

AGENDA

Meeting: Standards Review Sub-Committee
Place: The Kennet Room - County Hall, Trowbridge BA14 8JN
Date: Wednesday 3 August 2016
Time: 2.00 pm

Please direct any enquiries on this Agenda to Libby Beale, of Democratic Services, County Hall, Bythesea Road, Trowbridge, BA14 8JN , 01225 718214 or Elizabeth.beale@wiltshire.gov.uk

Membership:

Cllr Desna Allen
Cllr Trevor Carbin

Cllr Pip Ridout
Mr John Scragg (Non-voting)

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AGENDA

1 **Election of Chairman**

To elect a Chairman for this meeting only.

2 **Declarations of Interest**

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

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

- a) To note the procedure for the meeting.
- b) To note the local assessment criteria to be used in assessing the complaint.

4 **Exclusion of the Public**

To consider passing the following resolution:

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

Paragraph 1 - information relating to an individual

5 **Review of an Assessment Decision: Reference WC-ENQ00149** (*Pages 15 - 44*)

Report- *Page 15*

Appendix 1a- Complaint- *Page 17*

Appendix 1b- Supplementary Information- *Page 35*

Appendix 1c- Code of Conduct Paragraphs breached- *Page 37*

Appendix 1d- Subject Member Response- *Page 39*

Appendix 2- Initial Assessment- *Page 41*

Appendix 3- Request for Review- *Page 43*

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STANDARDS COMMITTEE

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

1 Purpose

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

2 Definitions

- 2.1 The following definitions describe the participants at and the subject matter of a Review:
 - **'Subject Member/Member'** means a member or a co-opted member of Wiltshire Council, or of a parish, town or city council within its area, against whom a complaint has been made under the Code of Conduct.
 - **'Complainant'** means the person(s) who have lodged a complaint against the conduct of a Member
 - **'Council'** means Wiltshire Council.
 - **'The Monitoring Officer'** is a senior officer of the authority who has statutory responsibility for maintaining the register of members' interests and who is responsible for administering the arrangements for dealing with complaints of member misconduct. It includes any officer nominated by the Monitoring Officer to act on his or her behalf in that capacity.
 - **'Committee Lawyer'** means the Council's Lawyer (including an external Lawyer instructed by the Council's Head of Legal Services) who is present at a Hearing to advise the Chairperson and the Members.
 - **'Committee Clerk'** means the Council's Officer who is present at a Hearing to take minutes and advise on procedure.
 - **'Independent Person'** means a person appointed under Section 28(7) of the Localism Act:
 - a) whose views must be sought and taken into account before a decision is made on an allegation of member misconduct under these arrangements;
 - b) who may be consulted by the Member about the complaint.
 - **Initial Assessment** means a review of the complaint and any written response by the subject member to consider whether on the papers the complaint merits a formal investigation as set out in paragraph 4.1 and following of Protocol 12 of the Wiltshire Council Constitution (Arrangements for dealing with Code of Conduct Complaints).

- **'Parish Council'** means a parish, town or city council within the area of Wiltshire Council.
- **'Code of Conduct'** means the code of conduct for members which the Council and Parish Councils are required to adopt under Section 27 of the Localism Act 2011.
- **'Parties'** includes the Complainant, Subject Member and the Investigating Officer (if applicable).
- **'Local Assessment Criteria'** are the arrangements are made under Section 28 of the Localism Act 2011. They set out the process for dealing with a complaint that an elected or co-opted member of Wiltshire Council or of a parish, town or city council within its area has failed to comply with their Code of Conduct.
- The **'Hearing Sub-Committee'** is a sub-committee of the Council's Standards Committee appointed to determine complaints of member misconduct under the arrangements of the local assessment criteria.
- The **'Review Sub-Committee (The Committee)'** is a sub-committee of the Council's Standards Committee appointed to review a decision of the Monitoring Officer under sections 4 and 6 of the local assessment criteria. This can include voting and non-voting members of the Standards Committee.
- The **'Constitution'** means the Constitution of Wiltshire Council, which includes rules on public speaking at committees and the code of conduct complaints procedure.

3 The Review

- 3.1 The Review Sub-Committee is a public body and as such the meeting shall take place in public.
- 3.1.1 The Committee may exclude the public from all or part of the Review where it considers it to be in the public interest to do so and pass a resolution in accordance Section 100A(4) of the Local Government Act 1972.
- 3.1.2 The Committee may require any person attending the Review who, in its opinion, is behaving in a disruptive manner, to leave the Review and may:
- a refuse to permit them to return;
 - b permit them to return only on such conditions as the Committee may specify;
- 3.2 Prior to the Review commencing, the Chairperson shall advise the parties of the procedure it proposes to follow at the Review.
- 3.3 In accordance with paragraphs 24-26 of Part 4 of the Constitution, speakers will be permitted a maximum of three minutes to make any statement.
- 3.4 Taking into consideration the documents provided, namely the original complaint, response of the subject member and any additional material submitted in the request for a review of the initial assessment, the Sub-Committee will then apply the tests required under paragraph 3 of the local assessment criteria, namely whether:

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

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

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

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

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

4 Documentation

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

5 Intervention

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

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

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

6 Failure of Parties to Attend Review

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

7 Decision

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

Review Procedure Summary

1. The Democratic Services Officer/Committee Clerk will request nominations for a Chairman for the Review
2. The Chairperson welcomes all those present and introduces the Review.
3. The Chairperson invites the Sub-Committee Members, Council Officers, the complainant (if present), and the subject member (if present) to introduce themselves.
4. The Chairperson outlines the Review Procedure as set out in the Agenda, makes any relevant announcements and asks for any declarations of interest.
5. The Sub-Committee can choose to pass a resolution to exclude the public from the rest of the meeting.
6. The Complainant and Subject Member are given the opportunity to make a brief statement to the Sub-Committee.
7. Taking into consideration the evidence, namely the original complaint, response of the subject member and any additional material submitted in the request for a review of the initial assessment, the Sub-Committee will then apply the tests required under paragraph 3 of the local assessment criteria, namely whether:
 - a) The complaint is about the conduct of a member of a council within the area of Wiltshire Council;
 - b) That the member was a member at the time of the incident giving rise to the complaint;
 - c) That the member remains a member of the relevant council at the time of the complaint;
 - d) That the complainant has provided a copy of the Code of Conduct of the relevant council;
 - e) That the matters giving rise to the complaint would, if proven, be capable of breaching that Code.
8. The Members of the Review Sub-Committee may withdraw, with the Independent Person, the Committee Lawyer and the Committee Clerk, to consider the case.
9. Depending on the outcome of 7. the sub-committee will consider whether, under the local assessment criteria, they feel the complaint should be referred for investigation or if no further action should be taken.
10. The sub-committee will then consider the initial assessment of the monitoring officer, and if in their view, on the basis of available information, it was reasonable.

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STANDARDS COMPLAINTS ASSESSMENT CRITERIA

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

The Review Committee will use the same approach and criteria.

Relevance

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

Alternative resolution

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

Initial Tests

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

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

Sufficiency of information

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

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

Seriousness of the Complaint

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

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

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

Length of Time Elapsed

6. A complaint will not be referred for investigation when it is made more than 20 working days from the date upon which the complainant became aware of the matter giving rise to the complaint.

Anonymous Complaints

Anonymous complaints will not be considered unless the Monitoring Officer is satisfied that there would otherwise be a serious risk to the complainant's personal safety, in which case the Monitoring Officer will decide how the complaint should be taken forward.

Multiple Complaints

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

Confidentiality

8. All information regarding the complaint will remain confidential until determined otherwise by the Monitoring Officer or Hearing Sub-Committee.

Withdrawing Complaints

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

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