on when the Code applies and in what situations.

Acting in a capacity as a Councillor

In order for there to be a finding that the Subject Member was in breach of the Parish Council Code of Conduct it was necessary to establish whether the Code applied during the discussions with the Complainant and the subsequent actions of the Subject Member.

The Sub-Committee noted the following from the Redlynch Parish Council's Code of Conduct:

This Code of Conduct applies to you when you are acting in your capacity as a councillor which may include when:

- *You misuse your position as a councillor;*
- *Your actions would give the impression to a reasonable member of the public with knowledge of all the facts that you are acting as a councillor;*
- *The Code applies to all forms of communication and interaction, including:
at face-to-face meetings
at online or telephone meetings
in written communication
in verbal communication
in non-verbal communication
in electronic and social media communication, posts, statements and*

comments.

A member may be acting in one of three different roles:

- a) Acting in a private capacity – the code of conduct does not apply.
- b) Acting as a constituent elected member and therefore acting in a public role but not representing the body to which he or she has been elected - the code of conduct does apply.
- c) Acting in an official capacity on behalf of the body to which he or she is elected to - the code of conduct does apply.

The Subject Member was required in their role as a member of the Parish Council to abide by its Code of Conduct, which states at 5.1 that:

“I do not bring my role or the Parish Council into disrepute.”

The Code of Conduct refers:

As a Councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other councillors and/or your Parish Council and may lower the public’s confidence in your or the Parish Council’s ability to discharge your/it’s functions. For example, behaviour that is considered dishonest and/or deceitful can bring your Parish Council into disrepute.

Although some aspects of the conversation were disputed, such as whether the Subject Member had introduced himself as Parish Councillor during the meeting and whether he had stated the proposed hedge trimming work was on behalf of the Parish Council as part of a wider project, it was not in dispute that the Subject Member had discussed Parish Council relevant business during the initial visit as well as taking a copy of a printed document regarding associated council works. He had also not taken steps to clarify the role in which he was speaking.

The Sub-Committee noted that the line between personal and official business could at times be unclear (particularly in this case where the Subject Member also resided within close proximity of the Complainant) but that it was the responsibility of an elected member to ensure that clarity on which role they were acting in was provided to prevent a public perception being formed incorrectly.

Nonetheless, whatever the Subject Member’s intentions had been in relation to his actions, the requirement of the Code was whether his actions would give the impression to a reasonable member of the public with knowledge of all the facts that he was acting as a councillor, not whether he considered himself to be acting so.

In discussing Parish Council relevant business and in providing a Parish Council written document as evidence of other Parish Council similarly related

works, the Sub-Committee determined that a reasonable person would have had the impression the Subject Member was acting as a councillor, as indeed the Complainant in their submissions had confirmed he had so considered.

Accordingly, the Sub-Committee was satisfied the Code was in effect and they needed to establish on the balance of probabilities whether the actions of the Subject Member amount to a breach of the provisions of the Code of Conduct referred to in the Complaint.

Hedge cutting and movement of the Street Sign

On the 7 March 2023, the Subject Member had visited the location of the hedge from Chapel Lane, whilst no one was at home and significantly cut back the hedge. Whilst there he had also removed a street sign from across the road and installed it on the Complainants land.

Later the same day, a neighbour informed the Complainant of the works which had been carried out by the Subject Member. The Complainant's wife contacted the Parish Council to discuss the hedge cutting and the movement of the street sign. The Clerk confirmed that the Parish Council had not scheduled the work and was unaware of it. After receiving legal advice, the Complainant emailed the Parish Council to lodge a formal complaint.

On 9 March 2023 the Subject Member visited the Complainant's home to speak about the hedge and to apologise. When asked directly, the Subject Member is said to have stated that he was acting on Parish Council business. The Complainant's wife then challenged this stating that the Clerk had confirmed he was not acting on behalf of the Council and asked him to leave their property.

The Subject Member on 15 March 2023 submitted an offer of an apology and a replacement of shrubs, through the Complaint Team as a way of resolving the complaint. This was declined by the Complainant.

The Subject Member contends that his actions came about as the Parish Steward, who had previously been responsible for drain clearance maintenance, had left. As a resident of Chapel Lane, the Subject Member was concerned with the possibility of damage which recent heavy rain may have on the unadopted gravel lane. He contends that his actions were as a concerned resident of Chapel Lane and not in his role of a Parish Councillor.

Conclusions

The Subject Member, during his visit had made reference to Parish Council drain clearance works. In addition, a printed document produced by the Parish Council had been used by the Subject Member as evidence that similar works were being carried out within the community. Whether it was stated by the Subject Member or not, it would be reasonable for a member of the public with knowledge of all the facts to perceive that he was acting as a Parish Councillor, even if this had not been the intention.

The Sub-Committee felt that it was likely that the Subject Member was acting in what he considered to be the best interest of Chapel Lane, and that his intentions had been as a concerned resident in this case. The Sub-Committee noted that if the hedge had been in any other road, other than the one the Subject Member lived on, then there would be no reason for him to involve himself in maintenance and upkeep of shrubs, as the correct process would be for maintenance concerns to be lodged with the Parish Council to take action where appropriate.

The Sub-Committee also noted the attempts of the Subject Member to apologise and to purchase replacement shrubs to make good his actions, as part of a way forward in repairing any damage caused.

In considering whether the action amounted to a breach of Paragraph 5.1, the Sub-Committee considered the Code:

"I do not bring my role or the Parish Council into disrepute."

The Code of Conduct refers:

As a Councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other councillors and/or your Parish Council and may lower the public's confidence in your or the Parish Council's ability to discharge your/it's functions. For example, behaviour that is considered dishonest and/or deceitful can bring your Parish Council into disrepute.

The Sub-Committee therefore resolved that there had been a breach of Paragraph 5.1.

As the Code sets out holders of public office should be aware that their actions might have an adverse impact on themselves, other councillors, their authority or council, and may lower the public's confidence in their ability to discharge their function. In not being clear in the role in which he was requesting permission to cut back the hedge, it was left open to the Complainant to form his own judgement on the matter, leading to misunderstanding and subsequently resulting in a complaint against the Subject Member in his role as an elected member.

The Sub-Committee considered that the Subject Member believed he was acting as a local resident and in that his actions had not been of a malicious nature. In addition, the Sub-Committee commended the offered apology and the replacement of shrubs which had been made previously.

In considering sanctions the Sub-Committee had regard to the Local Government Sanctions Guide to ensure that when deciding on a sanction the Sub-Committee should ensure that it is reasonable, proportionate and relevant to the subject members behaviour. The Sub-Committee noted that mitigating factors may include a subject members co-operation in rectifying the effects of

that failure (in this case noting the Subject Members offer to replace the shrubs and to discuss and agree the most appropriate site for the sign) and an apology to affected persons (again noting the Subject Members apology to the Complainants).

The Sub-Committee agreed that the Subject Member had brought his role as Parish Councillor or that of the Parish Council into disrepute therefore, it was resolved that there had been a breach of Paragraph 5.1.

Sanctions

The Sub-Committee sought the view of the Investigating Officer in relation to recommendation of any sanction. The Investigating Officer made no comment.

In advance of the Hearing the Subject Member was notified of the procedure for making representations on sanctions if the Sub-Committee found that a breach had taken place. The Subject Member was given the opportunity to be contacted by telephone on the day of the Hearing to make any such representations.

The Sub-Committee withdrew once more into private session for deliberation and, after consulting the Independent Person and noting the mitigating factors in this case (as referred to above) resolved to recommend that no sanctions be recommended to Redlynch Parish Council.

(Duration of meeting: 10.00 - 10.55 am)

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Standards Hearing Sub-Committee

MINUTES OF THE STANDARDS HEARING SUB-COMMITTEE MEETING HELD ON 8 FEBRUARY 2024 AT COUNCIL CHAMBER - COUNTY HALL, BYTHESEA ROAD, TROWBRIDGE, BA14 8JN.

Present:

Cllr Trevor Carbin, Cllr Tamara Reay and Cllr Graham Wright (Chairman)

Also Present:

Lisa Alexander (Senior Democratic Services Officer), Pat Bunche (Independent Person), Cllr John Dalley (Subject Member), Kieran Elliott (Democracy Manager – Democratic Services), Perry Holmes (Monitoring Officer), Cllr Amanda Humphreys (Complainant), Jed Matthews (Investigating Officer – Complaints), Henry Powell (Democracy and Complaints Manager)

1 **Election of Chairman**

Nominations for a Chairman of the Standards Sub-Committee were sought and it was

Resolved:

To elect Councillor Graham Wright as Chairman for this meeting only.

1 **Election of Chairman**

Nominations for a Chairman of the Standards Sub-Committee were sought and it was

Resolved:

To elect Councillor Graham Wright as Chairman for this meeting only.

2 **Declarations of Interest**

There were no declarations of interest.

3 **Meeting Procedure**

The procedure listed within the agenda papers was noted.

Introductions of all those present were made.

4 **Exclusion of the Press and Public**

After seeking views from the Investigating Officer, Subject Member and Monitoring Officer in accordance with procedure, the Sub-Committee did not resolve to move into Part II private session for the conducting of the Hearing.

5 **Determination of a Code of Conduct Complaint COC146700 in respect of Councillor John Dalley, Rowde Parish Council**

The Hearing was in relation to complaint COC146700 made by Cllr Amanda Humphreys (The Complainant) of Rowde Paris Council, regarding the alleged conduct of Councillor John Dalley (The Subject Member), also of Rowde Parish Council.

The Sub-Committee had received prior notification from the Investigating Officer, the Complainant and the Subject Member confirming their attendance at the Hearing in person.

Investigating Officer Representations

The Investigating Officer, Jed Matthews, presented their Report and confirmed that no witnesses would be called.

It was alleged that during events which took place in June 2023, the Subject Member had acted in a loud an offensive manner, had made inappropriate comments about the Complainant to other Councillors. In his actions, the Complainant believed that the Subject Member had bullied and showed a lack of respect to the Complainant.

In doing so it was alleged that the Subject Member breached the following Sections of the Rowde Parish Council Code of Conduct:

1. He/she shall behave in such a way that a reasonable person would regard as respectful.
2. He/she shall not act in a way which a reasonable person would regard as bullying or intimidatory.

At the conclusion of the Investigation, the Investigating Officer's findings were that based on the evidence considered, and on the balance of probabilities a breach of the Rowde Parish Council's Code of Conduct had occurred.

Complainant Statement

In accordance with the procedure the Sub-Committee received a verbal statement from the Complainant in support of their complaint.

Questioning of Investigating Officer

In accordance with the procedure the Sub-Committee then had the opportunity to ask questions of the Investigating Officer, supported by the Independent Person. No Questions or points of clarification were sought by the Sub-Committee.

Subject Member Representations

In accordance with the procedure the Sub-Committee received a verbal statement from the Subject Member as evidence and to make representations as to why they consider that they did not fail to comply with the Code of Conduct.

In the statement, the Subject Member suggested that the complaint against him had arisen out of a disagreement between members of the Parish Council with regards to the handling of the playing fields and associated matters involving the use of a container as a changing room and of sourcing barriers for the playing field.

The Subject Member stated that historically, he had been solely responsible for all matters involving the playing field and as such believed that the other members of the Parish Council should not be involved in taking on any tasks, which he considered were within his remit.

The Subject Member set out examples of alleged poor behaviour from other members of the Parish Council, in order to highlight the breakdown between differing personalities, which he felt had led to the escalation of bad feeling against him by some of the members, who had specifically targeted him in an effort to paint him in a poor light within the community.

No witnesses were called by the Subject Member.

Questions of the Subject Member

The Sub-Committee reminded the Subject Member that the Hearing was in regard to the complaint against his actions as set out in the report and that any separate incidents should be logged separately through the Code of Conduct Complaints Process for consideration.

The Sub-Committee sought clarification on whether the Parish Council had sub-committees for specific areas of responsibility, such as the playing fields or whether he had been delegated as the lead member for the playing fields.

The Subject Member confirmed that although there had been a suggestion made by one of the members to form a Sub-Committee, it had not come to fruition due to the disagreements around the changing facilities and such. In addition, the Subject Member claimed that as he had historically taken charge of the maintenance of the sports ground and had been involved with the football games and setting up the goals and cutting the grass, that he should be left to deal with all of the playing fields associated requirements for works, because it fell under his area of responsibility.

Concluding Statements

The Investigating Officer

The Investigating Officer made a concluding statement, in which they highlighted their findings as detailed above.

In response to the Subject Member raising allegations against other Rowde Parish Councillors, the Investigating Officer confirmed that separate complaints could be logged in line with the Code of Conduct complaints process and that assistance would be provided should it be required.

The Complainant

The Complainant made a concluding statement, in which they highlighted their allegations which led to the complaint and how they believed the Subject Member had breached the Code of Conduct. In addition, the Complainant clarified some points which had been raised by the Subject Member during his statement, noting areas which they believed to be untrue.

The Subject Member

The Subject Member made a concluding statement in which they outlined the background to the disagreements between the council members and noted the inexperience of the Chairman in managing council meetings, which he believed to be mitigating factors in the course of events.

Deliberations

Following the concluding statements, the Sub-Committee withdrew into private session at 11:50am, together with the Independent Person, the Monitoring Officer, and other supporting officers.

The Independent Person was consulted throughout the process and her contributions were taken into account by the Sub-Committee in reaching their decision.

The Hearing resumed at 12:20pm at the conclusion of deliberations and the decision of the Sub-Committee was announced to those present as detailed below.

Decision

Having considered all relevant matters and evidence, including the complaint, the Investigating Officer's report, the submissions made by the parties as detailed in the agenda papers and in verbal statements during the Hearing, the Sub-Committee concluded on the balance of probabilities that Councillor John Dalley of Rowde Parish Council breached the Parish Council's Code of Conduct under the following provisions:

Paragraph 1 - He/she shall behave in such a way that a reasonable person would regard as respectful.

Paragraph 2 - He/she shall not act in a way which a reasonable person would regard as bullying or intimidatory.

Sanctions:

The Sub-Committee agreed the following Sanctions be recommended to Rowde Parish Council:

1. To recommend the Censure of Cllr John Dalley
2. To recommend the Hearing Sub-Committee minutes regarding COC146700 be published for information on the next Parish Council meeting agenda.

In addition, the following advisory notes were agreed:

- a) That Rowde Parish Council considers setting up an amenity committee and forms other sub-committees for specific areas of responsibility when required.
- b) That Rowde Parish Council considers the adoption of a model where a due process moving forward involves the clerk taking on such actions as the acquisition of quotes for future expenditure/works, which could be brought back to future Parish Council meetings for consideration in public.
- c) That Rowde Parish Council considers inviting all its members to undertake training on, the code of conduct, and meeting etiquette.

Reasons for Decision

Background

The Subject Member and the Complainant were elected members of Rowde Parish Council.

The Subject Member in his role as a Councillor had signed a declaration in agreement to abide by the Rowde Parish Council Code of Conduct.

The Code did not provide a definition of bullying. For the purposes of Hearing, the Sub-Committee considered the following definition of bullying provided by the Advisory, Conciliation and Arbitration Service (ACAS):

The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or phone calls, happen in the workplace or at work social events and may not always be obvious or noticed by others.

The Code did not provide a definition of respect. For the purposes of Hearing, reference was made to the guidance on respect provided by the Local Government Association, which accompanies its Model Code of Conduct and includes the following definition:

“Respect means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a Member, you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil

manner. You should not, however, subject individuals, groups of people or organisations to personal attack.”

“In a local government context this [i.e. respect] can mean using appropriate language in meetings and written communications, allowing others time to speak without interruption during debates, focusing any criticism or challenge on ideas and policies rather than personalities or personal attributes and recognising the contribution of others to projects.”

“Examples of disrespect in a local government context might include rude or angry outbursts in meetings, use of inappropriate language in meetings or written communications such as swearing, ignoring someone who is attempting to contribute to a discussion.”

12 June 2023 – Informal Meeting

Members of the Council met to discuss the parish playing field. This informal meeting was not open to the public, and no minutes were recorded. Members in attendance agreed to gather further information to present to the next formal meeting of the Council on 14 June 2023.

It was alleged by the Complainant, that during the informal meeting, the Subject Member made inappropriate comments about her, referring to her as “your gobby missus” (a remark directed at the Complainants husband).

The Subject Member confirmed that at the informal meeting on 12 June 2023 there was a disagreement but stated that it was settled during the meeting. During the Hearing the Subject Member refuted using the term ‘gobby’.

14 June 2023 – Council Meeting

At the public formal meeting, the Council discussed the matter of the changing rooms for the playing field further, during which the Subject Member altered his previous position, deciding that he wished to seek further clarification on one of the quotes. Following this, the Council resolved that three quotations would be put before the Council and voted on at its meeting in July.

The Complainant alleged that the Subject Member disrupted the meeting of the Council by shouting and finger pointing and acting in a loud and offensive manner.

15 June 2023

The Complainant offered her resignation to the Chairman of the Council and closed a WhatsApp group for Council members for which she was the administrator. A new WhatsApp group was then set up by another member without the Complainant in its membership. The Complainants resignation was not accepted by the Chairman and she remained a member of the Council.

WhatsApp Messages

In WhatsApp messages sent between 18 – 19 June 2023 by the Subject Member, to another member of the Parish Council, he referred to the

Complainant as “wicked, evil heinous” and “a nasty evil bitch who was trying to take over the parish council”.

The Subject Member in his initial response did not deny sending the messages, noting that they were not made in a public forum.

The Subject Member stated to the Investigating Officer that he had never received any formal training on communications or the use of social media since becoming a Parish Councillor.

Acting in a capacity as a Councillor

In order for there to be a finding that the Subject Member was in breach of the Parish Council Code of Conduct it was necessary to establish whether the Code applied during the time of the alleged behaviour of the Subject Member.

The Sub-Committee noted the following from the Rowde Parish Council’s Code of Conduct:

Pursuant to section 27 of the Localism Act 2011, Rowde Parish Council (‘the Council’) has adopted this Code of Conduct to promote and maintain high standards of behaviour by its members and co-opted members whenever they conduct the business of the Council, including the business of the office to which they were elected or appointed, or when they claim to act or give the impression of acting as a representative of the Council.

The Sub-Committee agreed that the Subject Member was acting in his capacity as an elected Member during his attendance at the informal meeting held on 12 June 2023, at the Parish Council meeting on 14 June 2023 and during his interactions on the WhatsApp group chat and his message to another councillor during 18 to 19 June 2023. Accordingly, the Sub-Committee was satisfied the Code was in effect.

Conclusions

Although the accounts of what was said at the informal meeting differ, the Sub-Committee noted that all of the statements concurred that there was a disagreement between the Subject Member and the Complainant and her husband, and that the Subject Member had referred to the Complainant in a way that portrayed her as an extension of her husband rather than as an individual.

The Sub-Committee considered the audio recording of the public Parish Council meeting held on 14 June 2023 and agreed that whilst it appeared a somewhat chaotic meeting, despite there being little structure or control exercised by the Chairman, there was no clear evidence that the Subject Member had breached the code of conduct in his attempts to dominate the discussion on the matter of the changing rooms.

The Sub-Committee agreed that the Parish Council as a whole would benefit from some training on meeting etiquette, the role of the Chairman and the code

of conduct to enable it to function more effectively in a positive manner moving forward.

The Sub-Committee considered the WhatsApp messages sent by the Subject Member on 18 and 19 June 2023, combined with the conduct on 12 June 2023 at the informal meeting did represent a pattern of behaviour that fell within the provided definitions of bullying as set out in the report.

On balance, the Sub-Committee was satisfied that the Subject Member had breached the following sections of the Rowde Parish Council Code of Conduct:

- I. He/she shall behave in such a way that a reasonable person would regard as respectful.
- II. He/she shall not act in a way which a reasonable person would regard as bullying or intimidatory.

Sanctions

The Sub-Committee sought the view of the Investigating Officer in relation to recommendation of any sanction. The Investigating Officer made no comment.

During the Hearing, the Subject Member was notified of the procedure for making representations on sanctions if the Sub-Committee found that a breach had taken place. The Subject Member was given the opportunity to be contacted by telephone on the day of the Hearing to make any such representations.

The Sub-Committee withdrew once more into private session for deliberation and, after consulting the Independent Person and noting the comments of the Subject Member, resolved to recommend that Rowde Parish Council impose the sanctions as set out above, as a result of a breach of the Code of Conduct.

(Duration of meeting: 10.30 am - 12.20 pm – 12:20pm)

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

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Standards Hearing Sub-Committee

MINUTES OF THE STANDARDS HEARING SUB-COMMITTEE MEETING HELD ON 15 MAY 2024 AT KENNET ROOM - COUNTY HALL, BYTHESEA ROAD, TROWBRIDGE, BA14 8JN.

Present:

Cllr Allison Bucknell, Cllr Gordon King (Chairman) and Cllr Mike Sankey

Also Present:

6 Election of Chairman

Nominations for a Chairman of the Standards Sub-Committee were sought and it was

Resolved:

To elect Councillor Gordon King as Chairman for this meeting only.

7 Declarations of Interest

There were no declarations of interest.

8 Meeting Procedure

The procedure listed within the agenda papers was noted.

Introductions of all those present were made.

9 Exclusion of the Press and Public

After seeking views from the Investigating Officer, Subject Member and Monitoring Officer in accordance with procedure, the Sub-Committee did not resolve to move into Part II private session for the conducting of the Hearing.

10 Determination of a Code of Conduct Complaint COC149256 in respect of Councillor Charles McGrath of Salisbury City Council and Wiltshire Council

The Hearing was in relation to complaint COC149256 made by Mr Paul Smith (The Complainant), regarding the alleged conduct of Councillor Charles McGrath (The Subject Member), of Salisbury City Council and Wiltshire Council.

The Sub-Committee had received prior notification from the Investigating Officer and the Subject Member confirming their attendance at the Hearing in person. The Complainant was not in attendance and had provided a written statement.

Investigating Officer (IO) Representations

The Investigating Officer, Marion Stammers, presented their Report and confirmed that no witnesses would be called.

It was alleged that following a Facebook post made by the Complainant on the 'Salisbury Soap Box' group page, the Subject Member responded with "disgraceful language, bullying and abusive behaviour" towards the Complainant and to others.

In doing so it was alleged that the Subject Member breached sections of the Salisbury City Council's Code of Conduct.

Salisbury City Council and Wiltshire Council have adopted versions of the Local Government Association Model Code of Conduct, which contain the following wording:

1.1 I treat other councillors and members of the public with respect.

2.2 I do not bully any person.

2.3 I promote equalities and do not discriminate unlawfully against any person.

5.1 I do not bring my role or local authority into disrepute.

Statement of the Complainant

In accordance with the procedure the Sub-Committee received a written statement from the Complainant in support of their complaint.

Questions of the Investigating Officer

In accordance with the procedure the Sub-Committee then had the opportunity to ask questions of the Investigating Officer, supported by the Independent Person.

The Investigating Officer gave clarity to why the originally offered apology had later been rejected by the Complainant, noting that there had been a misunderstanding between herself and the Subject Member regarding when the apology was to be made, which led to the Complainant retracting his agreement to accept an apology and to request the Subject Member be removed from office.

In addition, the Investigating Officer confirmed that the Complainant had been provided with the Protocol 11 - Arrangements for dealing with Code of Conduct Complaints and was aware that removal from office was not within the scope of the Sub-Committee.

There were no questions from the Subject Member.

Statement of the Subject Member

In accordance with the procedure the Sub-Committee received a verbal statement from the Subject Member as evidence and to make representations regarding the incident, whilst providing context to mitigating factors he believed to have been in place.

The Subject Member stated that the comments of the Complainant on the 'Salisbury Soap Box' Facebook group on the day the allegations related to, were not a single incident and that the Complainant and other group members persistently criticised councillors for a perceived lack of action, which he believed bordered on harassment.

The Subject Member accepted that as councillors were public figures, some level of criticism was expected and should be tolerated, however he believed that singling out individual councillors was unacceptable.

The Subject Member set out examples of the alleged persistent poor behaviour targeted towards Conservative councillors serving on City and Town councils, in order to highlight the extent of the accumulative derogatory remarks posted.

The Subject Member accepted that the language he had used in the comments to the Complainant and others during the interaction was inappropriate in his elected position, however he explained that at the time his physical and mental health were in a poor state and had impacted on his judgement.

The Subject Member stated that he had made efforts to provide a heartfelt apology as part of an alternative resolution, which had originally been agreed to by the Complainant. However, due to confusion around when the apology was to be made, the Complainant had then retracted his agreement to accept the apology.

The Subject Member further stated that following the retraction of the apology, the Complainant made public accusations against him on the 'Salisbury Soap Box' group, comparing elements of this complaint to those of another complaint relating to a separate matter and councillor, suggesting that the Conservative party was racist.

The Subject Member believed that in doing so, the Complainant had breached confidentiality rules which were in place until a complaint was concluded.

The Subject Member believed that the complaint against him had reached the stage of being unreasonable, due to the rescinded acceptance of an apology and the additional public slurring. He stated that the Complainant was using the complaint as a political tool and that his actions were politically motivated due to him being against Conservatives. However, he did accept the conclusions of the Investigating Officer's report as to the unacceptability of his remarks at the time.

No witnesses were called by the Subject Member.

Questions of the Sub-Committee to the Subject Member

The Subject Member when asked what his motivation had been in his choice of language used in the Facebook exchanges, noted that the Complainants comments on Facebook had been consistently aimed at Conservative Councillors and at the time of his response, he had not been in a good place, adding that if he had his time again, he would do things differently.

The Subject Member also noted the genuine apology offered as way of an informal resolution had originally been accepted.

Questions of the Investigating Officer to the Subject Member

There were no questions.

Concluding Statement of the Investigating Officer

No further comments were made.

Concluding Statement of the Subject Member

In accordance with the procedure the Subject Member made a concluding statement in which they outlined they had been willing to resolve the complaint informally, however following the rejection of the apology, the Complainant had continued to post comments relating to the complaint. The Subject Member questioned the way the Complainant was now pursuing the complaint.

Deliberations

Following the concluding statements, the Sub-Committee withdrew into private session at 10:40am, together with the Independent Person, the Monitoring Officer, and other supporting officers.

The Independent Person was consulted throughout the process and her contributions were taken into account by the Sub-Committee in reaching their decision.

The Hearing resumed at 11:10am at the conclusion of deliberations and the decision of the Sub-Committee was announced to those present as detailed below.

Decision:

Having considered all relevant matters and evidence, including the complaint, the Investigating Officer's report, the submissions made by the parties as detailed in the agenda papers, the additional materials provided by the Complainant and the Subject Member circulated at the meeting and the verbal statements during the Hearing, the Sub-Committee concluded on the balance of probabilities that Councillor Charles McGrath of Salisbury City Council and of Wiltshire Council breached both Council's Code of Conduct under the following provisions:

1.1 I treat other councillors and members of the public with respect.

2.2 I do not bully any person.

Sanctions:

The Sub-Committee agreed the following Sanctions be implemented by Wiltshire Council and forwarded to Salisbury City Council as a formal recommendation:

- 1. To Censure Cllr Charles McGrath for his conduct.**
- 2. To recommend Cllr Charles McGrath be provided and review online training information on the use of social media within the role of a Councillor and that completion of such to be confirmed to the Monitoring Officer of Wiltshire Council.**

Reasons for Decision

Background

The Subject Member is an elected member of Salisbury City Council and Wiltshire Council.

The Subject Member in his role as a Councillor has signed a declaration in agreement to abide by the Salisbury City Council and Wiltshire Council's Code of Conducts.

Bullying

Both of the Council's Codes include a definition of bullying, which states:

2.2 "The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as; offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate, or injure the recipient. Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face on social media, in emails or phone calls, happen in the workplace or at work social events and may not always be obvious or noticed by others".

The Sub-Committee considered the evidence produced by the Investigating Officer relating to the interview with the Complainant, where it was noted, the Complainant had stated that he had felt threatened and intimidated when the Subject Member had threatened to get him out of the city as soon as possible.

The Sub-Committee noted the Investigating Officers findings that the actions of the Subject Member did appear to fall within parts of the definition of bullying, as they could reasonably be considered to have been offensive, intimidating, humiliating and denigrating towards the Complainant, and as such the Sub-

Committee agreed that on balance of probabilities a breach of both of the Code's had occurred.

Respect

Both of the Council's Codes includes the following definition of respect:

1.1 "Respect means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a councillor, you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. However, you should not subject individuals, groups of people or organisations to personal attack"

"In a local government context (i.e. respect) can mean using appropriate language in meetings and written communications, allowing others time to speak without interruptions during debates, focusing any criticism or challenge on ideas and policies rather than personalities or personal attributes and recognising the contribution of others to projects."

"Examples of disrespect in a local government context might include rude or angry outbursts in meetings, use of inappropriate language in meetings or written communications such as swearing, ignoring someone who is attempting to contribute to a discussion."

The Sub-Committee noted the findings of the Investigating Officer, in that the Subject Member was found to have been acting in his official capacity at the time of the Facebook discussion, however by posting his remarks on Facebook he was not engaging in a political debate with fellow politicians. In addition, some of the remarks made by the Subject Member represented a direct personal attack on the Complainant and did not in themselves refer to political matters at all.

The Sub-Committee, on considering all of the evidence, on a balance of probabilities agreed with the Investigating Officers findings that a breach of paragraph 1.1 of both Council's Code of Conducts was established.

Equality and Discrimination

Both of the Council's Codes requires the following of elected and co-opted members:

- a. *I promote equalities and do not discriminate unlawfully against any person.*

The Sub-Committee considered the findings of the Investigation in that there was no indication in the evidence that the Complainant has a protected characteristic which the Subject Member was aware of and for which the Complainant could have been discriminated against.

The Sub-Committee agreed that whilst the choice of word "freak" used by the Subject Member was poor and inappropriate, there was no evidence to suggest

that the Subject Member had used the word because of a particular characteristic, such as his gender, ethnicity or sexual orientation. Rather, it appeared that he used the word in a more general way to insult the Complainant in the context of a disagreement about local issues in Salisbury. Nor do any of the other comments made by the Subject Member appear to represent unlawful discrimination against the Complainant or a specific failure on the Subject Member's part to promote equalities.

Disrepute

Both of the Council's Codes states:

5.1 I do not bring my role or local authority into disrepute.

The Sub-Committee considered and agreed with the findings of the Investigation in that whilst the actions of the Subject Member had breached two requirements under the Codes, it was not considered that the instances of misconduct fell within the definitions of bringing his role, or his authorities, into disrepute.

Facebook 'Salisbury Soap Box' Group Messages

Extracts from the Salisbury Soapbox group chat posted by the Subject Member, in response to the Complainants posts include:

- "Are you still yapping on?"
- "I'm shocked you've made it this far in life with your attitude"
- "I won't be deleting my remarks and I stand by them 100%. I've already made the decision not to stand for the council again so I feel I can speak more freely about the likes of you. You are a total disgrace to our city and we need to be shot of you frankly"
- "Freak"
- "You're an utter prat."
- "You really are pathetic. Please let me know the name of your freeholder so I can get you out of our city as quickly as possible."

The Subject Member in his response to the Investigating Officer, confirmed that on reflection, the language he had used was not appropriate for an elected member, however there were mitigating circumstances which had contributed to a clouding of his judgement at the time, and that he would act differently, given the time again.

Acting in a capacity as a Councillor

In order for there to be a finding that the Subject Member was in breach of both Council's Code of Conduct it was necessary to establish whether the Code applied during the time of the alleged behaviour of the Subject Member.

The Local Government Association's Model Code of Conduct 2020 which the Council's Codes are based on, states the following:

“This Code of Conduct applies to you when you are acting in your capacity as a councillor which may include when:

- *You misuse your position as a councillor;*
- *Your actions would give the impression to a reasonable member of the public with knowledge of all the facts that you are acting as a councillor;*

The code applies to all forms of communication and interaction, including:

- *at face-to-face meetings*
- *at online or telephone meetings*
- *in written communication*
- *in verbal communication*
- *in non-verbal communication*
- *in electronic and social media communication, posts, statements and comments”*

The complaint referred only to Salisbury City Council’s Code of Conduct, as the Complainant believed the Subject Member was acting in his Salisbury City Councillor role during the alleged incident, as at this stage he was not aware that the Subject Member was also a member of Wiltshire Council.

The Subject Member posted the comments that gave rise to the complaint using a Facebook account that did not refer to his elected roles. The Subject Member also had a second account which referred to his position as an elected councillor and his ward area.

The relevant Facebook exchanges did repeatedly refer to “the council” and make reference to the fact that the Subject Member is a councillor. The discussion topic at least in part refers to local matters of council business.

The Subject Member in his response to the complaint, and in his statement to the Assessment Sub-Committee, he did not refute that he was acting in his elected capacity when posting the alleged remarks. As such, the Investigating Officer’s conclusion was that he was acting in at least one of his elected capacities at the time.

The Sub-Committee agreed that despite the Subject Member using his personal Facebook account when posting the comments, the discussion referred to his role as a councillor and council related business and as such he was acting in his capacity as an elected Member during his participation in the Facebook discussion. Accordingly, the Sub-Committee was satisfied both of the Council’s Codes were in effect.

Conclusions

The Sub-Committee considered the attempts to resolve the complaint by means of Alternative Resolution, which had initially been agreed by both parties and questioned the reasoning behind the retraction by the Complainant to accept

the offer of a public apology, which had been agreed would have been made available for uploading to the 'Salisbury Soapbox' group page.

The Sub-Committee furthermore considered the subsequent confidentiality breach by the Complainant, in further posts on the 'Salisbury Soapbox' group page which were of a derogatory nature towards the Subject Member.

The Sub-Committee agreed that the Subject Member's physical and medical wellbeing at the time of the Facebook posts did represent mitigating factors which should reasonably be taken in to account.

The Sub-Committee considered and accepted the additional materials provided by the Complainant and the Subject Member as relevant in providing additional context to the incidents.

The Sub-Committee agreed that the Subject Member would benefit from some refresher training on the use of social media by elected members, to enable him to function more effectively in a positive manner moving forward.

On balance, the Sub-Committee was satisfied that the Subject Member had breached the following sections of the Salisbury City Council and Wiltshire Council's Code of Conducts:

1.1 I treat other councillors and members of the public with respect.

2.2 I do not bully any person.

Sanctions

1. The Sub-Committee sought the view of the Investigating Officer in relation to recommendation of any sanction. The Investigating Officer made no comment.
2. The Sub-Committee sought the view of the Subject Member in relation to recommendation of any sanction. The Subject Member noted that he would not agree to further attempts to engage in alternative resolution given his previous attempts to do so had been refused by the complainant.
3. The Sub-Committee withdrew once more into private session for deliberation and, after consulting the Independent Person and noting the comments of the Subject Member, resolved to recommend that Salisbury City Council and Wiltshire Council impose the sanctions as set out above, as a result of a breach of the Code of Conduct.

(Duration of meeting: 10.00 - 11.30 am)

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

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Wiltshire Council

Standards Committee

2 July 2024

Code of Conduct Complaints – Status Report

Purpose

1. To provide an update on the Code of Conduct complaints received by the council since the Committee's last meeting.

Statutory background

2. All local authorities are required, by s.28 Localism Act 2011, to adopt a code of conduct for their members. All such codes are required to cover the following:
 - The principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership
 - The registration and disclosure of pecuniary and other interests.
3. Wiltshire Council, as a principal authority, is required to have in place arrangements for investigating and determining allegations that a member of the Council, or a member of a town or parish council within the council area, has failed to comply with the relevant code of conduct.

Council Code of Conduct procedures

4. Wiltshire Council's arrangements for considering complaints about alleged code of conduct breaches are set out in Protocol 11 to the Constitution, the procedure having changed with effect from 1 January 2020.
5. On receipt of such a complaint the Monitoring Officer will consider the complaint and, if appropriate, prepare a report for the Assessment Sub-Committee (ASC). The Monitoring Officer (MO) may at this point decide not to take any further action on a complaint where, on the available information, it appears to be trivial, vexatious, malicious, politically motivated or 'tit for tat', and it would not be in the public interest, including particularly the efficient use of resources, to proceed.
6. Where the Monitoring Officer determines that there is sufficient evidence to suggest that a breach may have occurred, code of conduct complaints are determined by the Assessment Sub-Committee, following receipt of the report from the Monitoring Officer. The Assessment Sub-Committee may conclude that no further action should be taken, it may refer the complaint for investigation, or it may recommend that an alternative resolution be explored with the parties.
7. If the Assessment Sub-Committee determines that a formal investigation should be undertaken, an Investigating Officer is appointed by the Monitoring Officer. If the recommendation of the Investigating Officer is that there has been a substantial

breach of the Code of Conduct, and that alternative resolution is not appropriate, then the Monitoring Officer, after consultation with the Independent Person, will refer the matter to a Standards Hearing Sub-Committee.

8. The Standards Hearing Sub-Committee will conduct a hearing into the complaint to determine whether there has been a breach of the Code and, if so, what sanctions, if any, should be applied to the Subject Member (the councillor who is the subject of the complaint). If the Subject Member is a member of a town or parish council, the Hearing Sub-Committee's decision regarding sanctions will be in the form of a recommendation to the relevant council.
9. There is no right of appeal of the decision of the Assessment Sub-Committee or the Hearing Sub-Committee. However, parties are able to ask the Local Government and Social Care Ombudsman to review whether the council has followed its procedures correctly.
10. The Standards Committee has oversight of the operation of the procedures for dealing with Code of Conduct complaints as well as a general responsibility to promote and maintain high standards of conduct by elected and co-opted members and officers.

Summary of committee meetings

11. The last Standards Committee meeting took place on 12 April 2024. Since that meeting (and at the time of publication) there have been:
 - 1 meeting of the Standards Assessment Sub-Committee.
 - 1 meeting of the Standards Hearing Sub-Committee.
12. The next meeting of the Standards Assessment Sub-Committee is scheduled for 2 July 2024.

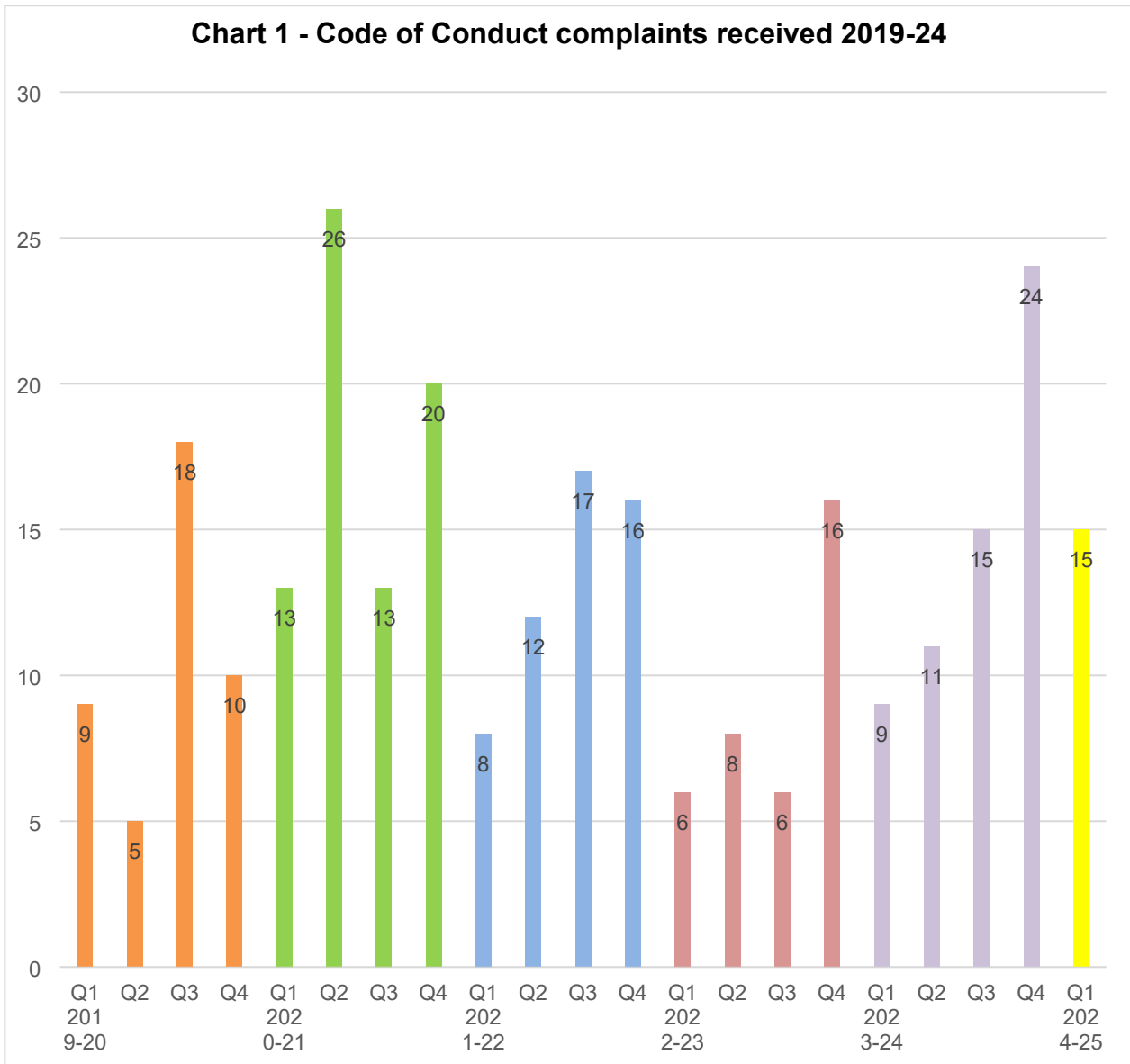
Summary of complaints received since 8 April 2024 (following publication of the 18 April 2024 meeting agenda)

13. Between 8 April 2024 and 20 June 2024 the Monitoring Officer received **15 complaints** under codes of conduct:
 - 1 referred for investigation by the Assessment Sub-Committee.
 - 1 dismissed by the Assessment Sub-Committee as requiring No Further Action.
 - 2 dismissed by the Monitoring Officer due to allegations relating to a member acting in their private capacity.
 - 1 dismissed by the Monitoring Officer due to the complaint being regarding an employment matter between the Complainant and council.
 - 1 dismissed by the Monitoring Officer following the resignation of the Subject Member.
 - 3 dismissed by the Monitoring Officer due to insufficient information being provided.
 - 1 dismissed by the Monitoring Officer under paragraph 4.6 of Protocol 11 (see below).
 - 1 resolved informally by the Monitoring Officer.

- 4 awaiting assessment.

14. The Monitoring Officer can determine No Further Action under paragraph 4.6 of Protocol 11 – Arrangements for dealing with Code of Conduct Complaints. This is applied where the Monitoring Officer determines that, on the information available, the complaint appears to be trivial, vexatious, malicious, politically motivated or ‘tit for tat’, and it would not be in the public interest for further action to be taken, including particularly the efficient use of resources.

15. **Chart 1** shows the code of conduct complaints received since 2019:



Quarterly avg: 11 Quarterly avg: 18 Quarterly avg: 13 Quarterly avg: 9 Quarterly avg: 15
 2019-20 total: 42 2020-21 total: 72 2021-22 total: 52 2022-23 total: 36 2023-24 total: 59

Types of complaint

14. The 15 code of conduct complaints received during the reported timeframe can be broken down as follows (some containing multiple allegations):

- 9 were against **parish councillors**:
 - 1 x a planning matter.
 - 3 x behaviour towards the clerk.
 - 1 x aggressive behaviour towards a member of the public.
 - 1 x disrespectful behaviour at a council working group.
 - 1 x posting false allegations on social media.
 - 1 x not declaring a financial conflict of interest.
 - 1 x disclosing personal data.
- 1 was against a **town councillor**
 - 1 x behaviour towards a child.
- 1 was against a **city councillor**
 - 1 x behaviour on social media
- 5 were against **unitary councillors**
 - 1 x disrespectful remarks in an email.
 - 1 x behaviour towards an officer during a meeting.
 - 2 x a lack of openness and honesty.
 - 1 x behaviour on social media

15. The one complaint referred by the Assessment Sub-Committee for investigation related to disrespectful remarks in an email.

Breaches of the Code of Conduct

16. For the complaint where the Investigating Officer concluded that a breach of the Code of Conduct had occurred, the Hearing Sub-Committee reached the findings and recommended the sanctions below (minutes [here](#)).

COC149256 Findings:

1.1 I treat other councillors and members of the public with respect – BREACH

2.2 I do not bully any person – BREACH

5.1 I do not bring my role or local authority into disrepute – NO BREACH

COC149256 Sanctions:

1. To censure the Subject Member for their conduct.

2. To recommend that the Subject Member be provided with, and reviews, online training information on the use of social media within the role of a councillor and that completion of such to be confirmed to the Monitoring Officer of Wiltshire Council.

Complaint resolution speed

16. Under Protocol 11 – Arrangements for Dealing with Code of Conduct Complaints, the council aims to assess all such complaints within **5 working days** of receiving the

subject member’s response. This is a challenging target as complaints can be complex, require legal input and include a large amount of background information that must be reviewed.

17. During the period reported, **8 complaints** were assessed by or on behalf of the Monitoring Officer (excluding those where insufficient evidence was provided) and this took an average of **1.5 working days**.
18. Complaints referred to Assessment Sub-Committee cannot usually meet the 5 working day timescale for assessment due to the need for a scheduled meeting. However, the council endeavours to inform complainants and subject members that the complaint will be assessed in this way, and of the Sub-Committee meeting date, as quickly as possible. During the period reported, **5 complaints** have been assessed or allocated for assessment by the Assessment Sub-Committee, with the parties informed of the Assessment Sub-Committee meeting date after an average of **5.5 working days** from the Subject Member’s response being received or from the expiry of the deadline for providing one.
19. All of the complaints assessed by Assessment Sub-Committee were considered at the next scheduled meeting after the Subject Member’s response was received (taking into account the required notice period regarding agenda publication).
20. **1 complaint** was referred for investigation by the Assessment Sub-Committee during this period.
21. Under Protocol 11, the council aims to complete Code of Conduct investigations within a total of 45 working days. This comprises 35 working days for the investigation report and a further 10 working days for the parties to submit their comments on it. The table below sets out the time taken for investigations commenced or completed over the past 12 months:

Complaint reference (completion date)	Investigator assigned Target: 5 working days	Investigator’s report sent to parties Target: 35 working days	Investigator’s report sent to Monitoring Officer Target: 10 further working days	Investigator’s report completed – total Target: 45 working days
COC144873 (27 Sep 2023)	6	82	9	91
COC145647 (19 Sep 2023)	6	48	5	53
COC146700 (9 Jan 2024)	3	37	10	47
COC149256 (5 April 2024)	4	42	6	48
COC150777 (in progress)	5	52*	-	-

Complaint reference (completion date)	Investigator assigned Target: 5 working days	Investigator's report sent to parties Target: 35 working days	Investigator's report sent to Monitoring Officer Target: 10 further working days	Investigator's report completed – total Target: 45 working days
COC151643 (in progress)	5	-	-	-

* Delays here due to correspondence with the subject member's legal representative regarding the process and an interview conducted in writing rather than verbally.

Dip Sampling

17. A table of current cases was provided to the Chairman of Standards Committee on 11 June 2024. The next session is scheduled for 10 July 2024.

Proposal

18. The Committee are asked to note the current position on code of conduct complaints.

Perry Holmes, Director of Legal & Governance and Monitoring Officer

Report Author: Henry Powell, Democracy and Complaints Manager,
complaints@wiltshire.gov.uk

Appendices

None.

Wiltshire Council

Standards Committee

2 July 2024

Changes to Protocol 11 – Arrangements for Dealing with Code of Conduct Complaints

Purpose

1. To propose amendments to Protocol 11 – Arrangements for Dealing with Code of Conduct Complaints (“Protocol 11”) for approval and recommendation to Full Council for adoption into the council’s Constitution.
2. To propose the removal of the separate Local Assessment Criteria document, with relevant content being incorporated into the new Protocol 11.
3. To propose amendments to the Procedure Rules for the Assessment Sub-Committee.

Background

4. Under Section 27 of the Localism Act 2011, all local authorities must promote and maintain high standards of conduct by their members and co-opted members, including by adopting a code of conduct setting out the behaviour that is expected of members when acting in their official capacity.
5. Under Section 28 of the Localism Act 2011, principal authorities such as Wiltshire Council must have in place arrangements under which allegations of misconduct can be investigated and determined. Protocol 11 of Wiltshire Council’s Constitution sets out the process the council follows in assessing and determining such allegations.
6. At present, Protocol 11 (Appendix 1) sets out the overall process for considering Code of Conduct complaints, and a separate document, the Local Assessment Criteria (Appendix 2), provides the Assessment Sub-Committee with further guidance on factors to consider when assessing such complaints. The current versions of both documents were last updated in July 2019 and have been in force since January 2020. Since that time, experience gained by officers, members and the council’s appointed Independent Persons has highlighted parts of both documents that require correction or clarification.
7. The changes proposed have been discussed with:
 - Members of the Standards Committee’s Assessment Sub-Committee, which assesses allegations of member misconduct when requested to do so by the Monitoring Officer.
 - The council’s three Independent Persons, appointed under Section 28 (7) of the Localism Act 2011, and whose views may be sought before a decision

is made on an allegation of misconduct or who may be consulted by a member who is the subject of a complaint.

- The Standards Committee's Constitution Focus Group, which has approved the changes proposed.

8. The Procedure Rules for Assessment Sub-Committee document sets out the process to be followed by the Sub-Committee in its meetings. The proposed changes to Protocol 11 create knock-on implications for the Procedure document, with amendments to paragraph numbers and terminology required. Other minor changes to the document are proposed for increased clarity and useability.

Main Considerations

9. At present, there is some overlap between Protocol 11 and the Local Assessment Criteria in terms of content and purpose. To provide greater clarity for everyone involved in the complaints process, it is proposed that content from both documents be combined into a single, new Protocol 11, with the separate Local Assessment Criteria document being removed.

10. The proposed new Protocol 11 includes a significant amount of textual change, but the key amendments aim to provide:

- a) Consistent use of terminology.
- b) Clarity around timescales for the submission, assessment and determination of complaints.
- c) More information about the role of Independent Persons.
- d) Clarity around the process followed by the Monitoring Officer when exploring 'alternative resolution'.
- e) More guidance for complainants on providing sufficient information when submitting complaints.
- f) A more comprehensive list of reasons why complaints may not proceed.
- g) Greater clarity around the options available to the Monitoring Officer when an investigation is completed.
- h) Greater clarity and detail around the process followed by the Hearing Sub-Committee, including during the pre-hearing stage.
- i) A new requirement that an Independent Person must be consulted before the council departs from the arrangements set out in the Protocol.
- j) Information on the role of the Local Government and Social Care Ombudsman (LGSCO) and its contact details.
- k) Greater clarity around requirements for confidentiality.

11. The following documents are provided:

Appendix 1	Current Protocol 11
Appendix 2	Current Local Assessment Criteria
Appendix 3	Proposed new Protocol 11 with track changes and comments
Appendix 4	Proposed new Protocol 11 without track changes or comments
Appendix 5	Current Procedure Rules for Assessment Sub-Committee
Appendix 6	Proposed new Procedure Rules for Assessment Sub-Committee with track changes

Overview and Scrutiny Engagement

12. The Constitution Focus Group includes a representative from Overview and Scrutiny, and the above changes have been reviewed by its members.

Safeguarding Implications

13. There are no safeguarding implications.

Public Health Implications

14. There are no public health implications.

Procurement Implications

15. There are no procurement implications.

Equalities Impact of the Proposal

16. There are no equalities implications.

Environmental and Climate Change Considerations

17. There are no environmental implications.

Workforce Implications

18. There are no workforce implications.

Risks that may arise if the proposed decision and related work is not taken

19. Some procedures would continue to lack clarity and not be as efficient or effective as they could be.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

20. No risks have been identified if the proposed actions are taken.

Financial Implications

21. There are no financial implications.

Legal Implications

22. The proposals are in accordance with required legislation.

Proposals

23. To approve the proposed new version of Protocol 11 – Arrangements for Dealing with Code of Conduct Complaints and recommend its adoption into the council's Constitution by Full Council.
24. To recommend the removal of the Local Assessment Criteria document by Full Council, with necessary and updated information from the document now incorporated in the proposed Protocol 11.
25. To approve the proposed new version of the Assessment Sub-Committee Procedure document.

Perry Holmes, Monitoring Officer and Director for Legal & Governance

Report author: Henry Powell, Democracy and Complaints Manager, 01225 718400
complaints@wiltshire.gov.uk

Appendices

- Appendix 1 **Current** Protocol 11
- Appendix 2 **Current** Local Assessment Criteria
- Appendix 3 **Proposed** new Protocol 11 **with** track changes and comments
- Appendix 4 **Proposed** new Protocol 11 **without** track changes or comments
- Appendix 5 **Current** Procedure Rules for Assessment Sub-Committee
- Appendix 6 **Proposed** new Procedure Rules for Assessment Sub-Committee **with** track changes
- Appendix 7 **Proposed** new Procedure Rules for Assessment Sub-Committee **without** track changes

Background Papers

None

**Wiltshire Council
Constitution
Protocol 11
Arrangements for dealing
with Code of Conduct
complaints under the
Localism Act 2011**

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PROTOCOL 11

ARRANGEMENTS FOR DEALING WITH CODE OF CONDUCT COMPLAINTS UNDER THE LOCALISM ACT 2011

1. Context

- 1.1 These arrangements are made under Section 28 of the Localism Act 2011. They set out the process for dealing with a complaint that an elected or co-opted member of Wiltshire Council, or of a parish, town or city council within its area, has failed to comply with their Code of Conduct.
- 1.2 A flowchart of the complaints processed is attached at [Schedule 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

- 1.6 'Member' means a member or co-opted member of Wiltshire Council, or of a parish, town or city council within its area, against whom a complaint has been made under the Code of Conduct.
- 1.7 'Complainant' means the individual who has submitted a complaint against a Member. 'Complainant' does not include a body corporate.
- 1.8 'Council' means Wiltshire Council.
- 1.9 'Investigating Officer' means the person appointed by the Monitoring Officer to undertake an investigation of an allegation of misconduct by a Member.
- 1.10 '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.
- 1.11 'Independent Person' means a person appointed under Section 28(7) of the Localism Act 2011:

- 2.6.1 whose views must be sought and taken into account before a decision is made on an allegation of Member misconduct under these arrangements.
- 2.6.2 who may be consulted by the Member about the complaint.

- 1.12 In order to avoid any conflict of interest at least two Independent Persons will be allocated to each complaint: One to advise and assist the Monitoring Officer or the Assessment Sub-Committee and Hearing Sub-Committee (as appropriate), and the other to be available for consultation by the Member.
- 1.13 'Parish Council' means a parish, town or city council within the area of Wiltshire Council.
- 1.14 '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.
- 1.15 'Days' means working days.
- 1.16 'Parties' includes the Complainant, Member and the Investigating Officer.
- 1.17 The 'Hearing Sub-Committee' is a sub-committee of the Council's Standards Committee appointed to determine complaints of Member misconduct under these arrangements.
- 1.18 The 'Assessment Sub-Committee' is a sub-committee of the Council's Standards Committee appointed to undertake the initial assessment of complaints and consideration of investigation reports under sections 4 and 6 of these arrangements respectively. The sub-committee shall operate in accordance with procedural arrangements agreed by the Standards Committee.
- 1.19 'Valid receipt' means formal receipt of a complaint and any information requirement from the Council, if any, for processing of that complaint.
- 1.20 The 'Assessment Criteria' means the criteria approved by the Standards Committee and Council for the assessment of complaints, and which is attached with guidance to the Code of Conduct at [this link](#).
- 1.21 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.
- 1.22 Documents sent by post will be deemed to have been received by the Parties on the second day after the date of posting.

3 Making a Complaint

- 1.23 A complaint against a Member under the Code of Conduct should be made in writing on the Council's standards form (*available from the Council's website at [this link](#) and*

from Council offices) and addressed to the Monitoring Officer (County Hall, Trowbridge, BA14 8JN/ governance@wiltshire.gov.uk) and must be made within 20 days of date on which the complainant became or ought reasonably to have become aware of the matter giving rise to the complaint, Any timescales for processing the complaint will run from valid receipt by council officers.

- 1.24 If the complaint does not meet the requirements of the Assessment Criteria, eg the complaint is out of time or insufficient evidence has been provided, then the complaint will not be taken forward for assessment.
- 1.25 The Monitoring Officer will acknowledge receipt of the complaint within five days of receiving it, and will send a copy to the Member.
- 1.26 The Member will be invited to submit a written response to the complaint within ten days of the date on which it is sent to them. No adverse inference should be drawn from a lack of response as there is no statutory requirement to respond, although this is recommended to assist the process and assessment.
- 1.27 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.
- 1.28 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

- 1.29 The Monitoring Officer will review the complaint within five days of receiving the Member's response and prepare a recommendation for the Assessment Sub-Committee
- 1.30 In reaching this recommendation the Monitoring Officer will have regard to the Standards Committee Assessment Criteria.
- 1.31 The Monitoring Officer may seek to resolve the complaint informally, without the need for a formal decision by the Assessment Sub-Committee. This may involve mediation or other suitable action, including training or an apology by the Member.
- 1.32 When the matter is referred for informal resolution the Monitoring Officer will identify the time the complaint will be suspended for under [paragraph 11](#).
- 1.33 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 requires formal determination.

- 1.34 The Monitoring Officer may decide not to take any further action on a complaint where, on the available information, it appears to be trivial, vexatious, malicious, politically motivated or 'tit for tat', and it would not be in the public interest, including particularly the efficient use of resources.
- 1.35 If the complaint identified potential criminal conduct by any person, the Monitoring Officer may notify the Police or other regulatory agencies. The usual timescales for accepting a complaint may be disapplied in such cases.
- 1.36 If the complaint is not determined by alternative resolution or referral to the police or other regulatory agencies, or otherwise not taken forward, the recommendation of the Monitoring Officer on whether the complaint merits formal investigation shall be taken to a meeting of the Assessment Sub-Committee.
- 1.37 The Assessment Sub-Committee may decide:
- 4.9.1 to dismiss the complaint or take no further action on the complaint;
 - 4.9.2 to refer the complaint to the Monitoring Officer for investigation or other suitable action, including mediation.

5 Investigation

- 1.38 If the Assessment Sub-Committee decides that a complaint merits formal investigation they will appoint an Investigating Officer within five days of the decision notice to investigate and inform the Parties of the appointment.
- 1.39 The Investigating Officer will investigate the complaint in accordance with guidelines produced by the Monitoring Officer. They will send a copy of the investigation report, including all documents relied upon as evidence, to the Parties, in confidence, within 35 days of the notification of the Investigating Officer's appointment.
- 1.40 The Parties will be invited to submit any written comments on the report to the Investigating Officer within ten days of the date on which the report is sent to them. This provides a total of 45 days from the beginning of the investigating in paragraph 5.2 to the receipt of any comments on the investigation report. The Investigating Officer will then amend their report or incorporate any comments within it as appropriate, before submitting it to the Monitoring Officer.

6 Consideration of Investigating Officer's Report

- 1.41 The Monitoring Officer will, as soon as reasonably practicable, review the Investigating Officer's report in consultation with the Independent Person.
- 1.42 If the Monitoring Officer is not satisfied that the investigation has been conducted properly, they may ask the Investigating Officer to reconsider their report and findings.

- 1.43 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 report to the Assessment Sub-Committee with a recommendation that no further action is required.
- 1.44 The Assessment Sub-Committee may decide:
- 6.4.1 to dismiss the complaint or take no further action on the complaint;
 - 6.4.2 to refer the complaint to the Hearing Sub-Committee or seek alternative resolution.
- 1.45 The decision of the Assessment Sub-Committee at this stage shall be final.
- 1.46 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 alternative resolution.

7 Alternative Resolution

- 1.47 Following receipt of an investigation report, where the Monitoring Officer in consultation with the Independent person considers that the matter can reasonably be resolved without the need for a hearing, they will consult with the Parties to seek to agree a fair resolution which also helps to ensure higher standards of conduct for the future.
- 1.48 Alternative resolution may involve mediation and may include the Member accepting that their conduct was unacceptable and offering an apology, and/or 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 Assessment Sub-Committee and the relevant Parish Council where appropriate, for information, but will take no further action.
- 1.49 The Member may elect to proceed to a hearing rather than accept alternative resolution.

8 Hearing

- 1.50 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 they 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.
- 1.51 The Member may be represented at the hearing by a friend or legal representative.

- 1.52 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.
- 1.53 The Monitoring Officer will notify the Parties in writing of the directions for the hearing.
- 1.54 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.
- 1.55 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.
- 1.56 The Complainant will have the right to make a statement in support of their complaint.
- 1.57 The Members of the Hearing Sub-Committee and the Member may ask questions of the Investigating Officer and any witnesses called.
- 1.58 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.
- 1.59 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.
- 1.60 The Parties may each make a concluding statement.
- 1.61 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.
- 1.62 The Hearing Sub-Committee may conclude that the Member did not fail to comply with the Code of Conduct, and so dismiss the complaint.
- 1.63 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.
- 1.64 The Investigating Officer and the Member will be invited to make representations on the question of sanctions.

- 1.65 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

- 1.66 The Council has delegated to the Hearing Sub-Committee such of its powers to take action in respect of individual members of the Council as may be necessary to promote and maintain high standards of conduct. The Hearing Sub-Committee may therefore impose (or, in the case of a parish, town or city councillor, recommend) one or more of the sanctions set out in [Schedule 1](#).

10 Decision

- 1.67 At the end of the hearing, the Chairman will announce the decision of the Hearing Sub-Committee in summary form.
- 1.68 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 and departure from these arrangements

- 1.69 The Council may by resolution agree to amend these arrangements, and has delegated to the Monitoring Officer, Assessment 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 Appeals

- 1.70 There is no right of appeal for the complaint or the Member against a decision of the Assessment or Hearing Sub-Committees.

13 Confidentiality

- 1.71 All information regarding the complaint will remain confidential until determined otherwise by the Monitoring officer, Assessment Sub-Committee or Hearing Sub-Committee.

Schedule 1 – Sanctions

1. Censure

- 1.1 Censure and report to the Council or relevant Parish Council; and/or

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

- 2.1 Recommend to the Member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that the Member is removed from any Committee or Sub-Committee of the Council;
- 2.2 Recommend to the Leader of the Council that the Member is removed from the Cabinet, or removed from particular portfolio responsibilities;
- 2.3 Remove the Member from any or all outside appointments to which they has been appointed or nominated by the Council or relevant Parish Council.

3. Training

- 3.1 Instruct the Monitoring Officer to arrange training for the Member.

4. Publish

- 4.1 Publish its findings in respect of the Member's conduct in the minutes of the Council or relevant Parish Council.

Note:

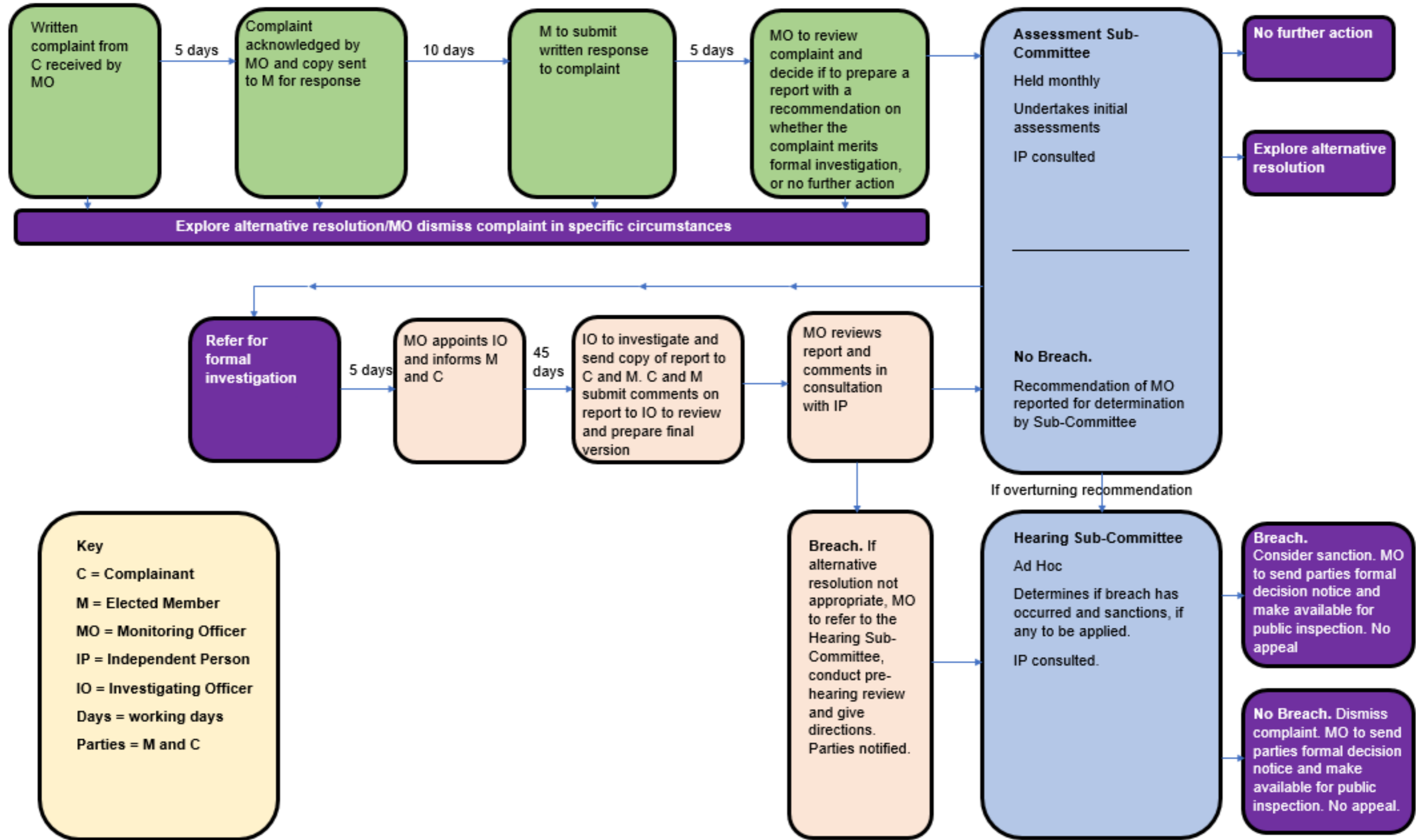
In the case of R v Broadland District Council ex parte Lashley the Court of Appeal recognised that it was within the Council's powers to take action that was calculated to facilitate and was conducive or incidental to, the council's functions (1) of maintaining its administration and internal workings in a state of efficiency and (2) of maintaining and furthering the welfare of its employees.

This may enable a Hearing Sub-Committee to impose restrictions on a member for the purpose of securing the efficient and effective discharge of the Council's functions. These might, for instance, include the withdrawal of certain facilities, such as a computer, e-mail and/or internet access, or exclusion from certain parts of the council's premises, provided that the measures do not interfere with the democratic process. However, this may not be used as a punitive measure nor, in particular, to justify the suspension or disqualification of a member.

Legal advice will need to be taken on the extent to which this potential option may be available in the particular circumstances of each case.

Protocol 11 Schedule 2 – Flowchart of arrangements for dealing with Code of Conduct Complaints under the Localism Act 2011

For full details of each stage, refer to the main protocol.



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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

10.1A 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;

whether action, such as an investigation, may be taken without the complainant's participation.

**Wiltshire Council
Constitution
Protocol 11
Arrangements for dealing
with Code of Conduct
complaints under the
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PROTOCOL 11

ARRANGEMENTS FOR DEALING WITH

CODE OF CONDUCT COMPLAINTS

UNDER THE LOCALISM ACT 2011

4.1 Context

1.1 These arrangements are made under Section 28 of the Localism Act 2011. They set out the process for dealing with a complaint that an elected or co-opted member of Wiltshire Council, or of a parish, town or city council within its area, has failed to comply with their Code of Conduct when acting in their official capacity.

1.2 A flowchart of the complaints processed is attached at [Schedule 2](#).

1.3 These arrangements are subject to the Council's procedure for dealing with vexatious complaints.

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Commented [HP1]: The flowchart will be updated following approval of the Protocol by Standards Committee.

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1.3 procedures for dealing with unreasonable and vexatious communications and unwanted behaviour.

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Commented [PH2]: Reflects new terminology for these procedures.

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.

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1.4 Where a complaint is outside the scope of this Protocol, the Complainant will be directed to the relevant procedure as appropriate.

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Commented [PH3]: Replaces text previously included in the Local Assessment Criteria.

1.5 Where appropriate, the 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.

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1.6 Where a complaint could, under the Localism Act 2011, also be assessed by another local authority, the Monitoring Officers will agree which authority will deal with the complaint.

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2.2 Interpretation

2.1 'Subject Member' means a member or co-opted member of Wiltshire Council, or of a parish, town or city council within its area, against whom a complaint has been made under the Code of Conduct.

2.2 'Complainant' means the individual who has submitted a complaint against a Subject Member. 'Complainant' does not include a body corporate.

2.3 'Council' means Wiltshire Council.

2.4 'Investigating Officer' means the person appointed by the Monitoring Officer to undertake an investigation of an allegation of misconduct by a Subject Member.

2.5 'The Monitoring Officer' is a senior officer of the authority who has statutory responsibility for maintaining the register of members' interests and who is responsible for administering the arrangements for dealing with complaints of member misconduct. It includes any officer nominated by the Monitoring Officer to act on his or her behalf in that capacity.

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2.6 'Independent Person' means a person appointed under Section 28(7) of the Localism Act 2011:

2.6.1 whose views must be sought and taken into account before a decision is made on an allegation of Subject Member misconduct under these arrangements.

2.6.2 who may be consulted by the Subject Member about the complaint.

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2.7 In order to avoid any conflict of interest, at least two Independent Persons will be allocated to each complaint: One to advise and assist the Monitoring Officer, or the Assessment Sub-Committee and Hearing Sub-Committee (as appropriate), and the other to be available for consultation by the Member.

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2.7 Assessment Sub-Committee and Hearing Sub-Committee as appropriate, and the other to be available for consultation in confidence by the Subject Member. The Independent Person assigned to the Subject Member can answer questions regarding the complaints process, offer an impartial view and may, where appropriate, suggest options for resolving the matter informally.

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Commented [PH5]: More detail added describing Independent Persons' role.

2.8 'Parish Council' means a parish, town or city council within the area of Wiltshire Council.

2.9 'Code of Conduct' means the Code of Conduct for Members which the Council and Parish Councils are required to adopt under Section 27 of the Localism Act 2011.

~~2.10 'Days' means working days.~~

~~2.11~~ 2.10 'Parties' includes the Complainant, Member and the Investigating Officer.

~~2.12~~ 2.11 ~~The 'Assessment Sub-Committee' is a sub-committee of the Council's Standards Committee appointed to undertake the initial assessment of complaints and the consideration of investigation reports under sections 6 and 8 of these arrangements respectively when requested to by the Monitoring Officer. and consideration of investigation reports under sections 4 and 6 of these arrangements respectively. The sub-committee shall operate in accordance with procedural arrangements agreed by the Standards Committee.~~

~~2.11~~

~~2.13~~

~~2.14~~ The 'Hearing Sub-Committee' is a sub-committee of the Council's Standards Committee appointed to determine complaints of Subject Member misconduct under these arrangements.

2.12 ~~The Assessment and Hearing Sub-Committees shall operate in accordance with any procedural arrangements agreed by the Standards Committee.~~

~~2.15~~ 2.12 ~~The 'Assessment Sub-Committee' is a sub-committee of the Council's Standards Committee appointed to undertake the initial assessment of complaints and consideration of investigation reports under sections 4 and 6 of these arrangements respectively. The sub-committee shall operate in accordance with procedural arrangements agreed by the Standards Committee.~~

2.16 ~~2.13~~ 'Valid receipt' means formal receipt of a complaint and any associated information requirement from the Council, if any, necessary for processing of that complaint.

~~2.17~~ 2.14 ~~The 'Assessment Criteria' means the criteria approved by the Standards Committee and Council for the assessment of complaints, and which is attached with guidance to the Code of Conduct at [this link](#).~~

2.14 ~~2.14~~ Where a complaint is made against a mMember of a Parish Council the Clerk to the Parish Council will be notified of the complaint, the date of any hearing and the outcome of the matter.

~~2.18~~ 2.15 ~~and kept informed of the progress and outcome of the matter.~~

~~2.19~~

2.20 ~~2.15~~ Documents sent by post will be deemed to have been received by the Parties on the second day after the date of posting.

3 Making a cComplaint

3.1 ~~2.16~~ A complaint against regarding a Member under their council's Code of Conduct should be made submitted in writing on the appropriate Wiltshire Council's standards form

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Commented [PH6]: "Working days" is now stated throughout.

Commented [PH7]: Clarifying that some complaints are determined by the Monitoring Officer without them progressing to the Assessment Sub-Committee.

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available digitally from its website at this link and in hard copy from Council offices. The complaint should be addressed to the Monitoring Officer (County Hall, Trowbridge, BA14 8JN or MonitoringOfficer@wiltshire.gov.uk).

(available from the Council's website at this link and from Council offices) and addressed to the Monitoring Officer (County Hall, Trowbridge, BA14 8JN/ governance@wiltshire.gov.uk) and must be made within 20 days of date on which the complainant became or ought reasonably to have become aware of the matter giving rise to the complaint. Any timescales for processing the complaint will run from valid receipt by council officers.

3.2 Complaints must be made within **20 working days** of the date on which the Complainant became, or ought reasonably to have become, aware of the matter giving rise to the complaint. In cases where the Complainant could not reasonably have become aware of the matter giving rise to complaint within 20 working days, it must in any case be submitted within **6 months** of the incident giving rise to the complaint. Any timescales for processing the complaint will run from valid receipt by Council officers.

3.1
3.3 Complainants must include details of the specific incident(s) giving rise to their complaint, providing relevant information such as direct quotes, correspondence and dates. Complaints should also specify the sections of the Code of Conduct that the Complainant believes the Subject Member has breached through their actions. If insufficient information is provided, the complaint cannot be assessed, and no further action may be taken.

If the complaint does not meet the requirements of the Assessment Criteria, eg the complaint is out of time or insufficient evidence has been provided, then the complaint will not be taken forward for assessment.

3.4 To be considered under this procedure, the complaint must meet the following initial tests:

3.4.1. The complaint is regarding a member of the Council, or a member of a Parish Council within the area of Wiltshire Council;

3.4.2. They were a member, and were acting in their official capacity (rather than in their private capacity), at the time of the incident giving rise to the complaint;

3.4.3. The Subject Member remains a member of the relevant council, or, if not, there are exceptional circumstances to justify a decision that it is in the public interest to consider the complaint;

3.4.4. A Code of Conduct for the relevant council is in force.

3.5 If the complaint fails one or more of these tests, then no further action will be taken.

3.6 Anonymous complaints will not be accepted for assessment unless the Monitoring Officer considers that allegations are of sufficient seriousness to justify this and that action could be taken without the Complainant's participation.

3.7 Where the Complainant's name is provided, but the Complainant wishes their identity to be withheld from the Subject Member, the complaint will not be accepted unless the Monitoring Officer considers that there would otherwise be a serious risk to the Complainant's personal safety, in which case the Monitoring Officer will decide how the complaint should be taken forward.

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Commented [PH9]: The 20 working days time limit has not changed. A new introduction is the 6-month hard time limit, which only relates to complaints where the complainant could not reasonably have become aware of the incident giving rise to the complaint within 20 working days.

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Commented [PH10]: More guidance provided on the types of information required for a complaint to be assessed.

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Commented [PH11]: Paragraphs moved but not significantly amended.

3.23.8 The Monitoring Officer will acknowledge receipt of the complaint within five days of receiving it, and will send a copy to the Subject Member.

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3.9 Where it will support the assessment of a complaint, and in all cases where a complaint will go forward for assessment by the Assessment Sub-Committee, a copy of the complaint will be sent to the Subject Member and they will be invited to submit a written response to the allegations within ten working days of the date on which it is sent to them. No adverse inference will be drawn from a lack of response as there is no statutory requirement to respond. However, a response is recommended to assist with the Council's assessment of the complaint.

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Commented [PH12]: Reflecting how complaints that clearly do not meet the relevant criteria may not be sent to the subject member for response, as a response is not necessary for assessment.

3.3 The Member will be invited to submit a written response to the complaint within ten days of the date on which it is sent to them. No adverse inference should be drawn from a lack of response as there is no statutory requirement to respond, although this is recommended to assist the process and assessment.

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3.10 At any time during the complaints process the Subject Member may seek advice and assistance in connection with the complaint from a friend or professional legal adviser, in confidence, and/or consult the Independent Person, where one is assigned to them,

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Commented [PH13]: Reflects that where a complaint clearly fails to meet the relevant criteria and can be assessed without Subject Member's response, an Independent Person will not be assigned.

3.4 designated for that purpose.

3.5

3.11 Where a Complainant wishes to withdraw their complaint, the Monitoring Officer will take into account the following considerations:

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3.11.1. The Complainant's reasons for wishing to withdraw the complaint;

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3.11.2. Is the complaint such that action can be taken on it, such as an investigation, without the Complainant's participation;

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3.11.3. Does the public interest in taking some action on the complaint outweigh the Complainant's wish to withdraw it.

Commented [PH14]: Text previously included in the Local Assessment Criteria document.

3.6 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.

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4 Initial Assessment

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4.1 Within five working days of receiving the complaint, or of receiving the Subject Member's response to it where one is provided, or of the expiry of the Subject Member's deadline for providing a response (whichever is appropriate), the Monitoring Officer will undertake an initial assessment of the complaint, consulting an Independent Person when appropriate.

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Commented [PH15]: Reflects how a) a response from the Subject Member is not always required, and b) where a response is sought, it is not always provided.

The Monitoring Officer will review the complaint within five days of receiving the Member's response and prepare a recommendation for the Assessment Sub-Committee

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4.2 Where the Monitoring Officer determines that any of the following criteria apply, no further action will be taken and the Complainant will be informed of this decision:

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4.2.1 The complaint is 'out of time' (see paragraph 3.2);

4.2.2 Insufficient information has been provided to assess whether a breach of the Code of Conduct has potentially occurred (see paragraph 3.3);

4.2.3 The complaint does not meet one or more of the initial tests set out at paragraph 3.4;

4.2.4 The complaint is submitted anonymously but the allegations are not exceptionally seriousness in nature (see paragraph 3.6);

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4.2.5 The Complainant requests that their identity be withheld from the Subject Member, but a serious risk to the Complainant's safety has not been demonstrated (see paragraph 3.7):

4.2.6 The same, or substantially the same, incident has been the subject of a previous Code of Conduct complaint that has either been determined or has been referred to the Assessment Sub-Committee;

4.2.7 The complaint is essentially regarding the actions of the relevant council as a whole, rather than about an individual members' conduct;

4.2.8 It would not be in the public interest to proceed as defined under paragraph 4.4.

Where the matter has been, or will be, referred to the Police or other regulatory agency, the Monitoring Officer may determine no further action will be taken for its assessment may be paused pending the outcome of the relevant agency's investigation.

4.3

4.1—4.4 In reaching this recommendation the Monitoring Officer will have regard to the Standards Committee Assessment Criteria.

The Monitoring Officer may decide not to take any further action on a complaint where, on the available information, it appears to be vexatious, malicious, politically motivated, retaliatory or if proven it would not reach the threshold of breaching of the Code of Conduct, and it would therefore not be in the public interest to take further action having mind to the efficient use of resources.

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

4.2 The Monitoring Officer may seek to resolve the complaint informally, without the need for a formal decision by the Assessment Sub-Committee. This may involve mediation or other suitable action, including training or an apology by the Member.

4.3 When the matter is referred for informal resolution the Monitoring Officer will identify the time the complaint will be suspended for under paragraph 11.

4.4 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 requires formal determination.

4.5 The Monitoring Officer may decide not to take any further action on a complaint where, on the available information, it appears to be trivial, vexatious, malicious, politically motivated or 'tit for tat', and it would not be in the public interest, including particularly the efficient use of resources.

4.6 If the complaint identified potential criminal conduct by any person, the Monitoring Officer may notify the Police or other regulatory agencies. The usual timescales for accepting a complaint may be disappplied in such cases.

4.7 If the complaint is not determined by alternative resolution or referral to the police or other regulatory agencies, or otherwise not taken forward, the recommendation of the Monitoring Officer on whether the complaint merits formal investigation shall be taken to a meeting of the Assessment Sub-Committee.

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Commented [PH16]: New criteria for consideration when assessing complaints, already considered in practice but not stated in the Protocol.

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Commented [PH17]: Clarifying that where appropriate such complaints may be paused rather than dismissed.

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Commented [PH18]: Language amended from "tit for tat" and "trivial".

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5 Alternative resolution

5.1 At any point prior to a complaint being referred to the Hearing Sub-Committee, the Monitoring Officer may seek to resolve the matter through alternative resolution to encourage higher standards of conduct in the future and ensure the efficient use of resources. This may involve mediation, training, the Subject Member providing an apology, or other suitable action. Where appropriate, the Monitoring Officer may also recommend remedial action by the relevant council.

5.2 When the Monitoring Officer seeks alternative resolution, they may identify a timeframe within which the complaint will be suspended for in order that alternative resolution can be explored and, where appropriate, completed.

5.3 Where the Subject Member makes an offer of alternative resolution that the Monitoring Officer considers to be reasonable, but the Complainant is not willing to accept that offer, this may be taken into account when determining whether further action is taken with regard to the complaint.

5.4 Where it becomes clear during an investigation that alternative resolution is an appropriate resolution to the matter, the Monitoring Officer will only do so following consultation with an Independent Person.

5.5 In all cases where alternative resolution is attempted, the Monitoring Officer will determine if it has satisfactorily resolved the complaint. The Assessment Sub-Committee may decide:

6 Assessment Sub-Committee

6.1 If the complaint is not dismissed under paragraph 4.2, and is not successfully resolved through alternative resolution, the Monitoring Officer will refer the complaint for assessment by the Assessment Sub-Committee. In doing so, the Assessment Sub-Committee will consider the original complaint, the Subject Member's response, other relevant documentation, any prior attempts to resolve the complaint through alternative resolution and any further statement submitted to them by the Parties.

6.2 Having consulted the Independent Person, the Assessment Sub-Committee may decide:

6.2.1 That no further action should be taken on the complaint;

6.2.2 To refer the complaint to the Monitoring Officer for investigation;

6.2.3 To refer the complaint to the Monitoring Officer for alternative resolution (except where this has already been attempted).

6.3 Complaints will not normally be referred for investigation where the Subject Member has offered an apology, a reasonable explanation of the issues, or where the Assessment Sub-Committee considers that the matter can reasonably be addressed by other means. Investigation is normally reserved for serious complaints where alternative options for resolution are not considered appropriate. Investigation may not be appropriate where the Subject Member is seriously ill.

6.4 A single incident may give rise to similar complaints from a number of Complainants. Where possible these complaints will be considered by the Assessment Sub-

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Commented [PH20]: A new provision allowing the Monitoring Officer to explore informal resolution during an investigation, but only following consultation with an Independent Person.

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Commented [PH21]: Clarifying that this is a responsibility of the Monitoring Officer.

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Commented [PH22]: Detailing the information usually considered by the Assessment Sub-Committee.

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Commented [PH23]: Amended wording but no change to the options available to the Assessment Sub-Committee.

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Committee at the same time. Each complaint will, however, be determined separately. If an investigation is deemed to be appropriate the Monitoring Officer may determine that, in the interests of efficiency, only one complaint should be investigated, with other Complainants being treated as potential witnesses in that investigation.

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6.5 Where the Assessment Sub-Committee refers a complaint to the Monitoring Officer for alternative resolution, the provisions under paragraph 5 will apply.

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6.6 Where, following a referral by the Assessment Sub-Committee, alternative resolution is unsuccessful the Monitoring Officer may determine that no further action will be taken or refer the complaint back to the Assessment Sub-Committee for further consideration.

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6.7 Where, following a referral by the Assessment Sub-Committee, alternative resolution is successful, the Monitoring Officer will report this to the Assessment Sub-Committee for information, but no further action will be taken.

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4.9.1 to dismiss the complaint or take no further action on the complaint;

Commented [PH25]: Clarifies that, a) where alternative resolution is explored but is unsuccessful, the Monitoring Officer is empowered to refer the matter back to the Assessment Sub-Committee; b) where it is explored and is successful, the Assessment Sub-Committee will be notified.

4.9.2 to refer the complaint to the Monitoring Officer for investigation or other suitable action, including mediation.

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57 Investigation

5.47.1 If the Assessment Sub-Committee decides, taking into account paragraph 6.3, that a complaint merits formal investigation, the Monitoring Officer they will appoint an Investigating Officer within five working days of the decision notice to investigate and inform the Parties of the appointment.

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5.27.2 The Investigating Officer will investigate the complaint in accordance with guidelines produced by the Monitoring Officer. They will send a copy of the investigation report, including all documents relied upon as evidence, to the Parties, in confidence, within 35 days of the notification of the Investigating Officer's appointment.

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5.37.3 The Parties will be invited to submit any written comments on the report to the Investigating Officer within working ten days of the date on which the report is sent to them. This provides a total of 45 days from the beginning of the investigating in paragraph 5.2 to the receipt of any comments on for the investigation report process. The Investigating Officer will then amend their report or incorporate any comments within it as appropriate, before submitting it to the Monitoring Officer.

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68. Consideration of Investigating Officer's Report

6.48.1 The Monitoring Officer will, as soon as reasonably practicable, review the Investigating Officer's report in consultation with the Independent Person.

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8.1 If the Monitoring Officer is not satisfied that the investigation has been conducted properly, they may ask the Investigating Officer to reconsider their report and findings.

8.2 considers that the investigation or report are not sufficient, they may ask the Investigating Officer to undertake further work.

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6.28.3 Where the Investigating Officer concludes that on the balance of probabilities, the Code of Conduct has not been breached, 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 investigation and report is are sufficient, the Monitoring Officer will report to the Assessment Sub-Committee with a recommendation that no further action is requiredtaken.

Commented [PH26]: "On the balance of probabilities" is the threshold complaint investigators work to.

6.38.4 The Assessment Sub-Committee may decide:

6.4.18.4.1 to dismiss the complaint or take no further action on the complaint; or
6.4.28.4.2 to refer the complaint to the Hearing Sub-Committee or seek alternative resolution.

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6.4 The decision of the Assessment Sub-Committee at this stage shall be final.

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8.5 Where the Investigating Officer concludes that, on the balance of probabilities, the Code of Conduct has been breached, the Monitoring Officer will, after consulting the Independent Person, either conclude that no further action is necessary, seek alternative resolution, or refer the matter for hearing before the Hearing Sub-Committee.

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here 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 alternative resolution.

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8.6 Where the Investigating Officer concludes that the Code of Conduct has been breached, but the Monitoring Officer determines that no further action is necessary, the Monitoring Officer will report to the Assessment Sub-Committee with a recommendation that no further action is taken.

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8.7 The Assessment Sub-Committee may determine that:

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8.7.1 No further action will be taken with respect to the complaint; or
8.7.2 The complaint will be referred to the Hearing Sub-Committee.

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Commented [PH27]: Allows the Monitoring Officer to recommend that no further action is taken (following consultation with the Independent Person) where a breach is found by the Investigating Officer. This is usually in cases where the subject member's conduct is considered to represent a minor 'technical breach' of the Code of Conduct or that otherwise it would not be in the public interest or efficient use of resources to proceed.

8.8 Where, following receipt of an investigation report, the Monitoring Officer seeks alternative resolution, the provisions under paragraph 5 will apply.

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8.9 Where alternative resolution is successful at this stage, the Monitoring Officer will report this to the Assessment Sub-Committee for information, but no further action will be taken.

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8.10 Where alternative resolution is unsuccessful at this stage, the Monitoring Officer will refer the matter for hearing before the Hearing Sub-Committee.

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8.11 The Subject Member may elect to proceed to a hearing rather than accept alternative resolution.

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7 Alternative Resolution

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7.1 Following receipt of an investigation report, where the Monitoring Officer in consultation with the Independent person considers that the matter can reasonably be resolved without the need

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for a hearing, they 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 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 Assessment Sub-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.

9 Hearing

8

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

the Member's right to request an extension of time.

Before the hearing

9.2 The date of the hearing and the process to be followed will be provided to the Subject Member, Investigating Officer, relevant Independent Persons, Complainant and, for information, the Clerk of any relevant parish council.

9.3 The Subject Member will be asked if they:

9.3.1 will attend the hearing;

9.3.2 wish to be represented at the hearing, or wish to be accompanied by someone who will not represent them;

9.3.3 disagree with any of the findings of fact in the investigation report, including reasons for any of these disagreements;

9.3.4 wish to give evidence to the hearing, either verbally or in writing;

9.3.5 wish to call relevant witnesses to give evidence to the Hearing Sub-Committee;

9.3.6 wish to request any part of the hearing to be held in private;

9.3.7 wish to request any part of the investigation report or other relevant documents to be withheld from the public.

9.4 The Investigating Officer will be asked if they:

9.4.1 will attend the hearing;

9.4.2 wish to be represented at the hearing;

9.4.3 wish to invite such witnesses to attend the hearing as they consider appropriate;

9.4.4 wish to request any part of the hearing to be held in private.

9.5 To support the efficient conduct of the hearing, members of the Hearing Sub-Committee, supported by the Monitoring Officer, will:

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- 9.5.1 Identify areas of agreement and disagreement;
- 9.5.2 Consider any additional evidence required for the hearing;
- 9.5.3 Decide if any additional evidence submitted, or witnesses called, by the Investigating Officer and Subject Member are proportionate and directly relevant to the complaint;
- 9.5.4 Identify any additional witnesses they wish to hear from;
- 9.5.5 Determine timescales for the submission of any relevant further information in advance of the hearing;
- 9.5.6 Finalise the date of the hearing, taking into account requests from the Parties for extension and any pre-hearing matters still to be resolved;
- 9.5.7 Any other matters considered relevant.

9.6 This pre-hearing process may be conducted in writing and/or through a meeting, involving the parties where appropriate. If a meeting is required, it will not be in public, will not represent a formal meeting of the Hearing Sub-Committee, and the merits of the complaint will not be discussed. The outcome of any pre-hearing meeting in terms of directions for the hearing will be sent to the Parties in writing as soon as practicable.

During the hearing

- 9.7 The Hearing Sub-Committee may exclude the press and public from the hearing where it appears likely that confidential or exempt information will be disclosed and the public interest in withholding the information outweighs the public interest in disclosing the information to the public.
- 9.8 The Investigating Officer will present their report and make representations to support their conclusions.
- 9.9 The Complainant may make a statement to support their complaint.
- 9.10 The Hearing Sub-Committee and Subject Member may ask questions of the Investigating Officer, with the Independent Person able to raise points for clarification and suggest areas for exploration by the Hearing Sub-Committee.
- 9.11 The Investigating Officer will ask questions of any witnesses they have called in turn.
- 9.12 The Hearing Sub-Committee and Subject Member may ask questions of any witnesses called by the Investigating Officer, with the Independent Person able to raise points for clarification and suggest areas for exploration by the Hearing Sub-Committee.
- 9.13 The Subject Member may make representations to support their response to the complaint.
- 9.14 The Hearing Sub-Committee and Investigating Officer may ask questions of the Subject Member, with the Independent Person able to raise points for clarification and suggest areas for exploration by the Hearing Sub-Committee.
- 9.15 The Subject Member will ask questions of any witnesses they have called in turn.
- 9.16 The Hearing Sub-Committee and Investigating Officer may ask questions of any witnesses called by the Subject Member, with the Independent Person able to raise

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

9.17 The Parties may each make a concluding statement in the following order: Investigating Officer, Complainant, Subject Member.

9.18 The Independent Person will be invited to give their views and raise any further points of clarification, which the Hearing Sub-Committee must have regard to.

9.19 The Hearing Sub-Committee will then withdraw to consider the case.

9.20 If the Independent Person withdraws with the Hearing Sub-Committee, they will not take part in any decision making as they are not part of the formal decision-making process. They will ensure that any views they give to the Hearing Sub-Committee are also conveyed back to the full meeting.

9.21 Any officer who retires with the Hearing Sub-Committee is there to advise on matters of procedure and law and any advice given must be conveyed back to the full meeting.

9.22 The Hearing Sub-Committee may conclude that the Subject Member did **not** breach the Code of Conduct, and, if so, dismiss the complaint.

9.23 If the Hearing Sub-Committee concludes that the Subject Member **did** breach the Code of Conduct, the Chairman will inform the Parties of this finding and the Hearing Sub-Committee will then consider what action, if any, should be taken.

9.24 The Investigating Officer and the Subject Member will be invited to make representations on the question of sanctions.

9.25 The Hearing Sub-Committee will, after consulting the Independent Person, determine what action, if any, to take (or recommend in the case of a parish councillor) in respect of the matter.

The Member may be represented at the hearing by a friend or legal representative.

10 Sanctions

8.1—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.

8.2—The Monitoring Officer will notify the Parties in writing of the directions for the hearing.

8.3—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.

8.4—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.

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~~8.5—The Complainant will have the right to make a statement in support of their complaint.~~

~~8.6—The Members of the Hearing Sub-Committee and the Member may ask questions of the Investigating Officer and any witnesses called.~~

~~8.7—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.~~

~~8.8—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.~~

~~8.9—The Parties may each make a concluding statement.~~

~~8.10—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.~~

~~8.11—The Hearing Sub-Committee may conclude that the Member did not fail to comply with the Code of Conduct, and so dismiss the complaint.~~

~~8.12—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.~~

~~8.13—The Investigating Officer and the Member will be invited to make representations on the question of sanctions.~~

~~8.14—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~~

~~10.1 At the end of the hearing, the Chairman will announce the decision of the Hearing Sub-Committee in summary form.~~

~~9.10.2 The Council has delegated to the Hearing Sub-Committee such of its powers to take action in respect of individual members of the Council as may be necessary to promote and maintain high standards of conduct. The Hearing Sub-Committee may therefore impose (or, in the case of a parish, town or city councillor, recommend) one or more of the sanctions set out in [Schedule 1](#).~~

~~10.11 Decision~~

~~10.11.1 At the end of the hearing, the Chairman will announce the decision of the Hearing Sub-Committee in summary form.~~

~~10.211.2 The Monitoring Officer will send the Parties, and where appropriate the relevant parish council, a formal decision notice, which will be published on the Council's website and made available for public inspection.~~

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

11.12 Revision of and departure from these arrangements

11.12.1 The Council may by resolution agree to amend these the arrangements set out in this Protocol, and has delegated to the Monitoring Officer, Assessment Sub-Committee and the Hearing Sub-Committee, following consultation with an Independent Person, the right to depart from these arrangements where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

12.13 Appeals

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

Local Government and Social Care Ombudsman

Tel. 0300 061 0614

12.1

13.14 Confidentiality

14.1 All information regarding the complaint will remain confidential until determined otherwise by the Monitoring officer, Assessment Sub-Committee or Hearing Sub-Committee. Except where confidentiality has been agreed by the Monitoring Officer, Assessment or Hearing Sub-Committee under paragraph 3.7, the published minutes of any Sub-Committee meetings will include details of the complaints discussed.
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Schedule 1 – Sanctions

1. Censure

Protocol 11
Last Updated 9 July 2019 (in force 1 Jan 2020)

- 1.1 Censure and report to the Council or relevant Parish Council; and/or
- 2. Removal from Committees, Sub-Committees, Cabinet and Outside Bodies**
- 2.1 Recommend to the Member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that the Member is removed from any Committee or Sub-Committee of the Council;
- 2.2 Recommend to the Leader of the Council that the Member is removed from the Cabinet, or removed from particular portfolio responsibilities;
- 2.3 Remove the Member from any or all outside appointments to which they has been appointed or nominated by the Council or relevant Parish Council.
- 3. Training**
- 3.1 Instruct the Monitoring Officer to arrange training for the Member.
- 4. Publish**
- 4.1 Publish its findings in respect of the Member's conduct in the minutes of the Council or relevant Parish Council.

Note:

In the case of R v Broadland District Council ex parte Lashley the Court of Appeal recognised that it was within the Council's powers to take action that was calculated to facilitate and was conducive or incidental to, the council's functions (1) of maintaining its administration and internal workings in a state of efficiency and (2) of maintaining and furthering the welfare of its employees.

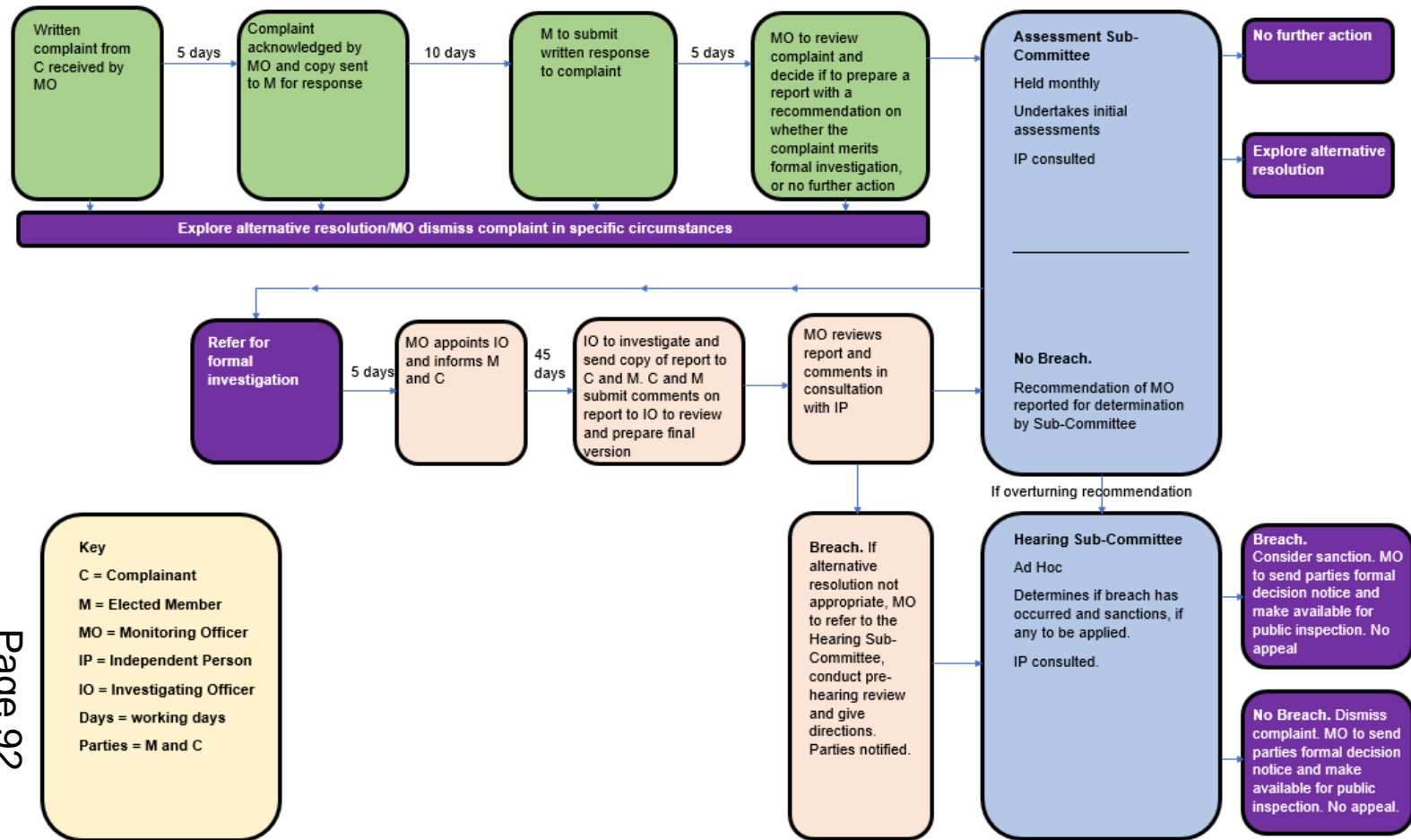
This may enable a Hearing Sub-Committee to impose restrictions on a member for the purpose of securing the efficient and effective discharge of the Council's functions. These might, for instance, include the withdrawal of certain facilities, such as a computer, e-mail and/or internet access, or exclusion from certain parts of the council's premises, provided that the measures do not interfere with the democratic process. However, this may not be used as a punitive measure nor, in particular, to justify the suspension or disqualification of a member.

Legal advice will need to be taken on the extent to which this potential option may be available in the particular circumstances of each case.

Protocol 11 Schedule 2 – Flowchart of arrangements for dealing with Code of Conduct Complaints under the Localism Act 2011

For full details of each stage, refer to the main protocol.

Commented [HP36]: Flowchart to be updated following approval of the Protocol by Standards Committee.



**Wiltshire Council
Constitution
Protocol 11
Arrangements for dealing
with Code of Conduct
complaints under the
Localism Act 2011**

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PROTOCOL 11

ARRANGEMENTS FOR DEALING WITH CODE OF CONDUCT COMPLAINTS UNDER THE LOCALISM ACT 2011

1 Context

- 1.1 These arrangements are made under Section 28 of the Localism Act 2011. They set out the process for dealing with a complaint that an elected or co-opted member of Wiltshire Council, or of a parish, town or city council within its area, has failed to comply with their Code of Conduct when acting in their official capacity.
- 1.2 A flowchart of the complaints processed is attached at [Schedule 2](#).
- 1.3 These arrangements are subject to the Council's [procedures](#) for dealing with unreasonable and vexatious communications and unwanted behaviour.
- 1.4 The Monitoring Officer will determine as a preliminary issue whether a complaint relates to the Code of Conduct and is to be dealt with under these arrangements. Where a complaint is outside the scope of this Protocol, the Complainant will be directed to the relevant procedure as appropriate.
- 1.5 Where appropriate, the Monitoring Officer will encourage complainants to explore whether the matter can be resolved without the need to submit a formal complaint under this process.
- 1.6 Where a complaint could, under the Localism Act 2011, also be assessed by another local authority, the Monitoring Officers will agree which authority will deal with the complaint.

2 Interpretation

- 2.1 'Subject Member' means a member or co-opted member of Wiltshire Council, or of a parish, town or city council within its area, against whom a complaint has been made under the Code of Conduct.
- 2.2 'Complainant' means the individual who has submitted a complaint against a Subject Member.
- 2.3 'Council' means Wiltshire Council.
- 2.4 'Investigating Officer' means the person appointed by the Monitoring Officer to undertake an investigation of an allegation of misconduct by a Subject Member.
- 2.5 'The Monitoring Officer' is a senior officer of the authority who has statutory responsibility for maintaining the register of members' interests and who is responsible for administering the arrangements for dealing with complaints of member misconduct.

It includes any officer nominated by the Monitoring Officer to act on his or her behalf in that capacity.

- 2.6 'Independent Person' means a person appointed under Section 28(7) of the Localism Act 2011:
- 2.6.1 whose views must be sought and taken into account before a decision is made on an allegation of Subject Member misconduct under these arrangements.
 - 2.6.2 who may be consulted by the Subject Member about the complaint.
- 2.7 In order to avoid any conflict of interest, at least two Independent Persons will be allocated to each complaint: One to advise and assist the Monitoring Officer, Assessment Sub-Committee and Hearing Sub-Committee as appropriate, and the other to be available for consultation in confidence by the Subject Member. The Independent Person assigned to the Subject Member can answer questions regarding the complaints process, offer an impartial view and may, where appropriate, suggest options for resolving the matter informally.
- 2.8 'Parish Council' means a parish, town or city council within the area of Wiltshire Council.
- 2.9 'Code of Conduct' means the Code of Conduct for Members which the Council and Parish Councils are required to adopt under Section 27 of the Localism Act 2011.
- 2.10 'Parties' includes the Complainant, Member and the Investigating Officer.
- 2.11 The 'Assessment Sub-Committee' is a sub-committee of the Council's Standards Committee appointed to undertake the assessment of complaints and the consideration of investigation reports under sections 6 and 8 of these arrangements respectively when requested to by the Monitoring Officer.
- 2.12 The 'Hearing Sub-Committee' is a sub-committee of the Council's Standards Committee appointed to determine complaints of Subject Member misconduct under these arrangements. The Assessment and Hearing Sub-Committees shall operate in accordance with any procedural arrangements agreed by the Standards Committee.
- 2.13 'Valid receipt' means formal receipt of a complaint and any associated information necessary for processing that complaint.
- 2.14 Where a complaint is made against a member of a Parish Council the Clerk to the Parish Council will be notified of the complaint, the date of any hearing and the outcome of the matter.
- 2.15 Documents sent by post will be deemed to have been received by the Parties on the second day after the date of posting.

3 Making a complaint

- 3.1 A complaint regarding a Member under their council's Code of Conduct should be submitted in writing on the appropriate Wiltshire Council form available digitally from its website at this [link](#) and in hard copy from Council offices. The complaint should be addressed to the Monitoring Officer (County Hall, Trowbridge, BA14 8JN or MonitoringOfficer@wiltshire.gov.uk).

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

- 3.10 At any time during the complaints process the Subject Member may seek advice and assistance in connection with the complaint from a friend or professional legal adviser, in confidence, and/or consult the Independent Person, where one is assigned to them.
- 3.11 Where a Complainant wishes to withdraw their complaint, the Monitoring Officer will take into account the following considerations:
- 3.11.1. The Complainant's reasons for wishing to withdraw the complaint;
 - 3.11.2. Is the complaint such that action can be taken on it, such as an investigation, without the Complainant's participation;
 - 3.11.3. Does the public interest in taking some action on the complaint outweigh the Complainant's wish to withdraw it.

4 Initial assessment

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

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

5 Alternative resolution

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

6 Assessment Sub-Committee

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

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

7 Investigation

- 7.1 If the Assessment Sub-Committee decides, taking into account paragraph 6.3, that a complaint merits formal investigation, the Monitoring Officer will appoint an Investigating Officer within five working days of the decision notice to investigate and inform the Parties of the appointment.
- 7.2 The Investigating Officer will investigate the complaint in accordance with guidelines produced by the Monitoring Officer. They will send a copy of the investigation report, including all documents relied upon as evidence, to the Parties, in confidence, within 35 days of the notification of the Investigating Officer's appointment.
- 7.3 The Parties will be invited to submit any written comments on the report to the Investigating Officer within working ten days of the date on which the report is sent to them. This provides a total of 45 days for the investigation process. The Investigating Officer will then amend their report or incorporate any comments within it as appropriate, before submitting it to the Monitoring Officer.

8. Consideration of Investigating Officer's report

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

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

9 Hearing

- 9.1 A hearing will be held within 20 days of the date on which the Monitoring Officer refers the matter to the Hearing Sub-Committee for determination, subject to reasonable requests from the Parties for an extension, or other reasons for delay, as determined by the Monitoring Officer.

Before the hearing

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

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

During the hearing

- 9.7 The Hearing Sub-Committee may exclude the press and public from the hearing where it appears likely that confidential or exempt information will be disclosed and the public interest in withholding the information outweighs the public interest in disclosing the information to the public.
- 9.8 The Investigating Officer will present their report and make representations to support their conclusions.
- 9.9 The Complainant may make a statement to support their complaint.
- 9.10 The Hearing Sub-Committee and Subject Member may ask questions of the Investigating Officer, with the Independent Person able to raise points for clarification and suggest areas for exploration by the Hearing Sub-Committee.
- 9.11 The Investigating Officer will ask questions of any witnesses they have called in turn.
- 9.12 The Hearing Sub-Committee and Subject Member may ask questions of any witnesses called by the Investigating Officer, with the Independent Person able to

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

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

10 Sanctions

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

10.2 The Council has delegated to the Hearing Sub-Committee such of its powers to take action in respect of individual members of the Council as may be necessary to promote and maintain high standards of conduct. The Hearing Sub-Committee may therefore impose (or, in the case of a parish, town or city councillor, recommend) one or more of the sanctions set out in [Schedule 1](#).

11 Decision

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

11.2 The Monitoring Officer will send the Parties, and where appropriate the relevant parish council, a formal decision notice, which will be published on the Council's website and made available for public inspection.

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

12 Revision of and departure from these arrangements

12.1 The Council may by resolution agree to amend the arrangements set out in this Protocol, and has delegated to the Monitoring Officer, Assessment Sub-Committee and the Hearing Sub-Committee, following consultation with an Independent Person, the right to depart from these arrangements where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

13 Appeals

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

[Local Government and Social Care Ombudsman](#)

Tel. 0300 061 0614

14 Confidentiality

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

Schedule 1 – Sanctions

- 1. Censure**
 - 1.1 Censure and report to the Council or relevant Parish Council; and/or
- 2. Removal from Committees, Sub-Committees, Cabinet and Outside Bodies**
 - 2.1 Recommend to the Member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that the Member is removed from any Committee or Sub-Committee of the Council;
 - 2.2 Recommend to the Leader of the Council that the Member is removed from the Cabinet, or removed from particular portfolio responsibilities;
 - 2.3 Remove the Member from any or all outside appointments to which they has been appointed or nominated by the Council or relevant Parish Council.
- 3. Training**
 - 3.1 Instruct the Monitoring Officer to arrange training for the Member.
- 4. Publish**
 - 4.1 Publish its findings in respect of the Member's conduct in the minutes of the Council or relevant Parish Council.

Note:

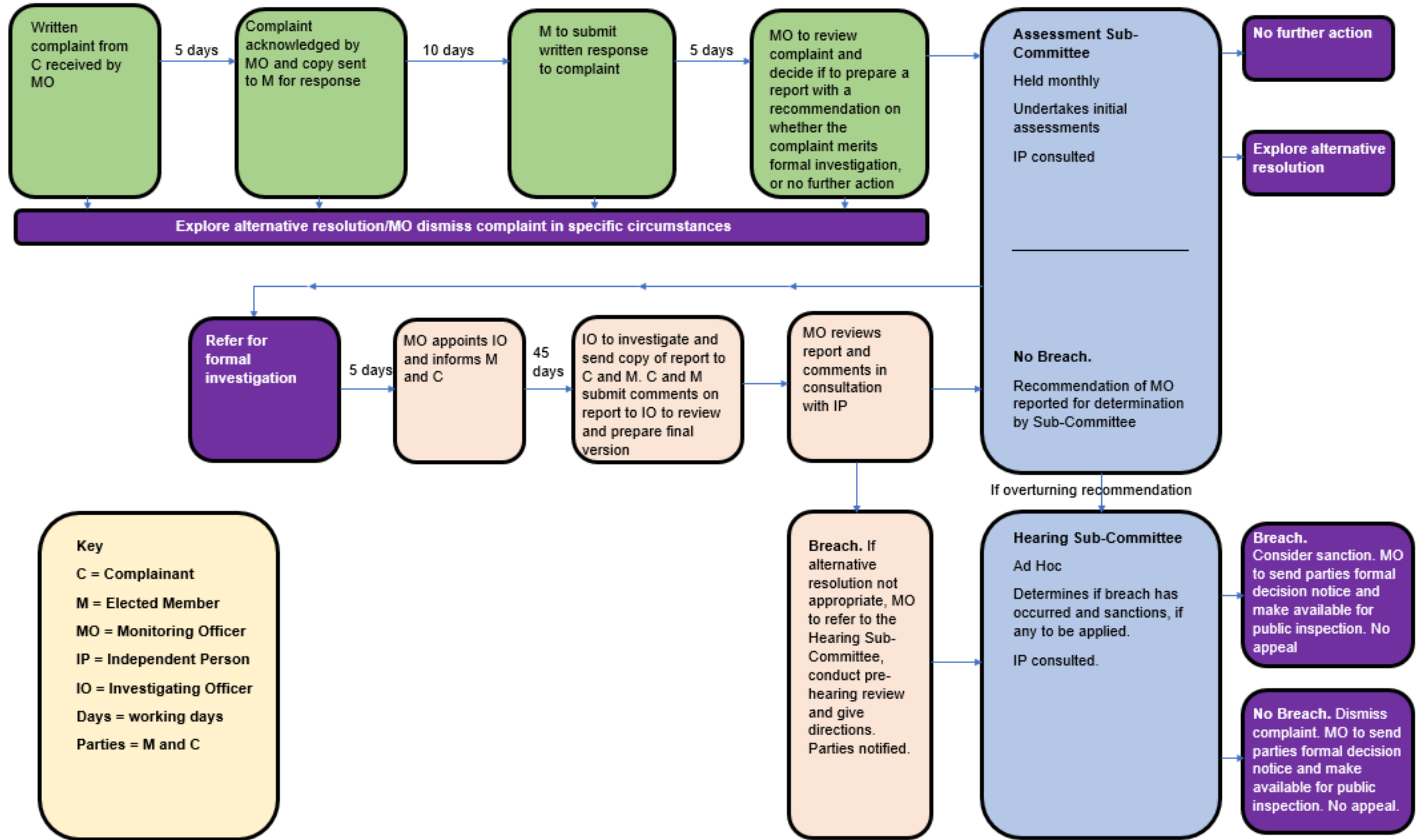
In the case of R v Broadland District Council ex parte Lashley the Court of Appeal recognised that it was within the Council's powers to take action that was calculated to facilitate and was conducive or incidental to, the council's functions (1) of maintaining its administration and internal workings in a state of efficiency and (2) of maintaining and furthering the welfare of its employees.

This may enable a Hearing Sub-Committee to impose restrictions on a member for the purpose of securing the efficient and effective discharge of the Council's functions. These might, for instance, include the withdrawal of certain facilities, such as a computer, e-mail and/or internet access, or exclusion from certain parts of the council's premises, provided that the measures do not interfere with the democratic process. However, this may not be used as a punitive measure nor, in particular, to justify the suspension or disqualification of a member.

Legal advice will need to be taken on the extent to which this potential option may be available in the particular circumstances of each case.

Protocol 11 Schedule 2 – Flowchart of arrangements for dealing with Code of Conduct Complaints under the Localism Act 2011

For full details of each stage, refer to the main protocol.



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 COMMITTEE

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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 the a Review Assessment of a complaint by the Sub-Committee:

- ⊖ **'Subject Member/Member'** means a member of Wiltshire Council, or of a parish, town or city council within the Wiltshire ~~Local Authority~~ Council area, against whom a complaint has been made under the relevant council's Code of Conduct.
- ⊖ **'Complainant'** means the person(s) who ~~have~~ has 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 ~~o~~ 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 Subject Member about the complaint.

- ⊖ **Assessment** means a review of the complaint, ~~and~~ any written response by the Subject Member and other relevant information to consider ~~whether on the papers the complaint merits a formal investigation what action, if any, is appropriate~~ as set out in ~~paragraph 4.1 and the following provisions of Protocol 112 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 **Assessment Sub-Committee** is a sub-committee of the Council's Standards Committee appointed to make determinations under sections 64 and 6 of the arrangements in Protocol 112 of the Constitution. This can include voting and co-opted non-voting members of the Standards Committee.~~
- ⊖ The **Hearing Sub-Committee** is a sub-committee of the Council's Standards Committee appointed to determine complaints of member misconduct under section 9 of the arrangements in Protocol 112 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.
- Protocol 11 means Protocol 11 – Arrangements for Dealing with Code of Conduct Complaints, in Wiltshire Council's Constitution.
- ⊖

3. The Assessment

- 3.1. The Assessment is dealt with on the ~~papers information presented to the Assessment Sub-Committee~~ and is not to be treated as a hearing of the complaint itself, which ~~is undertaken by the Hearing Sub-Committee and~~ can only be convened after an investigation has been concluded and a decision has been made under paragraphs ~~8.4 and 8.76.1 of the arrangements for dealing with Code of Conduct Complaints Protocol 11~~ 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 ~~a~~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~~Assessment, 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 ~~will be informed of their the~~ decision ~~subsequently~~.
- 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 indicated~~ whether or not they ~~intend to will~~ attend, the ~~a~~Assessment will proceed in their absence. ~~As it is an~~As the Assessment ~~of a complaint is undertaken on the papers primarily on the written evidence provided to the Sub-Committee~~, 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 ~~A~~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 a~~ 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. ~~Sub-Committee~~ 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 being 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, or 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~~ accepted and taken into account if it 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. To be considered under Protocol 11, a complaint must meet~~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 set out under paragraphs 3.4 and 4.2 of Protocol 11 the local assessment criteria, namely whether:~~

~~5.10:~~ 3.4

~~—“~~

- ~~a) the complaint is about the conduct of a member of a council within the area of Wiltshire Council;~~
- ~~a) the member was a member at the time of the incident giving rise to the complaint;~~
- ~~b) 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;.~~
- ~~c) a Code of Conduct is in force for the relevant council and provided;~~

~~d) the matters giving rise to the complaint would, if proven, be capable of breaching that Code.~~

a) The complaint is regarding a member of the Council, or a member of a Parish Council within the area of Wiltshire Council;

b) They were a member, and were acting in their official capacity (rather than in their private capacity), at the time of the incident giving rise to the complaint;

c) The Subject Member remains a member of the relevant council, or, if not, there are exceptional circumstances to justify a decision that it is in the public interest to consider the complaint;

d) A Code of Conduct for the relevant council is in force.”

4.2

a) “The complaint is ‘out of time’ (see paragraph 3.2);

b) Insufficient information has been provided to assess whether a breach of the Code of Conduct has potentially occurred (see paragraph 3.3);

c) The complaint does not meet one or more of the initial tests set out at paragraph 3.4;

d) The complaint is submitted anonymously but the allegations are not exceptionally seriousness in nature (see paragraph 3.6);

e) The Complainant requests that their identity be withheld from the Subject Member, but a serious risk to the Complainant’s safety has not been demonstrated (see paragraph 3.7);

f) The same, or substantially the same, incident has been the subject of a previous Code of Conduct complaint that has either been determined or has been referred to the Assessment Sub-Committee;

g) The complaint is essentially regarding the actions of the relevant council as a whole, rather than about an individual members’ conduct;

h) It would not be in the public interest to proceed as defined under paragraph 4.4.”

5.11. If those tests are met, the Sub-Committee will consider whether, if proven, the alleged conduct would **not** reach the threshold of breaching of the Code of Conduct, and it would therefore **not** be in the public interest to take further action having mind to the efficient use of resources.

5.12. The Assessment Sub-Committee will also consider if the tests set out in paragraph 6.3 of Protocol 11 are met:

“6.3 Complaints will not normally be referred for investigation where the Subject Member has offered an apology, a reasonable explanation of the issues, or where the Assessment Sub-Committee considers that the matter can reasonably be addressed by other means. Investigation is normally reserved for serious complaints where alternative options for resolution are not considered appropriate. Investigation may not be appropriate where the Subject Member is seriously ill.”

~~5.11-5.13. If the Sub-Committee are-is **not** satisfied that the-the criteria above in-a-e above are met, the-complaint-it will be assessed as requiring no further action-determine that no further action should be taken on the complaint.~~

~~5.14.~~ -If the Sub-Committee **are is** satisfied that ~~a-e in para 5.7 above~~ the criteria above are met, ~~they it 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.~~ will determine:

- a) To refer the complaint to the Monitoring Officer for investigation; or
- b) To refer the complaint to the Monitoring Officer for alternative resolution (except where this has already been attempted).

~~5.12.~~ _____

~~5.13.~~ **5.15.** Before making any decision, the Sub-Committee ~~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-~~i~~Investigation

7.1. If-, following ~~an the~~ investigation of a complaint under paragraph 7 of Protocol 11, 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 will 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 set out above, 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.~~

~~7.6. If Having considered if these 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.~~decided

- a) That no further action should be taken on the complaint;
- b) To refer the complaint to the Monitoring Officer for investigation;
- c) To refer the complaint to the Monitoring Officer for alternative resolution (except where this has already been attempted).

~~8.7.~~ The Sub-Committee will request and receive the views of an Independent ~~P~~person in person or in writing at the beginning of their discussion.

DRAFT

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 the Assessment of a complaint by the Sub-Committee:

- **'Subject Member'** means a member of Wiltshire Council, or of a parish, town or city council within the Wiltshire Council area, against whom a complaint has been made under the relevant council's Code of Conduct.
- **'Complainant'** means the person(s) who has 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 Subject Member about the complaint.

- **Assessment** means a review of the complaint, any written response by the Subject Member and other relevant information to consider what action, if any, is appropriate as set out in Protocol 11.
- **'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 **'Assessment Sub-Committee'** is a sub-committee of the Council's Standards Committee appointed to make determinations under section 6 of the arrangements in Protocol 11. This can include voting and co-opted non-voting members of the Standards Committee.
- The **'Hearing Sub-Committee'** is a sub-committee of the Council's Standards Committee appointed to determine complaints of member misconduct under section 9 of the arrangements in Protocol 11.
- The **'Constitution'** means the Constitution of Wiltshire Council, which includes rules on public participation at committees and the code of conduct complaints procedure.
- **Protocol 11** means Protocol 11 – Arrangements for Dealing with Code of Conduct Complaints, in Wiltshire Council's Constitution.

3. The Assessment

- 3.1. The Assessment is dealt with on the information presented to the Assessment Sub-Committee and is not to be treated as a hearing of the complaint itself, which is undertaken by the Hearing Sub-Committee and can only be convened after an investigation has been concluded and a decision has been made under paragraphs 8.4 and 8.7 of Protocol 11 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 Assessment, 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 the parties will be informed of the decision subsequently.
- 4.3. If a party has informed the Council that they do not intend to attend the Sub-Committee meeting, or have not indicated whether or not they will attend, the

assessment will proceed in their absence. As the Assessment of a complaint is undertaken primarily on the written evidence provided to the Sub-Committee, 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 a 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 being 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, or refer for alternative resolution.
- 5.5. The reports will also include 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 accepted and taken into account if it 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. To be considered under Protocol 11, a complaint must meet the tests set out under paragraphs 3.4 and 4.2 of Protocol 11, namely:

3.4

- a) *“The complaint is regarding a member of the Council, or a member of a Parish Council within the area of Wiltshire Council;*
- b) *They were a member, and were acting in their official capacity (rather than in their private capacity), at the time of the incident giving rise to the complaint;*
- c) *The Subject Member remains a member of the relevant council, or, if not, there are exceptional circumstances to justify a decision that it is in the public interest to consider the complaint;*
- d) *A Code of Conduct for the relevant council is in force.”*

4.2

- a) *“The complaint is ‘out of time’ (see paragraph 3.2);*
- b) *Insufficient information has been provided to assess whether a breach of the Code of Conduct has potentially occurred (see paragraph 3.3);*
- c) *The complaint does not meet one or more of the initial tests set out at paragraph 3.4;*
- d) *The complaint is submitted anonymously but the allegations are not exceptionally seriousness in nature (see paragraph 3.6);*
- e) *The Complainant requests that their identity be withheld from the Subject Member, but a serious risk to the Complainant’s safety has not been demonstrated (see paragraph 3.7);*
- f) *The same, or substantially the same, incident has been the subject of a previous Code of Conduct complaint that has either been determined or has been referred to the Assessment Sub-Committee;*
- g) *The complaint is essentially regarding the actions of the relevant council as a whole, rather than about an individual members’ conduct;*
- h) *It would not be in the public interest to proceed as defined under paragraph 4.4.”*

- 5.11. If those tests are met, the Sub-Committee will consider whether, if proven, the alleged conduct would **not** reach the threshold of breaching of the Code of Conduct, and it would therefore **not** be in the public interest to take further action having mind to the efficient use of resources.

- 5.12. The Assessment Sub-Committee will also consider if the tests set out in paragraph 6.3 of Protocol 11 are met:

“6.3 Complaints will not normally be referred for investigation where the Subject Member has offered an apology, a reasonable explanation of the issues, or where the Assessment Sub-Committee considers that the matter can reasonably be addressed by other means. Investigation is normally reserved for serious complaints where alternative options for resolution are not considered appropriate. Investigation may not be appropriate where the Subject Member is seriously ill.”

5.13. If the Sub-Committee is **not** satisfied that the criteria above are met, it will determine that no further action should be taken on the complaint.

5.14. If the Sub-Committee **is** satisfied that the criteria above are met, it will determine:

- a) To refer the complaint to the Monitoring Officer for investigation; or
- b) To refer the complaint to the Monitoring Officer for alternative resolution (except where this has already been attempted).

5.15. 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 the investigation of a complaint under paragraph 7 of Protocol 11, 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 will present a report for each complaint requiring assessment.

Taking into consideration the evidence, namely the original complaint, response of the Subject Member and any relevant additional material submitted, the Sub-Committee will then apply the tests set out above.

6. Having considered if these criteria are met, the Sub-Committee will decided
 - a) That no further action should be taken on the complaint;
 - b) To refer the complaint to the Monitoring Officer for investigation;
 - c) To refer the complaint to the Monitoring Officer for alternative resolution (except where this has already been attempted).
7. The Sub-Committee will request and receive the views of an Independent Person in person or in writing at the beginning of their discussion.

Wiltshire Council

Standards Committee

2 July 2024

Recommendations from the Constitution Focus Group on Proposed Changes to the Constitution

Purpose of Report

1. This report asks the Standards Committee to consider proposed changes to the following section of the Constitution:
 - Part 10 – Contract and Procurement Rules
2. The Standards Committee is asked to make recommendations as it considers appropriate to Full Council.

Background

3. The Standards Committee has responsibility for oversight of the Council's constitution and making recommendations to Council.
4. The Standards Committee has established the Constitution Focus Group to review sections of the Constitution and present it with proposals to consider.
5. The Focus Group met on 10 June, and 24 June 2024 to consider the above sections of the Constitution.

Relevance to the Council's Business Plan

6. Changes are required to be made to Part 10 of the Council's Constitution (Procurement and Contract Rules) to comply with incoming UK procurement legislation and the proposed changes support the Council's business plan in various ways set out below.
7. **Section 1 - Empowered People and Section 2 – Resilient Society.** Much of the support, advice, accommodation and services etc used by the residents of Wiltshire is obtained through contracts that have been awarded as result of a procurement process. In order that those processes are of good quality and compliant to relevant UK procurement legislation and policy, there is a need to ensure that Part 10 is current and reflective of relevant changes. Failure to do so could mean that our procurement and contracting processes are not compliant which could open the Council to costly and time-consuming challenges. Dealing with such challenges could create a risk of disruption to service delivery. Ensuring that the right changes happen at the right time would support sections 1 and 2 of the business plan.
8. **Section 3 – Thriving Economy.** New UK procurement law sets out clear expectations around engagement with Small to Medium Enterprises (SMEs) and how procurement activity can improve their participation in bidding for contracts when advertised. The proposed changes to Part 10 seek to ensure the Council will be supporting SMEs to

participate in procurement processes which in turn should support local workforce development and associated benefits.

9. **Section 4 – Sustainable Environment.** The proposed changes to Part 10 seek to support the outcomes associated with a sustainable environment. Contracts awarded as part of procurement processes need to be conducted in accordance with the relevant UK procurement legislation to ensure that the Council is free to commence such processes and reduces the risk of challenge. Failure to do so could impact the speed at which the Council can award contracts that support the outcomes of achieving a sustainable environment.
10. **Section 5 – Wiltshire Council.** The proposed changes to Part 10 seek to ensure that our procurement activity aligns with the relevant UK procurement law, updated policies and ambitions in respect of value for money, social value, support of small and medium-sized enterprises, commercial and procurement delivery and skills and capability for procurement, which are set out in the National Procurement Policy Statement (currently under consultation). Doing so will seek to ensure that the Council's ambitions to continue to be a healthy organisation that is forward thinking and embracing change as well as helping to achieve expectations set out in respect of social value and tackling the climate emergency are supported.

Main Considerations

11. Part 10 was last updated in May 2019 to reflect practice and UK and European procurement law in force at that time.
12. When the UK exited from the European Union this triggered the need to review and implement new procurement legislation, which is due to come into force on the 28 October 2024.
13. As part of the creation of the new legislation, the Government set out its expectations in respect of transparency ambitions in public sector procurement and contract management. This is at the heart of the new legislation. The Council has, and is continuing to, update its processes and policies so that we are compliant with UK procurement law which brought about the need to review Part 10.
14. In addition to the need to review Part 10 to ensure compliance with the Procurement Act 2024, there was a need to consider updates to reflect current practice, to remove contradictions, and ensure that it did not contain unnecessary operational 'process' information and to ensure that it was future-proof as far as is reasonably practicable.
15. The Focus Group considered the changes at two meetings, and agreed a number of small changes subject to further circulation. The final document will be published in an agenda supplement.

Overview and Scrutiny Engagement

16. The Constitution Focus Group includes a representative from Overview and Scrutiny, and changes to all parts have been reviewed by its members.

Safeguarding Implications

17. There are no safeguarding implications.

Public Health Implications

18. There are no public health implications.

Procurement Implications

19. Ensuring that Part 10 represents UK procurement law will support the Procurement Team to deliver good quality, compliant procurement processes.

20. Failure to adopt the changes to Part 10 could see the Council either act outside of the Constitution or UK procurement law making the Council open to challenge.

Equalities Impact of the Proposal

21. There are no equalities implications.

Environmental and Climate Change Considerations

22. There are no environmental implications.

Workforce Implications

23. There are no workforce implications.

Risks that may arise if the proposed decision and related work is not taken

24. Failure to amend Part 10 of the Council's Constitution as recommended will mean:

- It references outdated UK and European law and policy therefore it will not be aligned with new and changing UK procurement legislation.
- The content is not reflective of current processes and good practice.
- The Council will not be acting in line with what it has set out in the Constitution in conducting its procurement activity in accordance with new and updated UK procurement legislation.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

25. No risks have been identified if the proposed actions are taken.

Financial Implications

26. There are no financial implications.

Legal Implications

27. Legal Services has collaborated with the Procurement Team in re-drafting Part 10 of the Council's Constitution, taking into consideration the current processes and those required by the imminent change in law.

28. Legal Services confirms that the decision being sought is in line with the Council's Constitution including budget and policy framework, the Financial Regulations and the incoming UK Legislation and guidance as it is drafted to date.

29. Failure to change our policies and processes in response to changes to the law could give rise to challenges which will present a cost and time pressure to the Council.
30. An increased risk of challenge is likely to cause disruption to service delivery while matters are concluded.
31. By adopting the proposed changes to Part 10 this will seek to ensure that the Council remains compliant with UK procurement law and sets out the expectations for officers when they are seeking to undertake procurement activity.

Options Considered

32. No other options were considered in respect of Part 10. The change in UK procurement law means that it is necessary to review and amend Part 10 of the Council's Constitution.

Proposals

33. To recommend Full Council approve changes to the following sections of the Constitution:
- Part 10 – Contract and Procurement Rules

Perry Holmes - Director, Legal and Governance (and Monitoring Officer)

Report Authors:

Deborah Bull, Head of Procurement

Kieran Elliott, Democracy Manager (Democratic Services)

Appendices:

Appendix 1a – Proposed Part 10 (clean version)

Appendix 1b – Proposed Part 10 (tracked changes)

Background Papers

None

Wiltshire Council

Standards Committee

2 July 2024

Appointment of Members to the Sub-Committees and Working Groups

Purpose of Report

1. To appoint the membership of the Standards Assessment Sub-Committee for the forthcoming year.
2. To confirm the terms of reference for the Constitution Focus Group and the standards representative on the Focus Group for the forthcoming year.

Background

3. Under paragraph 2.5.8.1 of Part 3B of the Constitution sets out that the Standards Committee will appoint an Assessment Sub-Committee to assess complaints in respect of complaints regarding the conduct of Members of Wiltshire Council, or Members of city, town, or parish councils under the Council's arrangements.
4. Under paragraph 2.5.10 of Part 3B of the Constitution the Standards Committee will appoint the members of the above Sub-Committee annually. The Sub-Committee will be responsible for electing its own Chair and Vice-Chair following its reappointment by the Committee.
5. The Constitution Focus Group is a cross party working group established by the Standards Committee to review the Constitution and make proposals for consideration by the Committee before they are recommended to Full Council.

Main Considerations

Assessment Sub-Committee

6. The Sub-Committee is comprised of five Members or Substitute Members of the Standards Committee, with all other Members or Substitute Members acting as substitutes for the Sub-Committee. Once appointed, up to two Co-opted Members of the Standards Committee attend the Sub-Committee on a rotating ad hoc basis.
7. The Sub-Committee is not subject to the requirements of political balance but is subject to a requirement of a maximum of four elected Members from any political group.
8. The terms of reference for the Sub-Committee are set out at Appendix A.
9. The current membership of the Sub-Committee is set out below:

Cllr Richard Britton
Cllr Ernie Clark (Vice-Chair)
Cllr Ruth Hopkinson (Chair)

Cllr Gordon King
Cllr Sam Pearce-Kearney

10. On 20 June 2024 the current Assessment Sub-Committee members of the Standards Committee were emailed requesting expressions of interest to be re-appointed to serve on the Standards Assessment Sub-Committee for 2024/25.
11. All of the current members as set out above had confirmed an interest to be re-appointed to serve on the Assessment Sub-Committee for 2024/25.

Constitution Focus Group

12. The terms of reference of the Focus Group are attached at Appendix B.
13. The membership includes representatives of each political group on the Council, as well as representatives of the Standards, Audit and Governance, and Overview and Scrutiny Management Committees, as well as the Chair of the Council.
14. The current representative appointed by the Standards Committee for 2023/24 is:

Cllr Richard Britton.
15. The Committee is requested to confirm the terms of reference of the Focus Group, and to select a member or substitute of the Committee to serve as the representative on it.

Safeguarding Implications

16. There are no safeguarding issues arising from this report.

Equalities Impact of the Proposal

17. There are no equalities impacts arising from this report.

Risk Assessment

18. There are no risk issues arising from this report.

Financial Implications

19. There are no financial implications arising from this report.

Public Health Impact of the Proposals

20. There are no public health impacts arising from this report.

Environmental Impact of the Proposals

21. There are no environmental impacts arising from this report.

Legal Implications

22. There are no legal implications.

Proposal

23. **To appoint five members to the Standards Assessment Sub-Committee for the forthcoming year as follows.**

24. **To agree the terms of reference for the Constitution Focus Group, and appoint a Standards Committee representative.**

Perry Holmes - Director, Legal and Governance

Report Author: Lisa Alexander, Senior Democratic Services Officer, 01722 434560,
lisa.alexander@wiltshire.gov.uk

Appendices

Appendix A – Terms of Reference of the Assessment Sub-Committee

Appendix B – Terms of Reference of the Constitution Focus Group

Background Papers

[Protocol 11 of the Constitution](#)

Appendix A - Standards Assessment Sub-Committee Terms of Reference

(Part 3B of the Constitution)

Assessment Sub-Committee

- 2.5.10 As it shall consider multiple complaints per meeting this Sub-Committee shall comprise 5 elected Members from among the Standards Committee and its substitutes, in case of conflicts arising. The Standards Committee will appoint the members annually. The Sub-Committee will elect a Chair and Vice-Chair at their first meeting following their reappointment by Standards Committee after the annual meeting of Council. The Sub-Committee may include up to 2 non-voting co-opted Members of the Standards Committee on an ad-hoc basis. All other members and substitutes of the Standards Committee will serve as substitutes for the Sub-Committee.
- 2.5.11 The above Sub-Committee is not subject to the requirements of political balance but is subject to a requirement of a maximum of 4 elected Members from any political group. The co-opted members serving on the Sub-Committee will be determined by the proper officer, who in this instance would be a Democratic Services Officer on behalf of the Monitoring Officer.
- 2.5.12 The above Sub-Committee shall meet on a monthly basis and make decisions on all Code of Conduct complaints in accordance with the Council's arrangements under [Protocol 11](#).
- 2.5.13 Members, including co-opted members, may not serve on the Hearing Sub-Committee for a complaint they have previously considered on the Assessment Sub-Committee.

Appendix B – Constitution Focus Group Terms of Reference

Function

To undertake the following:

- ongoing review work on the constitution as and when required;
- producing user friendly summaries of the relevant parts of the constitution for use by members of the public and members of the Council on request, and specifically to review the constitution in light of any changes in the legislation
- To consider the views of (as appropriate):
 - elected and co-opted members of the Council
 - officers
 - decision making bodies of the Council
 - town, parish and city councils and
 - members of the publicascertained through appropriate methods of communication and make appropriate recommendations
- To offer a councillor perspective on and accordingly to influence key issues within the constitution.
- To advise the Standards Committee of final recommendations on any changes to the constitution for consideration and onward recommendation to Council.

Membership

- (i) a member from each political group on the Council nominated by group leaders;

Conservative: Ashley O'Neill
Liberal Democrat: Ian Thorn
Independent: Graham Wright
Labour: Ricky Rogers

- (ii) a member or substitute of the Overview and Scrutiny Management Committee:
Jon Hubbard

- (iii) a member or substitute of the Audit and Governance Committee: **Stuart Wheeler**

- (iv) A member or substitute of the Standards Committee: **Richard Britton**

- (v) The Chairman of the Council: **Bridget Wayman**

And that appropriate Councillors and Officers are invited to attend as and when requested by the Focus Group or its Chair to assist it in its work.

Chair

A Chair will be selected annually by the Focus Group from among its membership.

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