



STRATFORD-ON-AVON DISTRICT COUNCIL

Complaints Procedure

Arrangements for Dealing with Councillor Misconduct Complaints under the Localism Act 2011

1. Background

- 1.1 The Localism Act 2011 places a general duty on Local Authorities (including Parish/Town Councils within its area) to ensure that high standards of Member (councillor) and co-opted Member conduct are maintained and demonstrated to the public. As part of this, councils must have arrangements in place to investigate and settle allegations that a Member, or co-opted Member of a Committee or Sub-Committee of the authority (or of a Parish/Town Council within the authority's area), has broken the Council's Code of Members' Conduct.
- 1.2 This Procedure sets out how to make such a complaint and how the authority will deal with your allegations. The procedure for assessing, investigating and reaching a conclusion about alleged Member (councillor) misconduct is outlined in a separate flowchart which, like this document, is accessible on the Council's website or available in hard copy format on request.
- 1.3 The authority is required by law to appoint at least one Independent Person, whose views must be sought by the authority before it takes a decision whether or not to investigate an allegation, and whose views can be sought by the authority at any other stage of the complaints process, or by a Member or co-opted Member (or a Member or co-opted Member of a Parish/Town Council) against whom an allegation has been made.
- 1.4 The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is then appointed by a positive vote from a majority of all the Members of Council. The job description and a protocol for the role are available on the Council's website.
- 1.5 Stratford-on-Avon District Council has appointed two Independent Persons. Each of the Independent Persons has an equal right to give his/her views when requested by the Monitoring Officer, the Audit and Standards Committee or a subject Member (or a Member or co-opted Member of a Parish/Town Council) with respect to any particular complaint or hearing of a complaint, except where, for any reason, he/she are deemed by the Monitoring Officer to have a conflict of interest. In such a situation the Independent Person will withdraw from involvement.

2. The Code of Conduct

- 2.1 The Council has adopted a Code of Conduct for Members, which is available for inspection on the authority's website and on request from reception at the Council's Offices.
- 2.2 Each Parish/Town Council is also required to adopt a Code of Conduct. If you wish to inspect a Parish/Town Council's Code of Conduct you should inspect any website

operated by the Parish Council or request the Parish Clerk to allow you to inspect its Code of Conduct.

3. Making a Complaint

3.1 If you wish to make a complaint, please write or email to:

Monitoring Officer
Stratford-on-Avon District Council
Elizabeth House
Church Street
Stratford-upon-Avon
CV37 6HX

Or monitoring.officer@stratford-dc.gov.uk

You can obtain a copy of the Complaint Form either by writing to the Monitoring Officer or from the Council's website.

3.2 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 system in respect of complaints of Member misconduct.

3.3. In the interests of fairness and natural justice, we believe Councillors who are complained about have a right to know who has made the complaint. We also believe that they have a right to be provided with a summary of the complaint. We are very unlikely to withhold your identity or the details of your complaint unless we have good reason to believe that if your identity is disclosed:-

3.3.1 You have reasonable grounds to believe you will be at risk of physical harm or;

3.3.2 You are an officer working closely with the Member in question and you fear the employment consequences or,

3.3.3 It would create medical risks associated with a serious health condition.

Requests to keep your name and address confidential will not automatically be granted. However, if you have made such a request you will be contacted and advised of the decision and, if your request is not granted, we will allow you the option of requesting the withdrawal of your complaint.

3.4. Please complete the Complaint Form as fully as possible and return to the Monitoring Officer with any supporting evidence in writing. In completing the form, please ensure that you identify the particular provision(s) of the Code of Conduct that you allege has/have been breached. The Monitoring Officer will acknowledge receipt of your complaint, and will keep you informed of the progress of your complaint.

4. Stage 1: Initial Assessment of the Complaint

4.1. The Monitoring Officer will review your complaint and decide if it warrants a full investigation. This is done against a set of relevant questions and in consultation with the Independent Persons.

4.2 Where he/she requires additional information in order to come to a decision, he/she may come back to you for such information. Where your complaint relates to a Parish/Town Councillor, The Monitoring Officer will also inform the Parish/Town Council of your complaint. If requested, the Parish/Town Council will provide any relevant documents or information to the Monitoring Officer to assist him/her with the initial assessment, before deciding whether the complaint merits full investigation.

4.3 The Monitoring Officer will inform the Member of the substance of the complaint, unless he/she thinks it is not appropriate to do so, for example if by doing so any investigation would be affected, or there might be a risk that evidence could be destroyed.

4.4 Where the Monitoring Officer informs the Member of the substance of the complaint he/she will also:

- 4.4.1. Tell the Member the paragraphs of the Code of Conduct that may have been breached
- 4.4.2 Provide an opportunity for the Member to comment on the complaint
- 4.5. In deciding whether the complaint merits full investigation the Monitoring Officer will apply criteria, which are designed to promote confidence that complaints will be taken seriously and dealt with properly. They also reflect the fact that any decision to investigate a complaint will cost public money and both officer and Member time. The criteria are designed to balance the need to promote confidence in local governance with the need to ensure that public resources are applied appropriately. The criteria are as follows:-
 - 4.5.1 Public interest – The Monitoring Officer must be satisfied that an investigation would be in the public interest, taking into account the time and cost involved. If the Monitoring Officer is not satisfied, he/she will decide not to investigate:
 - 4.5.2 Sufficient information – The complainant must specifically identify the part(s) of the Code which he/she feels have not been complied with, clearly explain why this is the case and provide sufficient information to warrant an investigation. If not the Monitoring Officer will take no further action unless additional information is provided by the complainant.
 - 4.5.3 Previous action – If there has already been an investigation or some other action under the Code of Conduct or by another regulatory body in relation to the complaint, the Monitoring Officer will not normally decide to investigate, although he/she may do so in certain circumstances (for example, if a criminal charge was dropped).
 - 4.5.4 Repeated complaints – If the complaint is the same or substantially the same as one previously dealt with, the Monitoring Officer will normally decide not to investigate.
 - 4.5.5 Timing – If there is a significant delay between the incident complained of and the submission of the complaint, the matter will not normally be investigated.
 - 4.5.6 Trivial matters – If the Monitoring Officer takes the view that the matter is not sufficiently serious to warrant further action, no further action will be taken, unless there are compelling reasons to do so.
 - 4.5.7 Ulterior motive - If it appears to the Monitoring Officer that the complaint is motivated by malice or retaliation, no further action will be taken unless it involves a serious allegation.
 - 4.5.8 Special circumstances – There may be circumstances where the Monitoring Officer takes the view that an investigation should occur even though the application of these criteria would suggest otherwise. For example, if a very serious allegation was made after a long delay, it may be appropriate to investigate notwithstanding the delay.

These criteria are for general guidance, and will be applied in the light of particular circumstances of each case.
 - 4.5.9 In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the Member accepting that his/her conduct was unacceptable and offering an apology, or agreeing to other remedial action suggested by the authority. Where the Member or the authority makes a reasonable offer of local resolution, but you are not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.
 - 4.5.10 If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police and other regulatory agencies.
 - 4.5.11 Once the initial assessment is complete, the Monitoring Officer will write to you to inform you of his/her decision and give reasons for it.

5. Actions Available to the Monitoring Officer after Stage1

- 5.1. The complaint could be rejected with reasons as outlined above in paragraph 4.5 and its sub-sections.
- 5.2 The complaint could be judged to have merit. Once this decision has been made there are three further options available to the Monitoring Officer.
 - 5.2.1 If there appears to be criminal misconduct, the Monitoring Officer will refer the case to the Police.
 - 5.2.2 The Monitoring Officer can attempt to resolve the complaint informally by getting the Member to acknowledge that their conduct was unacceptable and apologise, or engage in other remedial actions on behalf of the authority.
 - 5.2.3 The Monitoring Officer can appoint an Investigating Officer to fully investigate the complaint.

Note: Although there is no internal right of appeal, the complainant or the subject of the complaint may refer the Monitoring Officer's decision to the Local Government Ombudsman if there is some fault in the way that he/she has considered the complaint and there is sufficient injustice to warrant his/her involvement.

6. Stage 2: Full Investigation

- 6.1 If the Monitoring Officer decides that a complaint merits a full investigation, he/she will appoint a suitably qualified Investigating Officer, who may be another senior officer of the authority, an officer of another authority or an external investigator.
- 6.2 Prior to appointing an Investigating Officer, the Monitoring Officer will require any such person to be able to demonstrate that he/she has the requisite skills, knowledge and experience to undertake the investigation to the required standards. In the case of a firm providing investigative services, the firm will be required to give assurance that the Investigating Officer will receive adequate levels and frequency of supervision.
- 6.3 Once instructed the Investigating Officer will be required to devise a suitable and robust investigation plan and a timetable for the investigation process. The investigation plan and timetable must be shared with and approved by the Monitoring Officer. The timetable will be shared with you and the Member, save for exceptional circumstances. The Investigating Officer will advise you and the Member if there are any changes to the timetable and the reasons for any delay.
- 6.4 The Investigating Officer will decide whether he/she needs to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents the Investigating Officer needs to see, and whom the Investigating Officer needs to interview.
- 6.5 The Investigating Officer will write to the Member against whom you have complained and provide him/her with a copy of your complaint, and ask the Member to provide his/her explanation of events, and to identify what documents he needs to see and whom he needs to interview. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the Member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the Member, or delay notifying the Member until the investigation has progressed sufficiently.
- 6.6 At the end of his/her investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to you and to the Member concerned, to give you both an opportunity to identify any matter in that draft report which you disagree with or which you consider requires more consideration.
- 6.7 Having received and taken account of any comments which you may make on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer.
- 6.8 The Monitoring Officer will review the Investigating Officer's report after consulting with the Independent Person. If the Monitoring Officer is not satisfied that the investigation

has been conducted properly, he may ask the Investigating Officer to reconsider his/her report. The Investigating Officer will give further careful consideration to the contents and status of his/her final report prior to sending it to the Monitoring Officer for approval and the Investigating Officer will also consider what supporting evidence is included with the report, taking into account such matters as its degree of relevance and its sensitivity, and advise the Monitoring Officer accordingly.

7. Actions Available to the Monitoring Officer after Stage 2

- 7.1. When the Monitoring Officer is satisfied with the Investigating Officer's report, he/she will write to you and to the Member concerned (and to the Parish/Town Council, where your complaint relates to a Parish Councillor), notifying you of his/her decision.
- 7.2 If the Monitoring Officer concludes that there is no evidence of a failure to comply with the Code of Conduct, he/she will inform you and the Member concerned (and to the Parish Council, where your complaint relates to a Parish/Town Councillor), that no further action is required, and give you both a copy of the Investigating Officer's final report.
- 7.3 If the Monitoring Officer concludes that there is evidence of a failure to comply with the Code of Conduct, he/she will then either send the matter for hearing before a panel of Members drawn from the Audit and Standards Committee or, after consulting the Independent Person, seek local resolution and inform both parties accordingly.
- 7.4 Local Resolution
 - 7.4.1 The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with the Independent Person and with you as complainant and seek to agree what you consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the Member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the authority. If the Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee [and the Parish/Town Council] for information, but will take no further action.

Note: Although there is no internal right of appeal, the complainant or the subject of the complaint may refer the Monitoring Officer's decision to the Local Government Ombudsman if there is seen to be some fault in the way that he/she has considered the complaint and there is sufficient injustice to warrant their involvement.

7.5. Hearing

- 7.5.1 If the Monitoring Officer considers that local resolution is not appropriate, or the Member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will trigger the Determination Procedures, a copy of which is accessible on the Council's website. Under these procedures the Panel (see section 12 below) will conduct a hearing before deciding whether the Member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Member.
- 7.5.2 The Monitoring Officer may conduct a "pre-hearing process", requiring the Member to give his/her response to the Investigating Officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing, and the Panel may issue directions as to the manner in which the hearing will be conducted.
- 7.5.3 At the hearing, the Investigating Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the Member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask you as the complainant to attend and give evidence to the Panel. The Member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Panel as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

- 7.5.4 The Panel, with the benefit of any advice from the Independent Person, may conclude that the Member did not fail to comply with the Code of Conduct, and so dismiss the complaint.
- 7.5.5 If the Panel concludes that the Member did fail to comply with the Code of Conduct, the Chairman will inform the Member of this finding and the Panel will then consider what action, if any, the Panel should take as a result of the Member's failure to comply with the Code of Conduct. In doing this, the Panel will give the Member an opportunity to make representations to it and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

8. What action can the Panel take where a Member has failed to Comply with the Code of Conduct?

- 8.1 The Council has delegated to the Panel such powers to take action in respect of individual Members as may be necessary to promote and maintain high standards of conduct. Accordingly, the Panel may:
- 8.1.1 Censure or reprimand the Member;
 - 8.1.2 Publish its findings in respect of the Member's conduct;
 - 8.1.3 Report its findings to the Council [or to the Parish/Town Council] for information;
 - 8.1.4 Recommend to the Member's Group Leader (or in the case of un-grouped Members, recommend to the Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
 - 8.1.5 Recommend to the Leader of the Council that the Member be removed from The Cabinet, or removed from particular Portfolio responsibilities;
 - 8.1.6 Recommend to Council that the Member be replaced as Leader;
 - 8.1.7 Instruct the Monitoring Officer to [or recommend that the Parish/Town Council] arrange training for the Member;
 - 8.1.8 Recommend to Council or the Council Leader [or recommend to the Parish/Town Council] that the Member be removed from all outside appointments to which he/she has been appointed or nominated by the authority [or by the Parish/Town Council];
 - 8.1.9 Withdraw [or recommend to the Parish/Town Council that it withdraws] facilities provided to the Member by the Council, such as a computer, website and/or email and internet access; or
 - 8.1.10 Exclude [or recommend that the Parish/Town Council exclude] the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Cabinet, Committee and Sub-Committee meetings.

The Panel has no power to suspend or disqualify the Member or to withdraw Members' basic or special responsibility allowances.

9. What happens at the end of the hearing?

- 9.1 At the end of the hearing, the Chairman will state the decision of the Panel as to whether the Member failed to comply with the Code of Conduct and as to any actions which the Panel resolves to take.
- 9.1.2 As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Panel Chairman, and send a copy to you, to the Member [and to the Parish/Town Council], make that decision notice available for public inspection and report the decision to the next convenient meeting of the Council.

10. Who are the Panel?

- 10.1 The Panel comprises three Members of the Audit and Standards Committee.
- 10.2 The Independent Person is invited to attend all meetings of the Panel and his/her views are sought and taken into consideration before it takes any decision on whether the Member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

11 **Appeals**

- 11.1 There is no right of appeal for you as complainant or for the Member against a decision of the Monitoring Officer.