

## 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 by the Standards Committee's Review Sub-Committee, when conducting a review of initial assessment decisions by the Monitoring Officer in respect of Code of Conduct complaints ( 'the Review').
- 1.2. The rules set out a framework for how Reviews are to be conducted and explain the role of the participants at the Review.

#### 2. Definitions

- 2.1 The following definitions describe the participants at and the subject matter of a Review:
  - **'Subject Member/Member'** means a member of Wiltshire Council, or of a parish, town or city council within the Wiltshire Local Authority area, against whom a complaint has been made under the Code of Conduct.
  - **'Complainant'** means the person(s) who have lodged a complaint against the conduct of a Member
  - **'Council'** means Wiltshire Council.
  - **'The Monitoring Officer'** is a senior officer of the authority who has statutory responsibility for maintaining the register of members' interests and who is responsible for administering the arrangements for dealing with complaints of member misconduct. It includes any officer nominated by the Monitoring Officer to act on his or her behalf in that capacity.
  - **'Democratic Services Officer'** means the Council's Officer who is present at a Review Sub-Committee meeting to take minutes and advise on procedure.
  - **'Independent Person'** means a person appointed under Section 28(7) of the Localism Act:
    - a) whose views must be sought and taken into account before a decision is made on an allegation of member misconduct under these arrangements;
    - b) who may be consulted by the Member about the complaint.
  - **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 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 **‘Review Sub-Committee’** is a sub-committee of the Council’s Standards Committee appointed to review a decision of the Monitoring Officer under sections 4 and 6 of the 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 Review**

- 3.1. The Review 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 6.4 of the arrangements for dealing with Code of Conduct Complaints referring the matter for hearing.
- 3.2. Information submitted in a request for a review should be focused solely upon the substantive allegations of the original complaint.. If new allegations are raised in the review request, then these shall be dealt with in one of the following ways, to be determined by the Monitoring Officer:-
- 3.2.1. The new allegations may be considered as part of the Review of the original complaint, but only if they relate to the original complaint and all parties, including if appropriate, the officer who carried out the initial assessment of the original complaint, have had an opportunity to comment on them.
  - 3.2.2. The Review of the original complaint may be postponed until there has been an initial assessment of the new complaints, so that, if appropriate, all of the complaints can be considered together.
  - 3.2.3. The new complaints may be the subject of separate assessment and be dealt with independently from the Review of the original complaint

### **4. Attendance at Meetings**

- 4.1. The Review Sub-Committee is a committee of the Council and as such the meeting shall take place in public, However, the Sub-Committee may exclude the public from all or part of the Review, by passing a resolution in accordance 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 likely that such a resolution would normally be appropriate at this stage in the process.

- 4.2. The Complainant and the Subject Member, as parties to the Review, would not be covered by such a resolution to exclude the public and press and may attend the Review Sub-Committee. However, the Sub-Committee will normally retire to consider 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 Review will proceed in their absence. As it is a review on the papers no adverse inference will be drawn from any parties' non-attendance at a meeting.
- 4.4. If a party has indicated an intention to attend the meeting, but is not present at the start of the meeting, the Review will proceed in the absence of that party, unless the Sub-Committee considers it necessary to adjourn the meeting to enable the party to attend and make their representations.
- 4.5. If a party does not intend to attend and speak to the meeting, they may submit short written representations that will be taken into account by the Sub-Committee 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, being someone other than the officer who made the initial assessment under review.

## **5. Procedure**

- 5.1. Prior to the Review commencing, the Chairman shall introduce the persons present and explain the procedure to be followed at the Review
- 5.2. The Complainant and the Subject Member ( or their representative) will be permitted up to three minutes to make any statement. If there is more than one complainant present, then, subject to the discretion of the Chairman, the maximum total time for statements by all complainants shall be three minutes. Any statements made should relate to the specific issues being considered by the Review Sub-Committee and should not raise any new issues or allegations.
- 5.3. No new documentation is to be introduced at the Sub-Committee meeting without the agreement of the Sub-Committee. New documentation should only be admitted if is considered by the Sub-Committee to be essential to its consideration of the issues in the Review.
- 5.4. The Sub-Committee may take into account written representations made by, or correspondence from, a party that have been received since the publication of the agenda, where it is considered that this will assist the Review.
- 5.5. No questioning of the parties will be permitted, other than by the Sub-Committee with the agreement of the Chairman, to seek clarification of any point that has been made

5.6. Following any statements by the parties, the Review Sub-Committee will normally withdraw, with the Independent Person(s), and relevant officers, to consider the case.

5.7. Taking into consideration the documents provided, 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 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 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.

5.8. 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.

5.9. 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.

5.10. In reaching its decision the Sub-Committee will have regard to the initial assessment reasoning and decision.

## **6. Decision**

6.1. The parties will be informed of the Sub-Committee's decision once it has been made and a full decision with written reasons shall be sent to the Complainant and Subject Member as soon as practicable thereafter.

## **Review Sub-Committee Meeting Procedure Summary**

1. The Democratic Services Officer will request nominations for a Chairman for the Review.
2. The Chairman welcomes all those present and introduces the Review.
3. If appropriate, the Chairman invites the Sub-Committee Members, Council Officers, the complainant (if present), and the Subject Member (if present) to introduce themselves.
4. The Chairman 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 determines whether to pass a resolution to exclude the press and the public from the rest of the meeting.
6. The Complainant and Subject Member are given the opportunity to make a statement to the Sub-Committee of up to three minutes for each party.
7. The Sub-Committee retires to consider their decision.
8. 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 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.
9. If the criteria in 8 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.
10. In reaching their decision the Sub-Committee will have regard to the initial assessment of the Monitoring Officer.