



SOUTH GLOUCESTERSHIRE COUNCIL
ARRANGEMENTS FOR DEALING WITH MEMBER CODE OF CONDUCT COMPLAINTS

Adopted by Council 16th October 2019

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1 1 Introduction

1.1 This procedure applies when a complaint is received that a Member, Co-opted Member or Parish Member has or may have failed to comply with the Code of Conduct for Members.

1.2 The person making the complaint will be referred to as “the Complainant” and the person against whom the complaint is made will be referred to as the “Councillor.”

1.3 No Member or Officer will participate in any stage of the arrangements if he or she has, or may have, any personal conflict of interest in the matter.

1.4 The Monitoring Officer has responsibility for the management of the Member Code of Conduct, but he may appoint any suitably qualified and experienced officer to act on his behalf. Referenced to the term Monitoring Officer throughout this document includes any officer appointed by the Monitoring Officer to act.

2 2 Making a Complaint

2.1 A complaint must be made in writing by post or email for the attention of the Monitoring Officer: –

Mr John McCormack,
Monitoring Officer
South Gloucestershire Council
Chief Executive & Corporate Resources Department
PO Box 1953
Bristol
BS37 0DB

By email: legalsupport@southglos.gov.uk

2.2 A complaint should be made in writing on the standard complaint form. This can be obtained from the Monitoring Officer or can be downloaded on the Council’s website. This will ensure that all required information is included.

2.3 If a disability prevents you from making a complaint in writing, please contact the Monitoring Officer, we will arrange to provide you with appropriate assistance

2.3 We aim to acknowledge receipt of a complaint within 5 working days. On receipt the Monitoring Officer will write to the Councillor (and in the case of a complaint about a Town / Parish Councillor to the Clerk of the Town / Parish Council as well) providing them with details of the allegations made (subject to any representations from the Complainant on confidentiality).

2.4 The Councillor may, within 10 working days of receipt of details of the complaint unless otherwise agreed with the Monitoring Officer, make written representations to the Monitoring Officer which must be taken into account when deciding how the complaint will be dealt with. Representations received after this time may be taken into account if received before a decision has been made.

3 Is the complaint a valid complaint?

3.1 The Monitoring Officer shall on the receipt of each complaint establish that it is a valid complaint. To be valid the complaint must establish that:

3.1.1 The complaint is made against one or more named Members or co-opted Members of the Council or Town or Parish Council Member or

3.1.2 The Councillor was in office at the time of the alleged conduct and the Code of Conduct was in force at that time.

3.1.3 The complaint must relate to the Councillor when acting in their "official capacity as a councillor", i.e. not a matter relating to their private life.

3.1.4 Complaints about the dissatisfaction with a decision or action of the Council or one of its Committees, a service provided by the Council or the Council's procedures or decision making do not fall within the jurisdiction of the Standards Sub-Committee

3.1.5 The Complaint is not an anonymous complaint.

3.2 The Monitoring Officer is authorised by the Standards Sub-Committee to reject all invalid complaints on behalf of the Sub-Committee and to notify the complainant of the decision.

4 Assessment Criteria

4.1 Not every complaint that falls within the jurisdiction of the Member Code of Conduct will justify further action. In deciding whether a complaint merits formal investigation, other action or local resolution or dealt with informally or rejected the Standards Sub Committee has approved the following Assessment Criteria:

- Sufficiency of Information – Is there sufficient information or evidence provided with the allegation? If it is clear that substantiating evidence may be available, but has not been provided, the Monitoring Officer may ask for that additional evidence, but the onus is on the complainant to ensure all relevant information is included.
- Seriousness of the Complaint – Is the complaint Trivial, vexatious, malicious, politically motivated or 'tit for tat'? Are the resources / cost involved in investigating and determining the complaint wholly disproportionate to the allegations?
- Vexatious/Unreasonably Persistent Complaint –
 - Is the complaint the same or substantially similar allegation that has previously been made by the Complainant to the Council and has either been dismissed or investigated and no breach has been identified, or has the complaint been made to another regulatory authority?
 - Is the complainant refusing to accept a properly made decision – repeatedly arguing the point and complaining about the decision?
 - Is the complaint outside the remit of the relevant local code?
 - Has the complainant failed to set out the grounds of the complaint?
 - Is the complainant appearing to make groundless complaints or the complaint appears to have no substance?

- Does the complaint contain irrelevant or trivial information that the complainant requires to be taken in to account?
- Is the complainant's behaviour a combination of some or all of the above
- Multiple Complaints -If a single event gives rise to similar complaints from a number of different complainants, wherever possible these complaints will be considered at the same meeting of the Sub-Committee, they will be determined individually but in the event that the Sub-Committee decide that the complaint (or parts of it) merit further action, all aspects will be combined at this stage.
- Length of Time – Did the event(s) or behaviour to which the complaint relates take place more than 3 months ago? Does the time lapse involved mean that those involved are unlikely to remember it clearly enough to provide credible evidence, or where the lapse of time means there would be little benefit or point in taking action now? Such allegations are only likely to be considered in exceptional circumstances, such as where the conduct relates to a pattern of behaviour which has recently been repeated.
- Public Interest - Would the public interest or any public benefit be served in referring the complaint for investigation or other action? For example, it may be not in the public interest if the member has resigned, or is seriously ill or has offered an apology or other remedial action or if it is clear that the Member is relatively inexperienced, or has admitted making an error, and the matter would not warrant a more serious sanction.
- Anonymous- Is the complaint anonymous? The Sub- Committee will not consider anonymous complaints.
- Request for the complainants name to be withheld – The Sub- Committee will only consider anonymous complaints in exceptional circumstances, i.e. were the complainant believes they may be victimised or harassed by the Member(s) complained about, or receive less favourable treatment from the Council because of the position of the Member being complained about.
- Other Action – Whether the complaint can be dealt with best by informal resolution, including training or conciliation.
- Wider Application – Does the complaint have wider applications, such as suggesting a wider problem throughout the Authority or Town / Parish Council?

5 What happens on submission of a complaint?

5.1 This stage is referred to as the “initial assessment” stage. The Monitoring Officer will establish if he can accept the complaint and how it will be managed.

5.2 On receipt of a complaint we will write to the Complainant to let them know we have received it, usually within 5 working days. The Monitoring Officer will assess whether the complaint is a valid complaint (see paragraph 3 above Determination of Valid Complaints)

5.3 If the complaint is not a valid complaint the Monitoring Officer will advise the Complainant in writing giving reasons why the complaint is not valid. No further action will be taken by the Monitoring Officer.

5.4 If the complaint is valid the Monitoring Officer will notify the Councillor to whom the complaint relates with details of the complaint and invite them to make representations. They will have 10 working days to respond. The Monitoring Officer may also contact the Clerk of the Town or Parish Council, where appropriate. The Monitoring Officer may also require the Complainant to provide additional information in order to inform their assessment.

5.5 Before making any decision, the Monitoring Officer will discuss the complaint with an "Independent Person". This is an individual who is not a councillor and who South Gloucestershire Council is required to appoint to assist it in dealing with complaints against councillors. The Independent Person will be provided with details of the complaint, the Councillors' response and the initial assessment of the Monitoring Officer. The views of the Independent Person will be recorded and taken in to account by the Monitoring Officer in reaching their decision.

5.6 In some cases, the Monitoring Officer and/or the Independent Person may request that the matter be considered informally by members of the Standards Sub-Committee, in these circumstances a telephone conference will be arranged

5.7 In exceptional circumstances the Monitoring Officer and the Independent Person may refer a complaint to the Standards Sub-Committee for the initial assessment. In these circumstances a meeting of the Standards Sub-Committee will be convened comprising of three members of the Regulatory Committee and an Independent Person. The members will be provided with a copy of the complaint, the response from the Councillor and any other material the Monitoring Officer/Independent Person considers is necessary.

5.8 On the completion of this initial assessment the Monitoring Officer will write to the Complainant and the Councillor to advise them of the outcome of the complaint. The decision notice will include the views of the Independent Person

6 Confidentiality /Anonymity

6.1 At the initial assessment stage, all complaints will be managed on a confidential basis. Officers, Members and the Independent Persons are reminded of the requirement to maintain confidentiality. Complaints that result in a Hearing Panel, will in most cases be held in public, at which time reports may be published providing details of the complaints.

6.2 As a matter of fairness and natural justice. Anonymous complaints will not normally be considered.

6.3 If the Complainant has asked for their identity to be withheld the Monitoring Officer will consider the request at the initial assessment stage

6.4 The Councillor will be given a summary of the complaint but will not normally be told the identity of the Complainant at this stage. The identity of the complainant may subsequently be released in the event of an investigation, however, in very exceptional circumstances, the Monitoring Officer/ Standards Sub-Committee may withhold the Complainant's identity if they are satisfied that the Complainant has reasonable grounds for believing that they or any witness relevant to the complaint may be at risk of victimisation or harassment from the Councillor complained about, or they have reasonable grounds for believing that they may receive less favourable treatment from the Council because of the position of the Councillor being complained about. Provided always that withholding the identity of the Complainant does not in any way compromise the Investigator's ability to undertake a fair and impartial investigation in accordance with the principles of natural justice.

6.5 If the Monitoring Officer refuses a request by a Complainant for confidentiality, the Complainant may withdraw the complaint, rather than proceed with his or her identity being disclosed.

6.6 If a Complainant withdraws the complaint, the Monitoring Officer shall inform the Complainant and Councillor that the complaint is closed

7 Outcomes

7.1 The Monitoring Officer having taken account of the views of the Independent Person may:

- i) Conclude that the complaint does not disclose a breach of the Code of Conduct, in which case the Monitoring Officer will write to both the Complainant and the Councillor to advise them of the conclusion and close the complaint.
- ii) Conclude that the complaint would be best resolved informally, without the need for an investigation. Such informal resolution may involve the Councillor accepting that his/her conduct was unacceptable and offering an apology, or taking other steps. Where the Councillor make a reasonable offer of local resolution, but it is rejected by the Complainant, the Monitoring Officer shall refer the matter to the Standards Sub-Committee. It will take account of the attempt to seek a local resolution in deciding whether the complaint merits formal investigation.
- ii) Conclude that an investigation is required to establish the facts. In these circumstances the Monitoring Officer will appoint an Investigating Officer to undertake an investigation. This will be conducted in accordance with paragraphs 8-10 below.

7.2 If the investigation reveals no failure to comply with the code then the Monitoring Officer, after consulting with the Independent Person is authorised to close the matter and issue his report to the Complainant and the Councillor.

7.3 If the investigation reveals a failure to comply with the Code of Conduct and providing all parties agree the Monitoring Officer in consultation with the Independent Person is authorised to seek a local resolution of the complaint.

7.4 If a local resolution is not appropriate or is not agreed by the parties then the outcome of the investigation will be reported to a Hearings Panel of the Standards Sub-Committee for a local hearing. This hearing will be held in public and although will be conducted on a relatively informal basis, both parties will be able to make representations and call witnesses. The Hearing the Panel will after consulting with the Independent Person decide whether, on the balance of probabilities there has been a failure to comply with the Code of Conduct and what "sanction" or "sanctions" should be imposed.

7.5 The procedure the Council has adopted is designed to be proportionate, timely and fair to both sides. Its overriding objective is to seek to provide pragmatic local solutions to local problems wherever possible.

8 Investigation Process

8.1 Where either Monitoring Officer or the Standards Sub-Committee conclude that a matter merits investigation, an Investigating Officer will be appointed. The Investigating Officer may be a Council officer, an officer of another Council, or an external investigator.

8.2 The Investigating Officer shall, before commencing the investigation undertake appropriate checks to satisfy themselves that their appointment will not give rise to a conflict of interest. If they reasonably believe that a conflict exists or arises at any time throughout the investigation process, they shall immediately advise the Monitoring Officer providing details of the conflict.

8.3 The Investigating Officer will follow guidance issued by the Monitoring Officer on the investigation of complaints. The guidance will follow the principles of proportionality and the cost-effective use of Council resources and shall be interpreted in line with these principles.

8.4 The Investigating Officer will ensure that the Councillor receives a copy of the complaint (subject to any decisions relating to confidentiality).

8.5 At the end of the investigation, the Investigating Officer will produce a draft report and will send copies of that draft report to the Complainant and to the Councillor for comments, which should normally be submitted within 5 working days of receipt of the draft report. The Investigating Officer will take such comments into account, before issuing the final report to the Monitoring Officer.

3 9 Investigating Officer finding of no breach or insufficient evidence of failure to comply with the Code of Conduct

9.1 The Monitoring Officer in consultation with an Independent Person will review the Investigating Officer's report. If they are satisfied that the Investigating Officer's report is satisfactory, they will make a Confirmation Decision to confirm the finding of no failure to comply with the Code of Conduct.

9.2 The Monitoring Officer will write to the Complainant and the Councillor (and to the Clerk of the Parish Council, where the complaint relates to a Parish Councillor), with a copy of the Confirmation Decision and the Investigating Officer's final report.

9.3 If the Monitoring Officer and Independent Person are not satisfied that the investigation has been conducted satisfactorily, the Investigating Officer may be asked to reconsider their report.

10 Investigating Officer finding of failure to comply with the Code of Conduct

10.1 The Monitoring Officer in consultation with the Independent Person is authorised to seek a local resolution to the complaint (if all parties agree).

10.2 If a local resolution is not appropriate or is not agreed by the parties then the outcome of the investigation will be reported to a Hearings Panel of the Standards Sub-Committee for a local hearing. This hearing will be held in public and although will be conducted on a relatively informal basis, both parties will be able to make representations and call witnesses. The Hearing the Panel will after consulting with the Independent Person decide whether, on the balance of probabilities there has been a failure to comply with the Code of Conduct and what "sanction" or "sanctions" should be imposed.

11. Sanctions Available to Hearing Panels

11.1 Where a Hearing Panel finds that a Member has failed to comply with the Code of Conduct, the Hearing Panel may impose any one or a combination of the following sanctions:-

- Censuring or reprimanding the member;
- Reporting its findings to Council *[or to the Parish Council]* for information;
- Recommending to the member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- Recommending to Council that the member be replaced as Constitutional Leader of the authority;
- Instructing the Monitoring Officer to *[or recommend that the Parish Council]* arrange training for the member;
- Removing *[or recommend to the Parish 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 Council]*;
- Withdrawing *[or recommend to the Parish Council that it withdraws]* facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
- Excluding *[or recommend that the Parish Council exclude]* the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

11.2 In respect of Parish Councils, the Standards Sub- Committee no power to do any more in respect of a member of a Parish Council than make a recommendation to the Parish Council on action to be taken in respect of the member. Parish Councils will be under no obligation to accept any such recommendation.

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5 12 Criminal Conduct

12.1 If the complaint identifies criminal conduct or breach of other regulations by any person, the Monitoring Officer is authorised to report this to the Police or other prosecuting or regulatory authorities.

6 13 Appeals

13.1 There is no right of appeal available (other than by way of Judicial Review) to the Complainant following the decision of the Standards Sub-Committee to take no further action in respect of a complaint made against a Member. The decision of a Standards Sub-Committee to take no further action in respect of a complaint is final.

13.2 Following a finding by a Hearing Panel that a Member has breached the relevant Code of Conduct, the Member may within 10 working days from the date of notification of the

Hearing Panel's decision make a request in writing to the Monitoring Officer for a review of the decision of the Hearing Panel.

13.3 The Member shall in requesting the review set out in detail the grounds for the review, this should include any relevant additional information not taken in to account in the investigation

13.4 In the event of a request for a review of a decision, the Monitoring Officer will convene a further Hearing Panel made up of Members not forming part of the first Hearing Panel. The re-hearing shall be convened within 3 months of the original Hearing Panel.

13.5 No right of appeal is available following the decision of the Hearing Panel referred to in 21.3 above, its decision shall be final.

13.6 The Complainant has no right of appeal against the decisions of the Monitoring Officer or Panel. If a Complainant is dissatisfied with the outcome they are entitled to challenge a decision through the Courts by way of Judicial Review.

14 Revision of these arrangements

14.1 The Monitoring Officer may amend or depart from these arrangements where s/he considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.