

Part 11a: Arrangements for Local Determination of Allegations of Alleged Breaches of the Councillors' Code of Conduct

The Localism Act 2011

Introduction

The arrangements referred to in this document sets out the process which will be followed in the local determination of allegations of misconduct made against either a District Councillor or Parish/Town Councillor, where Cherwell District Council is the responsible authority. The purpose of these arrangements is to ensure the Council makes every effort to deal with a complaint as smoothly as possible and ensure that complaints are dealt with within agreed timescales and with the relevant legislation. All allegations will be dealt with objectively, fairly and consistently. The Monitoring Officer will also have regard to what is in the public interest and the Council's fiduciary duty to the tax payers.

Arrangements for dealing with complaints against Councillors underwent significant changes following the introduction of the Localism Act 2011. Cherwell's current adopted code of conduct, which is a code agreed by all six Oxfordshire Local Authorities, was adopted at full Council on 18 May 2022.

All complaints are received by the Monitoring Officer who takes an initial decision on whether a complaint requires investigation, informal resolution by the Monitoring Officer, should be referred to the Police or whether no further action is required.

Within these arrangements, references to the 'Monitoring Officer' also refers to their duly appointed representative(s). It is likely that the Monitoring Officer will appoint an Investigating Officer, who may be another senior officer of the authority, an officer of another authority, or an external investigator.

The person making the complaint is referred to as 'the complainant' and the District/Town or Parish Councillor being complained about is referred to as 'the subject member'.

Process for Dealing with Complaints – Initial Assessment Stage

When the Monitoring Officer has received a formal and valid complaint, the complaint will be acknowledged within three working days of receipt.

All complaints must be submitted using the Council's online complaint form. If required, we can also provide a paper copy of the complaint form.

The Monitoring Officer also needs to ensure that the complaint complies with the Council's Assessment Criteria:

- Is against one or more named Councillors of the authority, or of a Parish or Town Council the authority is responsible for;
- the named Councillor was in office at the time of the alleged conduct;

- the complaint relates to matters where the Councillor was acting as a Councillor or representative of the authority and it is not a private matter;
- the complaint, if proven, would be a breach of the Code under which the Councillor was operating at the time of the alleged misconduct.

If the complaint fails one or more of these tests it cannot be investigated as a breach of the Code, and the Monitoring Officer must inform the complainant that no further action will be taken in respect of the complaint.

A complaint can also be rejected if:

- the complainant fails to provide enough information to base a decision, for example it is not clear as to what part of the adopted code of conduct has allegedly been breached;
- the subject member is no longer a Councillor of the authority (although if they are a member of another authority the Monitoring Officer could refer the complaint to that authority);
- the complaint has been the subject of an investigation or other action relating to the Code of Conduct, or the complaint has been the subject of an investigation by other regulatory authorities;
- the complaint is about something that happened so long ago that there would be little benefit in taking action now;
- the complaint is too trivial to warrant further action;
- the complaint appears to be simply malicious, politically motivated or tit-for-tat;
- the complainant appears to be submitting persistent or prolific complaints

Following receipt of a complaint that meets the agreed Assessment Criteria the complainant will be asked if there is any additional information they wish to submit and they may also be asked to clarify any issues that they have raised.

A summarised copy of the complaint will be sent to the subject member for written comment (unless the complainant has asked to keep their identity confidential – see Requests for Confidentiality). The subject member will also have the opportunity to submit any additional information that they feel will support their submission. This can include written witness statements.

Where a complaint relates to a Parish/Town Councillor, the Monitoring Officer may also inform the Parish/Town Council of the complaint and seek the views of the Parish/Town Council to take into account when making a decision in the Initial Assessment Stage.

Both the subject member and the complainant have the right to seek advice from one of the Council's Independent Persons. The Council has therefore appointed two Independent Persons to ensure that a conflict situation does not arise i.e. once they have been consulted, the Independent Person will not be involved in the decision making process.

The Monitoring Officer will also collate any additional information (e.g. minutes and agendas of meetings, information on websites, the applicable Code of Conduct, Standing Orders and any other relevant policies, background information including correspondence and witness statements) that will assist the Initial Assessment Stage.

As part of the Initial Assessment Stage, an Initial Assessment Panel meeting will usually take place within 20 working days of receipt of the complaint. The Monitoring Officer will consult the Independent Person at this meeting. As this is not a public meeting, neither the subject member nor the complainant, nor members of the press or public will have the opportunity to attend or speak at the meeting. In accordance with the Localism Act 2011, following the Initial Assessment the Monitoring Officer (in consultation with the Independent Person) is able to decide on one of the following four outcomes:

- no further action will be taken on the complaint;
- a form of informal resolution will be sought;
- the matter will be referred to the Director of Public Prosecutions or the Police where it is suspected that some form of criminal conduct has occurred in relation to interests that have not been disclosed;
- the complaint will be fully investigated by an Investigator Officer appointed by the Monitoring Officer

The complainant and subject member will be notified of the outcome of the Initial Assessment Panel meeting, usually within 25 working days from receipt of the complaint.

The Council may reach one of the three following decision on an allegations:

- no further action will be taken on the complaint;
- a form of informal resolution will be sought;
- the matter will be referred to the Director of Public Prosecutions or the Police where it is suspected that some form of criminal conduct has occurred in relation to interests that have not been disclosed;
- the complaint will be fully investigated by an Investigator Officer appointed by the Monitoring Officer.

If illegal activity is identified during the Initial Assessment, this is passed to the Police with any evidence received.

A flowchart summarising these arrangements that is followed when a complaint is received is attached at Appendix 1 to these arrangements.

Requests for Confidentiality

In the interests of fairness and in compliance with the rules of natural justice, District, Town and Parish Councillors who are complained about have a right to know who has made the complaint, and the substance of the allegation(s) made against them.

Complainants can request that their identity is not revealed to the subject member, and the Monitoring Officer may grant such requests at their discretion in exceptional circumstances. The Monitoring Officer is unlikely to withhold a complainant's personal details or the details of the complaint unless they consider there to be good reasons to believe that a complainant has justifiable grounds for anonymity/confidentiality.

When considering a request for confidentiality the Monitoring Officer, in consultation with the Independent Person, will consider any such request alongside the substance of the complaint itself and apply the following criteria:

- the complainant has reasonable grounds for believing that they will be at risk of physical harm from, or that they may be victimised or harassed by the subject member(s) against whom they are submitting the complaint (or from or by a person associated with the subject member(s));
- the complainant is an officer of a relevant authority who fears the consequences as regards their employment if their identity is revealed;
- the complainant works closely with the subject member, and is therefore afraid of the consequences to their employment or of losing their job;
- there is a medical risk to the complainant's health if their identity is revealed and this is supported by medical evidence;
- the complainant has reasonable grounds for the belief that they may receive less favourable treatment from the Council because of the identity and/or seniority of the subject member(s) in terms of any existing Council service provision or any tender/contract that they may have or are about to submit to the Council; or
- other exceptional circumstances

When considering a request for confidentiality against these criteria the Monitoring Officer will also:

- balance the request for confidentiality against the substance of the complaint;
- consider whether it is possible to investigate the complaint without making the complainant's identity known to the subject member, given the requirement for a proper investigation.

If the Monitoring Officer, in consultation with the Independent Person, decides to refuse a request for confidentiality, they may decide to offer the complainant the opportunity to withdraw their complaint. When deciding whether to allow a complaint to be withdrawn the Monitoring Officer must consider whether the public interest in proceeding with an investigation outweighs the complainant's wish to have their identity withheld from the subject member.

Outcome of Initial Assessment Stage – No Further Action

If following the Initial Assessment Panel meeting with the Independent Person, the Monitoring Officer decides that no further action is required in respect of a complaint, no further action can be taken by the Council and the matter will be closed.

The Localism Act 2011 does not provide any appeals mechanism. However the decision could be open to Judicial Review by the High Court should the complainant wish to take up this option. The complainant would be advised to seek independent legal advice about taking up this option.

Outcome of Initial Assessment Stage – Informal Resolution

If following the Initial Assessment Panel meeting with the Independent Person, the Monitoring Officer decides that other action should be taken on the complaint, the resolution, format and timescales for this action need to be outlined in the decision issued as a result of the Initial Assessment Notice.

If an informal resolution is determined as appropriate and either party declines to comply, this will be reported to the Monitoring Officer who may decide to treat the facts as a further complaint.

If the subject member complies with the action outlined in the decision, the Monitoring Officer will report the matter to the Standards Committee [and the Parish Council] for information but will take no further action.

The Localism Act 2011 does not provide any way to appeal a decision. However the decision could be open to Judicial Review by the High Court should either party wish to take up this option. The complainant or subject member would be advised to seek independent legal advice about taking up this option.

Outcome of Initial Assessment Stage – Report to the Police

If during the Initial Assessment the Monitoring Officer decides that the matter needs to be referred to the Police, both the subject member and complaint and if appropriate the relevant Town or Parish Clerk will be informed.

The Monitoring Officer will pass to the Police any relevant evidence relating to the allegations received, which disclose behaviour that may constitute a criminal offence, whether under the ethical standards provisions of the Localism Act or otherwise.

If potential criminal offences are identified and the complaint is referred for investigation with a view to prosecution, the appropriate procedures of the Police or Council will be followed so as to protect the integrity of the investigation.

Outcome of the Initial Assessment Stage – Investigation by Investigating Officer

If, following the Initial Assessment Stage, the Monitoring Officer, in consultation with the Independent Person, decides that if the allegations were substantiated, they may constitute a breach of the Code of Conduct of the relevant authority, they can refer the complaint for investigation.

The Monitoring Officer will appoint an Investigating Officer to undertake an investigation. The Investigating Officer may be another senior officer of the authority, an officer of another authority or an external investigator.

The Council will notify the complainant and the subject member that an investigator has been appointed to investigate the matter and advise which parts of the Code are being investigated against. This will also give the complainant and subject member details in case they need to contact the investigator to provide them with more information.

Any information received during the course of the investigation is confidential to the investigative process until the investigation is completed, unless there is a statutory requirement to disclose it. All parties involved will be advised of the confidential nature of the proceedings.

Once the investigation is concluded (no longer than six months from the original complaint being referred for an investigation) the investigator will be required to produce a draft written report that sets out their findings. The Monitoring Officer, subject member, the complainant and the Independent Person(s) will all be provided with an opportunity to comment on the initial report.

The subject member and the complainant will be sent the draft report and be asked to comment and advise if there are any areas of the report they dispute. All comments would need to be submitted within 10 working days of receipt of the draft report. The Council are not obliged to accept any comments made but where comments are not accepted, the Council should make a note explaining why.

On completion of the investigation, the Monitoring Officer may decide:

- To take no further action;
- To seek to resolve the matter informally; or
- To refer the matter to a hearing of the standards committee.

The final report should be issued by the Monitoring Officer and must be sent to:

- The subject member;
- The complainant;
- The relevant Independent Person;
- The relevant Parish or Town council of which the subject member is a Councillor (if applicable).

Meeting of the Standards Committee

If the Investigating Officer concludes that there is evidence of a breach of the Code of Conduct, if a local resolution is not appropriate or the subject member is not prepared to undertake any proposed remedial action, the matter will be reported to the Standards Committee and a hearing will be called.

The meeting of the Standards Committee must be held within three months of completion of the investigators report. The Democratic and Elections Officer shall arrange a time and date for the Standards Committee to meet and consider the matter.

At least five working days before the date of the meeting of the Standards Committee, the Democratic and Elections Officer shall notify the subject member, complainant, the clerk of the relevant Town or Parish Council (if applicable), Legal Advisor and any relevant witnesses of the date, time and place of the meeting and the membership of the Standards Committee at which the matter will be considered.

At least five working days before the Standards Committee meeting date, the Democratic and Elections Officer will send to each member of the Standards Committee, the subject member, the complainant and the Monitoring Officer, a copy of the paperwork for the meeting. The paperwork will include the agenda for the Committee meeting, a copy of the Investigator's report and a copy of any written statement in response to the report which has been received from the subject member, complainant and Independent Person.

The Monitoring Officer may make the provision of any such copy conditional upon an appropriate undertaking of confidentiality until the report is made available to the press and public, or it is agreed that the press and public shall not be excluded from the meeting.

Procedure at the Meeting of the Standards Committee

Attendance of the Subject Member and Complainant

- (i) The subject member and complainant may arrange to be accompanied or represented by counsel, a solicitor or by any other person they may wish at the Hearing at their own expense. If this is the case, the subject member or complainant must notify the Monitoring Officer of their intention to do so at least three working days prior to the Hearing.
- (ii) If the complainant or subject member are not present at the start of the Committee meeting, the Committee will adjourn to enable time for them to attend, unless they are satisfied that there is sufficient reason for their failure to attend, in which case the Committee may resolve to continue the meeting in their absence. Where the Committee proceeds in their absence, the procedure for the meeting shall be adapted as necessary, giving any representative of the subject member or complainant who is present such rights as would otherwise be accorded to them.

Agenda of the Committee meeting

The agenda of the meeting will be as follows:

- (i) Elect a chair person to preside over the meeting if the Chairman or Vice-Chairman are not present;
- (ii) Report of any apologies from Members unable to attend the meeting;
- (iii) Approve the Minutes of the last meeting;
- (iv) Receive any declarations of interest from Members;
- (v) Consideration as to whether to adjourn or to proceed in the absence of the subject member or complainant;
- (vi) Introduction of all in attendance at the meeting
- (vii)

any representation from the Monitoring Officer, or his representative and/or the subject member as to reasons why the Committee should exclude the press and public and a determination as to whether to exclude the press and public. Where the Committee decides that it will not exclude press and public, the Clerk shall at this point provide copies of the agenda and reports to any members of the press and public who are present;

- (viii) Consideration of the complaints and its evidence in the order in which they have been received.

Speaking at the Meeting

- (i) Presentation by the Monitoring Officer or Investigating Officer of the investigation report.
- (ii) Questions from the Committee to the Monitoring Officer. There shall be no cross-examination by the subject member but they may request the Chairman to direct appropriate questions to the Monitoring Officer
- (iii) The Monitoring Officer may introduce any witnesses required to substantiate any matter contained in the report that the complainant and subject member have disputed, however if the matter is not included in their written statement the Monitoring Officer or Democratic and Elections Officer should draw this to the attention of the Committee. The Committee may then decide:
 - not to admit the information but to proceed to a decision on the basis of the information contained in the report;
 - to admit the dispute but invite the Monitoring Officer to respond or recall any necessary witnesses;
 - or adjourn the meeting to enable the Monitoring Officer to investigate and report on the dispute.
- (iv) Committee's questions to the Monitoring Officer's witnesses. (There shall be no cross-examination by the subject member, but the subject member may request the Chairman of the Meeting to direct appropriate questions to the Witnesses).
- (v) Opportunity for the complainant or their representative to raise any issues with the report which they have disputed in their written submission. (The legal advisor shall ensure that the Committee are aware of any written submissions.)
- (vi) Committee's questions to the complainant. (There shall be no cross examination by the subject member, they will have the opportunity to raise any issues when they address the Committee).
- (vii) The complainant may introduce any witnesses required to substantiate any matter contained in the report that they have disputed.
- (viii) Committee's questions to the complainant's witnesses. (There shall be no cross-examination by the subject member, they will have the opportunity to raise any issues when they address the Committee).
- (ix) Presentation by the subject member or their representative. They should only raise any issues with the report which they have disputed in their written submission. (The legal advisor shall ensure that the Committee are aware of any written submissions.)

- (x) Committee's questions to the subject member.
- (xi) The subject member may introduce any witnesses required to substantiate any matter contained in the report that they have disputed.
- (xii) Committee's questions to the subject member's witnesses.
- (xiii) The Committee may at any time seek legal advice from its legal advisor.
- (xiv) Such advice will, on all occasions, be given in the presence of the subject member (or their representative) and complainant (or their representative).

Making a finding

Once all evidence has been presented by all parties, the Chairman will ask the Monitoring Officer whether there was any new matter raised during the course of meeting which was not addressed in the investigator's report or in the information submitted by the complainant or subject member disputing elements of the report. The Monitoring Officer will then have an opportunity to respond to any such new matter, or may request the Committee to adjourn to enable the Monitoring Officer to investigate and report on that new matter and/or to secure the attendance of witnesses as to the new matter.

If there is no adjournment, the Committee is required to come to a decision as to whether the subject member has breached the relevant Code of Conduct. The Committee need to be happy that they have sufficient information to make a decision. In the event that they require additional information they may question the Monitoring Officer, the subject member, complainant or any witness present in order to obtain sufficient information to enable the Committee to come to a decision on this issue.

The Committee will adjourn to a separate room where, in private, they will consider whether the subject member has acted in breach of the adopted Code of Conduct. If requested, an officer can retire with the panel to advise on matters of procedure and law, and any advice given must be conveyed back to the meeting publicly.

Once the Committee has come to a decision, the Committee will return and the Chairman will advise the complainant and the subject member their decision as to whether a breach of the Code of Conduct has occurred, and the reasons for that decision.

If the Committee come to the conclusion that the subject member has acted in breach of the Code of Conduct, the Committee will then hear representations from the Monitoring Officer and the subject member as to whether the Committee should take any action against the Councillor and what sanctions should be taken. Members of the Committee may ask questions of the Monitoring Officer and the subject member and seek legal advice in order to satisfy themselves that they have the information upon which to take a proper decision.

The Committee will then adjourn from the meeting to a separate room and will consider, in private, whether any action should be taken and what form of sanction should be taken. The Committee will then return to the meeting and the Chairman will report to the meeting the Committee's decision, the reasons for the decisions and sanctions imposed.

Sanctions that the Committee can impose include one or a combination of the following:

- Report its findings in respect of the subject member's conduct to Council or the relevant Parish or Town Council;

- Publish its findings in respect of the member's conduct;
- Issue a formal censure (or recommend the Parish or Town Council issue a formal censure);
- recommend to the subject member's group leader (or in the case of un-grouped councillors, recommend to Council) that they be removed from any or all Committees or sub-Committees of the authority (or recommend such action to the Parish or Town Council);
- recommend to the Leader of the relevant authority that the subject member be removed from positions of responsibility;
- instruct the Monitoring Officer to (or recommend that the Parish or Town Council) arrange training for the subject member;
- recommend to Council (or to the Parish or Town Council) that the subject member be removed from all outside appointments to which they have been appointed or nominated by the authority (or by the Parish or Town Council);
- recommend to Council (or to the Parish or Town Council) that it withdraws facilities provided to the subject member by the authority for a specified period, such as a computer, website and/or email and internet access; or
- recommend to Council (or that the Parish or Town Council) that it excludes the subject member from the authority's offices or other premises for a specified period, with the exception of meeting rooms as necessary for attending Council, Committee and sub-Committee meetings and/or restricts contact with officers to named officers only;
- if relevant, recommend to Council that the subject member be removed from their role as leader of the authority;
- if relevant, recommend to the secretary or appropriate official of a political group that the Councillor be removed as group leader or other position of responsibility.

10.8 Note that where the subject member is a Parish/Town Councillor, the matter is referred back to their Council to say that a breach of the Code has been found and with a recommended sanction. The Parish/Town Council must then meet to consider whether to impose that sanction or to replace it with another relevant sanction. They cannot overturn the finding that there has been a breach of the Code and if they wish to impose a different sanction, they should seek advice from the clerk and/or the Monitoring Officer. The Standards Committee should also ask the Parish/Town Council to report back to the Monitoring Officer within three months to confirm that they have met to discuss the sanction, and if necessary, to write again once the sanction has been fulfilled.

Note that under the Code of Conduct, failure to comply with a sanction may itself be a breach of the Code.

Publicising the findings

As soon as possible after the Standards Committee has made its decision in respect of the complaint, the Monitoring Officer shall take reasonable steps to give written notice of the decision and the reasons for the decision to complainant, subject member, the Investigator, Independent Person and if appropriate the relevant Parish/Town Clerk. The decision notice should be published on the website of any authorities involved and anywhere else the Committee considers appropriate.

Where the Committee finds that the subject member did not breach the Code of Conduct the authority's Code of Conduct, the public summary must say this and give reasons for this finding.

Where the Committee finds that the subject member breached the Code of Conduct but determines that no action is needed, the notice should:

- state that the subject member failed to follow the Code, but that no action needs to be taken;
- outline what happened;
- give reasons for the Committee's decision not to take any action.

Where the Committee finds that the subject member breached the Code of Conduct and a sanction is imposed, the notice should:

- say that the subject member failed to follow the Code of Conduct;
- outline what happened;
- explain what sanction has been imposed;
- give reasons for the decision made by the Standards Committee

The Committee's reports and minutes will be made available for public inspection in the same way as other committee papers are.

Appeals

There is no right of appeal for the complainant or the subject member against a decision of the Standards Committee.

Appendix 1 – Arrangements flowchart

