

## STANDARDS COMMITTEE

### PROCEDURAL RULES FOR REVIEWS OF DECISIONS BY MONITORING OFFICER TO DISMISS A CODE OF CONDUCT COMPLAINT FOLLOWING INVESTIGATION

#### 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 a decision by the Monitoring Officer to dismiss a Code of Conduct complaint, following his/her consideration of the Investigating Officer's report. ('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.
  - **Investigating Officer** means the officer appointed by the Monitoring Officer to carry out an investigation into the conduct of a Subject Member, pursuant to a Code of Conduct complaint under paragraph 5 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.
- **‘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 of the local assessment criteria.
- 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 Protocol 12 of the Council’s Constitution. 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 is dealt with on the papers and is not to be treated as a hearing into the complaint itself. A hearing which can only be convened if, after an investigation has been concluded, a decision has been made either under paragraph 6.4 of the arrangements for dealing with Code of Conduct Complaints to refer the matter for hearing, or this Review has determined that the matter should be referred for a hearing.

3.2. Information submitted in a request for a review should be focused only upon the substantive allegations of the original complaint and the evidence taken into account by the Monitoring Officer when reaching his/her decision on the Investigating Officer’s report. If new allegations are raised in the review request subsequent to that decision, then these shall be dealt with in one of the following ways, to be determined by the Monitoring Officer:

- The new allegations may be considered as part of the Review of the Monitoring Officer’s decision on the Investigating Officer’s report , but only if they relate to the original complaint and all parties, including if appropriate, the Monitoring Officer and Investigating Officer t, have had an opportunity to comment on them
- The new complaints may be the subject of separate assessment and be dealt with independently from this Review

### 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 Section 100A(4) of the Local Government Act 1972, where it considers there is likely to be disclosure of exempt information and 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 its decision and return to inform the parties of that decision.
- 4.3. If a party has informed the Council that it does not intend to attend the Sub-committee meeting, or has not given any indications as to whether or not it intends 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.
- 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 a representative of the Monitoring Officer, wherever possible being someone other than:
  - the officer who considered the Investigating Officer's report and made the decision to take no further action.
  - The officer who made the initial assessment on the complaint

## **5. Procedure**

- 5.1. Prior to the Review commencing, the Chairperson 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 a maximum of 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 it 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 Chairperson, to seek clarification of a comment that has been made

- 5.6. Following any statements by the parties, the Members of 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, the Review Sub-Committee shall determine one of the following:
- To uphold the decision of the Monitoring Officer to dismiss the complaint
  - To refer the complaint for hearing by the Hearing Sub-Committee
- 5.8. To refer the complaint to the Monitoring Officer to seek alternative resolution

## **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 Chairperson welcomes all those present and introduces the Review.
3. If appropriate, 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 to determine whether to pass a resolution to exclude the public from the rest of the meeting.
6. The Complainant and Subject Member are given the opportunity to make a brief statement to the Sub-Committee.
7. The Complainant and Subject Member are asked to leave the meeting whilst the Sub-Committee conducts the Review
8. Taking into consideration the evidence, including the Investigating Officer's Report, the Monitoring Officer's decision and the Complainant's request for a review of the Sub-Committee will then consider whether:
  - To uphold the decision of the Monitoring Officer to dismiss the complaint
  - To refer the complaint for hearing by the Hearing Sub-Committee
  - To refer the complaint to the Monitoring Officer to seek alternative resolution