

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 paragraph 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.”*

5.11. Complaints will be dismissed if the tests set out under paragraph 4.2 of Protocol 11 are met:

- 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.”*

*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.*

5.12. Following the application of those tests by the Monitoring Officer, 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.

5.13. The Assessment Sub-Committee will take into account paragraph 6.3 of Protocol 11:

“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.”

5.14. 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.

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

- 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).

5.16. 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.