

ITEM 17 - Appendix 2

PROCEDURES FOR THE ASSESSMENT AND REVIEW OF ALLEGATIONS OF BREACHES OF THE COUNCILLORS' CODE OF CONDUCT

Receipt of complaint and acknowledgement to complainant

1. Complaints will only be considered where the proper complaint form has been completed **in full**, whether electronically or in hard copy, including the screening questions.
2. Receipt of a completed form will be acknowledged within five working days. Notification that a complaint which has been submitted is incomplete and cannot be progressed will be notified within the same timescale.

Complainant requests to protect their identity

3. It is normal that Subject Members will have a right to know the name of the person who is complaining about them. The Monitoring Officer will consider any request made by the complainant to protect their identity; this will only be allowed in exceptional circumstances.
4. Where the Monitoring Officer agrees to the request, the complaint shall proceed on that basis.
5. Where the Monitoring Officer does not agree to the request, then the subsequent steps in this procedure shall be suspended until such time as it has been established whether the complainant is willing for the complaint to proceed on the basis that their identity shall not be protected.
6. In the event that the Monitoring Officer does not accept the request and the complainant is unprepared for their identity to be revealed to the Subject Member, then the complaint shall be dismissed. The complainant shall be notified within five working days of this decision.

Notification to the Subject Member

7. The Subject Member will also be notified of the complaint within five working days of receipt. They will be provided with:
 - (a) A summary of the complaint, including which part of the Members' Code of Conduct it is alleged they have breached;
 - (b) The name of the complainant, unless the Monitoring Officer has agreed to a request to protect their identity; and
 - (c) Their right to consult with an Independent Person. The definition of an Independent Person and the terms of any consultation with Subject Members is detailed in Appendix A.

8. The Subject Member may submit their comments about the complaint to the Monitoring Officer. Any comments must be in writing (by letter or email) and submitted within seven days of the member being sent the response by the Monitoring Officer.

Monitoring Officer Initial Consideration

9. The Monitoring Officer will consider whether the complaint relates to any other proceedings, such as court matters, that would make it inappropriate for consideration through the Councillor Complaints process. If the Monitoring Officer considers it would not be appropriate for consideration, the complainant will be advised as soon as practicable.
10. An *Independent Person Advisory Panel* will be made aware of the complaint and will recommend to the Monitoring Officer whether, in its view, the complaint is so serious that it should be escalated to the *Monitoring Officer Assessment Stage*. The Monitoring Officer will make a determination following consideration by the advisory panel.

Initial Screening Stage

11. The *Initial Screening Stage* will be undertaken by either the Monitoring Officer or by an officer within either the Legal or Democracy Services on behalf of the Monitoring Officer. Any final determination to not proceed with a complaint on the basis that it is subject to other investigatory proceedings, or to refer the complaint to a political group, will be made by the Monitoring Officer.
12. Subject to Paragraph 13, the decision following the *Initial Screening Stage* will be one of the following:
 - (a) To refer a matter to a political group, where the subject is a member of that group, on the basis that the complaint has the potential to be considered politically influenced. The grounds for this finding are detailed in Appendix B; or
 - (b) To progress the complaint to the *Monitoring Officer Assessment Stage*.
13. No decision shall be taken to refer a matter to a political group without first consulting the Independent Advisory Panel.
14. Where it has been determined to refer a complaint under paragraph 12(a), the complainant and the group will be notified within five days of the decision. The process for this is detailed in Appendix C.

Monitoring Officer Assessment Stage

15. The Monitoring Officer shall consider the complaint during the *Monitoring Officer Assessment Stage* and determine whether it warrants progression to the *Independent Person Consultation Stage*.

16. During this assessment, the Monitoring Officer may dismiss the complaint on the basis of any of the following:
- (a) The subject of the complaint was not an elected member of the authority at the time of the event(s) detailed in the complaint, or is no longer an elected member of the authority;
 - (b) The subject of the complaint was acting in a personal capacity rather than in their capacity as an elected member of the authority at the time of the event(s) detailed in the complaint. Guidance on this is detailed in Appendix D;
 - (c) The subject of the complaint has since taken steps to remedy the situation, and those steps are proportionate to the allegations and result in there not being a public interest in the complaint being pursued;
 - (d) A similar complaint has been received and/or the complaint may be considered to be part of a series of complaints and/or the complaint could be considered to be vexatious;
 - (e) The complaint, even if proven, would not constitute a breach of the paragraph in the Members' Code of Conduct as identified by the complainant.
 - (f) The complaint is such that it is unlikely that an investigation will be able to form a firm conclusion on the matter. This could be where neither the complainant or subject member have been able to provide substantiating evidence and where the Monitoring Officer, having given consideration to the severity of the allegation and having taken reasonable steps to identify any additional evidence that may exist, is of the opinion that there is no reasonable likelihood of a complaint being upheld. An example of this could be two conflicting accounts of a telephone conversation, with no means of independently verifying the contents of the call.
17. Where it has been determined that any of the grounds for dismissing the complaint detailed in Paragraph 16 apply, the complainant and Subject Member shall be notified within five working days.
18. Where it has been determined that none of the grounds under Paragraph 16 apply, the matter will progress to the *Independent Person Consultation Stage*.

Independent Person Consultation Stage

19. An Independent Person, as defined in Appendix A, shall be provided with a copy of the complaint and notified of the various grounds for referral or dismissal which it has been determined do not apply.
20. The Independent Person shall recommend one of the following courses of action to the Monitoring Officer:
- (a) That the matter should not be pursued and no further action should be taken on the basis that one or more of the following apply:
 - a. The complaint does not cross the threshold of seriousness to warrant an investigation;

- b. The Independent Person is not satisfied that even if the complaint was proven, it would result in a breach of the part of the Members' Code of Conduct which the complainant has identified; or
 - c. It is not in the public interest to pursue the matter.
 - (b) That a remedy or informal resolution, such as an apology from the Subject Member, should be pursued as an alternative to an investigation, on the basis that it is likely that there has been a breach but that an informal intervention would spare the time and expense of an investigation;
 - (c) That the complaint is sufficiently serious that it would be in the public interest to undertake an investigation.
21. The Monitoring Officer shall determine the outcome in consideration of the Independent Person's advice.
 22. Where it has been determined to pursue Paragraph 20(a), both the complainant and Subject Member shall be notified within five working days.
 23. Where it has been determined to pursue Paragraph 20(b) and following completion of the informal resolution, both the complainant and the Subject Member shall be notified that the matter has now concluded.
 24. Where it has been determined to pursue Paragraph 20(b) but where the Subject Member does not agree to the proposed informal resolution, the Monitoring Officer may re-consult with the Independent Person on whether Paragraph 20(a) or 20(c) should be applied.
 25. Where it has been determined to pursue Paragraph 20(c), the matter shall progress to an investigation and a report will be prepared for consideration by the committee. In the event that a member of the committee is either subject to a complaint or a complainant, their attendance at the meeting shall be in that capacity only and not as part of the decision-making body.

Monitoring Officer referrals

26. Under certain circumstances, it may be necessary for the Monitoring Officer to refer matters to the Standards Committee which have not been raised as complaints. This may arise, for example, when the Monitoring Officer has been made aware of conduct which may constitute a breach.
27. In these circumstances, the Monitoring Officer will report the matter for information and the committee's powers shall not extend beyond noting the report
28. If the committee agrees that the matter reported by the Monitoring Officer is of sufficient gravity that it potentially warrants further investigation, irrespective of whether a complaint has been received, then the matter can be referred to the Independent Person Advisory Panel for consideration (see paragraph 10).

Investigation

29. Where a complaint has been referred for investigation, the Monitoring Officer will appoint an *Investigator* to conduct an investigation. The investigator could be a council officer or if the Monitoring Officer considers it appropriate, they may appoint a suitably qualified external investigator.
30. The investigator will carry out such interviews as they feel appropriate. Interviewees will be asked to consider and agree with any notes taken at such interviews. If appropriate in the investigator's and/or Monitoring Officer's opinion, interviews may be recorded and stored for future evidence purposes, in accordance with Data Protection legislation. On completion of the investigation the investigator will produce a draft report which will be shared with the Subject Member and the complainant(s). The Subject Member and complainant(s) will be given seven days to provide any comments on the draft report. Once the investigator has considered any comments they will produce their final report to the Monitoring Officer.
31. The investigation will be carried out thoroughly but also proportionately taking into account the requirements of natural justice, the complexity and seriousness of the complaint(s) and the resources of the Council.
32. Following receipt of the investigation report, the Monitoring Officer will send a copy to the complainant(s) and the Subject Member.
33. If the investigator concludes that there has been no failure on the part of the Subject Member to comply with the Code of Conduct, the monitoring officer will consult with the Independent Person. Where the Monitoring Officer is satisfied that the investigation has been carried out appropriately, that will be the end of the matter and the Subject Member and the complainant(s) will be advised of the decision. The Monitoring Officer may ask the investigator to review their conclusions or carry out further investigations if the Monitoring Officer is not satisfied that the investigation has been carried out appropriately.
34. If the investigator concludes that there has been a failure to comply with the Code then the Monitoring Officer, in consultation with the Independent Person, will either;
 - a. Refer the investigator's report to a Hearings Panel for a hearing;
 - b. Or seek an informal resolution.
35. An informal resolution could be in the form of an apology or mediation or such other solution as the Monitoring Officer considers to be a reasonable resolution of the complaint.

Hearing

36. Where a hearing is required, the Monitoring Officer will undertake a pre-hearing process in accordance with Appendix E.

37. Any hearing will be conducted in accordance with the procedure at Appendix F.

Hearings are not a court. Evidence will not be taken on oath and persons attending the hearing will not be expected to stand. The principles of natural justice will be applied. All comments or questions must be put through the Chair. The Panel will reach its decisions on the balance of probabilities based on the evidence presented to it. The decisions of the Panel will be final and there will be no right of appeal.

Appendix A – Independent Persons

1. An Independent Person may be any of the following:
 - (a) An Independent Person appointed to the Standards Committee by Council;
 - (b) A person appointed to undertake this role by the Monitoring Officer due to unavailability of a person detailed at paragraph 1(a).
2. Independent Persons will undertake three distinct roles during the consideration and assessment of complaints, as follows:
 - (a) A panel of Independent Persons shall form an Independent Person Advisory Panel. The panel's discussions may be summoned in person or conducted over email/telephone. The composition of the panel shall be determined by the Monitoring Officer;
 - (b) An individual Independent Person shall provide support and/or advice to a Subject Member;
 - (c) An individual Independent Person shall provide support and/or advice to the Monitoring Officer on actions arising from complaints that have progressed beyond the *Monitoring Officer Assessment Stage*.
3. The Independent Persons undertaking roles detailed in 2(b) and 2(c) shall not be the same person in any individual investigation, but the same Independent Person may undertake either of those roles across different investigations and be part of the Independent Person Advisory Panel.
4. Where an Independent Person is undertaking the role detailed in 2(b), their remit shall be:
 - (a) To answer any questions the Subject Member may have about the complaint;
 - (b) To assist the Subject Member by talking through the complaint or by challenging the Subject Member to assist them in understanding whether they may have breached the Code of Conduct, or whether they have a strong defence to show that there has not been a breach;
 - (c) To take notes to assist the Subject Member and provide any guidance. Any notes will need to be agreed by both parties before being submitted as any form of evidence.
5. All Independent Persons duly appointed to the Standards Committee shall be entitled to attend a Standards Committee hearing where any investigation is discussed, but will be required to declare the role they have undertaken.

Appendix B – Finding that matter has potential to be politically influenced

1. Consideration shall be given to the responses provided by the complainant to the screening questions when determining whether a complaint may be politically influenced.
2. **Determination that a complaint has the potential to be politically influenced is not confirmation that the complaint is necessarily politically motivated. However, the existence of the potential creates risks around the matter being adjudicated by an officer of the council.**
3. It is acceptable for other sources to be used when considering this matter, such as opinion that has been published in the name of the complainant, and public records of candidates and signatories in local and General Elections.
4. A complaint may be considered to have the potential to be politically influenced when it has been submitted by any of the following, or when such persons have assisted in the preparation of a complaint:
 - A current councillor or MP;
 - A candidate in elections for any of the above within the previous three years;
 - A person who is (or has in the last three years been) closely linked to any of the persons detailed above, including political agents and active supporters of political parties and groups.
5. The decision of the Monitoring Officer shall be final.

Appendix C – Procedure for notifying political groups of complaint referrals

1. A matter shall only be referred where the complaint relates to a subject who is a member of a political group of the local authority. Complaints made against ungrouped or independent councillors shall not be referred to political groups. In these circumstances, the Monitoring Officer shall speak to the Councillor concerned.
2. Only the relevant political group as detailed in Paragraph 1, above, shall be notified of the complaint.
3. The referral shall be made by the Monitoring Officer, or an officer acting on behalf of the Monitoring Officer, providing a member of the political group, as detailed in Paragraph 4, below, with:
 - (a) A copy of the complaint, subject to any necessary redactions where the Monitoring Office has previously agreed to an individual's identity being redacted;
 - (b) Notification of the basis for the referral.
4. The member of the political group who is notified of the referral shall be any one of the following:
 - (a) The Leader of that group;
 - (b) The Deputy Leader of that group;
 - (c) The Group Whip;
 - (d) A member of the group who has been nominated by their group specifically for the purposes of receiving such notifications; or
 - (e) A member of the group who has been appointed to the Standards Committee.
5. Where the Subject Member is one of the individuals detailed in Paragraph 4, that person shall not be the group representative who receives the notification.
6. It is for the political group to utilise its disciplinary proceedings in handling the complaint. Except in the specific circumstances detailed in Paragraph 7, below, the Council and its officers shall not become involved in any discussions with any person, including the complainant, regarding:
 - (a) The disciplinary procedures operated by the political group;
 - (b) The application of those procedures; or
 - (c) The outcome of the referral.
7. Notwithstanding the independence of procedures which groups can apply as detailed above, groups handling complaints will be required:
 - (a) To confirm to the complainant and to the Monitoring Officer and/or a representative of the Monitoring Officer that a process has been applied within four weeks of receiving the complaint;
 - (b) To confirm to the complainant and to the Monitoring Officer that the matter has been resolved and to provide a written summary detailing the outcome and what actions have been taken as a result within 12 weeks of receiving the complaint.

8. Where the Monitoring Officer has agreed to a request that the complainant's identity be protected, officers will assist to communicate any updates and the final decision to the complainant. This line of communication shall not extend to seeking updates from the political group on behalf of the complainant beyond those detailed in paragraph 7.

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Appendix D – Members acting in their capacity as a councillor

1. Complaints shall be dismissed during the *Monitoring Officer Assessment Stage* where it is deemed that the councillor was not acting in their capacity as a councillor at the time of the incident(s) detailed in the complaint, subject to the clause in paragraph 4, below. This Appendix seeks to offer guidance but is not an exhaustive list.
2. Councillors shall be deemed to be operating on council business where they are:
 - Attending the Council House or other council premises;
 - Undertaking duties at a council committee;
 - Undertaking duties on an outside body or organisation to which Council has appointed them;
 - Undertaking duties on an outside committee to which the Council did not appoint them, but the basis of their appointment was as an elected member of the Council;
 - Undertaking case work on behalf of local constituents;
 - Attending councillor surgeries;
 - Attending Councillors on Patrol or other council-supported neighbourhood activities;
 - Delivering leaflets/letters that have been produced by the Council.
3. Councillors shall not necessarily be deemed to be operating on council business where they are:
 - Going about ordinary everyday tasks not specific to their role as a councillor;
 - Approached by a member of the public to discuss casework outside of a surgery or formal setting;
 - Travelling before or after undertaking council business;
 - Delivering leaflets on behalf of a political party or candidate.
4. The Monitoring Officer shall make the decision at initial assessment stage on whether a councillor was acting in their capacity as a councillor at the time of an incident leading to a complaint.

Appendix E - The pre-hearing process

1. Where, following the completion of an investigation, a decision is made to refer the matter for hearing, the Monitoring Officer shall provide the information in paragraph 2, on the understanding that it be treated as confidential, to
 - the Subject Member;
 - the Hearing Panel;
 - the Independent Person; and
 - the standards committee of any other authority, other than a parish council, of which the person who was the subject of the investigation is a member, if that other authority so requests.
2. The information that is to be provided is as follows:-
 - a copy of the Investigating Officer's final report,
 - any documents relied upon by the Investigating Officer in reaching the conclusion in his or her final report,
 - a copy of the hearing procedure, and
 - a covering letter explaining what will happen next.
3. The Subject Member will be asked to provide a written response, within 10 working days, stating whether or not they:
 - disagree with any of the findings of fact in the Investigating Officer's final report, including the reasons for any disagreement;
 - wish to attend the hearing
 - want to be represented at the hearing (at their own expense) by a solicitor, barrister or any other person;
 - want to give evidence at the hearing, either verbally or in writing;
 - want to call relevant witnesses to give evidence at the hearing;
 - want any part of the hearing to be held in private;
 - want any part of the final report or other relevant documents to be withheld from the public; and
 - will be unavailable on any dates within the next three months.
4. The Monitoring Officer will request the Subject Member to make clear in their response any disagreements they have with the findings of fact in the Investigating Officer's final report, as the Subject Member will not be allowed to raise new disagreements at the hearing unless the Hearing Panel agrees there are good reasons to permit these.
5. The Monitoring Officer will inform the Subject Member that to be represented at the hearing by a person other than a barrister or solicitor will require the permission of the Chair of the Hearing Panel in advance of the hearing. The Chair of the Hearing Panel may refuse permission if they believe that the non-legal representative is directly involved in the matter being determined.

6. The Monitoring Officer will inform the Subject Member that the Chair of the Hearing Panel and/or the investigating officer may call such witnesses as considered appropriate. The Monitoring Officer shall also inform the Subject Member that he/she may call witnesses, subject to the Chair of the Hearing Panel's power to limit the number of witnesses where the number requested is unreasonable.
7. The Chair of the Hearing Panel may request the attendance of any additional witnesses to be present at the hearing whose evidence may assist the Hearing Panel with its decision.
8. The Monitoring Officer in consultation with the Chair of the Hearing Panel, will then write to the persons referred to at paragraph 1 at least two weeks before the hearing to:
 - set the date, time and place for the hearing;
 - summarise the allegation(s);
 - outline the main facts of the case that are agreed;
 - outline the main facts which are not agreed;
 - note whether the member concerned or the Investigating Officer will attend or be represented at the hearing;
 - list those persons to be invited to the hearing, including the Independent Person and those witnesses, if any, who will be asked to give evidence;
 - indicate whether any part of the hearing should be in private or any documents or parts of documents withheld from the public; and
 - outline the proposed procedure for the hearing.

Appendix F - The hearings procedure

1. The Panel

- 1.1. The Hearings Panel (a Sub-Committee of the Council's Standards Committee) shall comprise a maximum of five members of the Council's Standards Committee, including not more than one member of the authority's Cabinet. The appointed Hearings Panel shall nominate a Hearings Panel Chair.
- 1.2. The Independent Person shall be invited to attend all meetings of the Hearings Panel.
- 1.3. The quorum for hearings by the Panel shall be three members of the Panel.

2. Opening

- 2.1. The Chair shall explain the procedure for the hearing and ask all present to introduce themselves.

3. Consideration of Exclusion of the Press and Public

- 3.1. Hearings will normally take place in public. The press and public may only be excluded from a hearing if the grounds in Schedule 12A of the Local Government Act 1972 are made out. The Hearings Panel shall invite representations from the Subject Member (or their representative) and the Investigating Officer before making any decision on whether to exclude the press or public.

4. The Complaint

- 4.1. The Investigating Officer shall be invited to present their report, including any documentary evidence, call such witnesses, including the complainant, as they consider necessary and make representations to substantiate their conclusion that the member has failed to comply with the Code of Conduct. The report and documentary evidence must be based on the complaint made to the Council, any additional points will not be allowed.
- 4.2. The Subject Member against whom the complaint has been made (or their representative) may question the Investigating Officer upon the content of their report and may question any witnesses called by the Investigating Officer. (This is the Council member's opportunity to ask questions arising from the investigator's report, but not to make a statement).
- 4.3. Members of the Hearings Panel may question the Investigating Officer upon the content of their report and/or question any witnesses called by the Investigating Officer.

5. The Subject Member's Case

- 5.1. The Subject Member, against whom the complaint has been made, (or their representative) may present their case (and call witnesses as required).
- 5.2. The Investigating Officer may question the Subject Member and/or any witnesses.
- 5.3. Members of the Hearings Panel may also question the Subject Member and/or any witnesses.

6. Summing Up

- 6.1. The Investigating Officer shall sum up the complaint.
- 6.2. The Subject Member (or their representative) may sum up their case.

7. Decision

- 7.1. Members of the Hearings Panel will deliberate in private to consider the complaint in consultation with the Independent Person prior to reaching a decision.
- 7.2. On the return of the Hearings Panel, the Chair will announce the Panel's decision in the following terms:
 - a) the Hearings Panel decides that the Subject Member has failed to follow the Code of Conduct or;
 - b) the Hearings Panel decides that the Subject Member has not failed to follow the Code of Conduct.

The Hearing Panel will give reasons for its decision. The Hearings Panel may give a brief summary of its reasons with more detailed written reasons to follow.

- 7.3. If the Hearings Panel decides that the Subject Member has failed to follow the Code of Conduct, the Panel will give the member the opportunity to make representations to the Panel and will consider any representations from the Investigating Officer as to:
 - a) whether any action should be taken and,
 - b) what form any action should take.
- 7.4. The Hearings Panel shall then deliberate in private, in consultation with the Independent Person, to consider what action, if any, should be taken.
- 7.5. On the return of the Hearings Panel, the Chair shall announce the Panel's decision as to any actions which the Hearings Panel resolves to take.

- 7.6. The Hearings Panel shall consider whether it should make any recommendations to the Council with a view to promoting high standards of conduct among Council members.
- 7.7. At the end of the meeting, the Chair shall confirm that a formal decision notice will be prepared by the Monitoring Officer and that within seven working days following the Hearing, a copy will be sent to the complainant, and to the Subject Member. The Chair shall also confirm that the decision notice will be made available for public inspection and the decision reported to the next convenient meeting of the Council.

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