

ARRANGEMENTS FOR DEALING WITH COMPLAINTS UNDER THE CODE OF CONDUCT ABOUT DISTRICT AND TOWN & PARISH COUNCILLORS¹

Most councillors conduct themselves appropriately and in accordance with the Code of Conduct. Councillors have both individual and collective responsibility to maintain these standards, support expected behaviour and challenge behaviour which falls below expectations.

The Localism Act places a general duty on the Council to ensure that high standards of conduct are maintained and demonstrated to the public. An authority must have an effective, fair, impartial, and transparent complaints and investigation procedure to enable it to make decisions on allegations which both councillors and the public can have confidence. Sanctions should be imposed in a consistent way and only where there is a genuine breach.

This procedure applies when a complaint is received that a member of Cotswold District Council or a town / parish councillor has, or may have, failed to comply with the Code of Conduct for Members ('the Code'). The District Council has adopted the Local Government Association Model Code of Conduct (the Code)² which it will review each year and regularly seek, where possible, the views of the public, community organisations and the town and parish councils.³ The Code will be readily accessible to both councillors and the public and will be placed in a prominent position on the District Councils website and available in its premises.⁴

1. General

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 "subject member".

1.2 The Monitoring Officer is the officer of the Council who is responsible for administering the system of complaints about member misconduct and as part

¹ References to best practices recommendations throughout this document refer to the recommendations made by the Committee for Standards in Public Life report

² This assumes that it will be adopted by Council on the 20th January 2021

³ **Best practice 3:** Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.

⁴ **Best practice 4:** An authority's code should be readily accessible to both councillors and the public, in a prominent position on a council's website and available in council premises.

of that role may nominate another officer of suitable experience and seniority to carry out any of the functions listed in this procedure.

- 1.2.1 The Monitoring Officer will provide advice, support and management of investigations and adjudications on alleged breaches to town and parish councils within Cotswold District.⁵ However, the Monitoring Officer cannot provide advice to town and parish councils in relation to matters outside of the Code, e.g. decision making not involving a breach of the Code and meeting procedure and etiquette.
- 1.2.2 The Monitoring Officer will usually appoint a deputy to act when he or she is unavailable or has an actual or potential conflict of interest. Susan Gargett, Legal Services Manager is the Deputy Monitoring Officer at Cotswold District Council. If there is no deputy or the deputy is unavailable, the Monitoring Officer may ask a monitoring officer from a different authority to undertake the investigation.⁶
- 1.3 The Council appoints Independent Persons from outside the authority to assist the Monitoring Officer and Hearings Panel in considering complaints. The Independent Persons currently appointed by the District Council are Michael Paget-Wilkes, John Acton and Phyllida Pyper.⁷
- 1.4 No member or officer of Cotswold District Council or any town or parish council will participate in any stage of the arrangements if he or she has, or may have, any conflict of interest in the matter.

2. Making a complaint⁸

- Complaints should be made in writing by e-mail at patrick.arran@cotswold.gov.uk
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⁵ **Best practice 12:** Monitoring Officers' roles should include providing advice, support and management of investigations and adjudications on alleged breaches to parish councils within the remit of the principal authority. They should be provided with adequate training, corporate support and resources to undertake this work.

⁶ **Best practice 13:** A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.

⁷ **Best practice 7:** Local authorities should have access to at least two Independent Persons.

⁸ **Best practice 10:** A local authority should have straightforward and accessible guidance on its website on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for investigations and outcomes.

- 2.1 Complaints about councillors may be made by anyone, but complaints about the conduct of a town or parish councillor towards a clerk should be made by the chair or by the parish council as a whole, rather than the clerk in all but exceptional circumstances.⁹ The Monitoring Officer may require the town or parish council to seek to resolve the complaint itself informally in the first instance.
- 2.2 An oral complaint will be accepted where the complainant is unable to write due to a physical or mental disability or there is a language barrier. Where an oral complaint is received it will be transcribed and sent to the complainant for their approval and the Monitoring Officer will talk them through it.
- 2.3 Anonymous complaints will only be accepted in exceptional circumstances. Further information regarding confidentiality and anonymous complaints is set out below.
- 2.4 A complaint must provide substantiated information and should outline an indication of the form of resolution the complainant is seeking. Further information regarding the range of sanctions available is set out in paragraph 9 below.
- 2.5 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 authority, in addition to any action taken pursuant to the Code. In the case of alleged criminal conduct the complaint may be held in abeyance pending the outcome of any criminal investigation to ensure that no criminal investigation is prejudiced (Referred to as Sub Judice).
- 2.6 If a complainant wishes their identity to be withheld, they should state this and provide full reasons why they believe their request is justified when submitting the complaint. Any request for confidentiality will be considered by the Monitoring Officer at the initial assessment stage of these Arrangements. In reaching his/her decision the Monitoring Officer may also consult with the Independent Person.

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- ⁹ **Best practice 11:** Formal standards complaints about the conduct of a parish councillor towards a clerk should be made by the chair or by the parish council as a whole, rather than the clerk in all but exceptional circumstances.

- 2.7 As a matter of fairness and natural justice the subject member will usually be told who has complained about them and receive details of the complaint. However, in exceptional circumstances, the Monitoring Officer 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 physical harm, or his or her employment may be jeopardised if their identity is disclosed, or where there are medical risks (supported by medical evidence) associated with the Complainant's identity being disclosed.
- 2.8 If the Monitoring Officer decides to refuse a request by a complainant for confidentiality, they will offer the complainant the option to withdraw the complaint, rather than proceed with his or her identity being disclosed. The Monitoring Officer will balance whether the public interest in taking action on a complaint will outweigh the complainant's wish to have his or her identity withheld from the subject member.
- 2.9 The Monitoring Officer may discontinue a complaint if they consider it appropriate to do so where the subject member ceases to be a councillor for any reason. Where a complaint is discontinued the Monitoring Officer will write to the complainant setting out the reasons for their decision.
- 2.10 If an anonymous complaint is received it will be considered by the Monitoring Officer at the initial assessment stage of these Arrangements. In reaching his / her decision the Monitoring Officer may also consult with the Independent Person.
- 2.11 The principles of fairness and natural justice referred to in paragraph 2.7 will also be applied to anonymous complaints and such complaints will only be accepted if they include documentary or photographic evidence indicating an exceptionally serious or significant matter.
- 2.12 The Monitoring Officer will acknowledge receipt of the complaint within a maximum of 10 working days of all required information being provided. The complainant will be given details about how the complaint will be dealt with and provided with a copy of these Arrangements. At the same time, the Monitoring Officer will write to the subject member and copy in their Group Leader and / or Whip if applicable (and in the case of a complaint about a town or parish council member to the Clerk) with a copy of the complaint and the name of the complainant, (unless anonymity has been requested and accepted as valid by the Monitoring Officer).

- 2.13 The subject member may, within 10 working days of being provided with a copy of the complaint, make written representations to the Monitoring Officer which must be taken into account when deciding how the complaint should be dealt with. Representations received after this time may be taken into account at the discretion of the Monitoring Officer but will not be considered after the Monitoring Officer has issued the initial assessment of the complaint.
- 2.14 Whilst the Monitoring Officer will deal with complaints at the earliest convenience, a decision regarding whether the complaint merits formal investigation or another course of action will normally be taken within a maximum of 20 working days of either receipt of representations from the subject member or where no representations are submitted 20 working days of the expiry of the period mentioned in paragraph 2.12 above. The complainant and the subject member will be informed should there be a delay in completing any stage of the process.

3. Stage 1 – Procedure for Initial Assessment of Complaint

- 3.1 The complaint will be automatically rejected if:
- The complaint is not against one or more named member of Cotswold District Council or any town or parish council within Cotswold District; or
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 - The complaint is against a current member of Cotswold District Council or any town or Parish Council within Cotswold District but the subject member was not acting in their capacity as a member of that council at the time of the alleged failure to comply with the Code. (The Monitoring Officer will consider all of the circumstances before reaching a conclusion as to the status of the member at the time of the alleged breach of the Code)
- 3.1.1 The Monitoring Officer may at his / her discretion, consult with the Independent Person in these circumstances.
- 3.1.2 Where a complaint is rejected on any of the above grounds, the Monitoring Officer will write to the complainant explaining why their complaint cannot be dealt with under this procedure.
- 3.2 The Monitoring Officer may request further information from either the complainant, the subject member or any other persons the Monitoring Officer considers appropriate before reaching a decision.

- 3.3 Where a complaint is by an officer or a member about a member of the same council which would be more appropriately dealt with informally, the Monitoring Officer will refer the matter to the relevant Group Leader and may, but will not have to, consult the Independent Person.
- 3.4 In all other cases, the Monitoring Officer will consider the complaint and, consult with the Council's Independent Person before reaching a decision¹⁰ (initial assessment) as to whether the complaint merits investigation, or another course of action. Where the complaint relates to a town or parish council member, the Monitoring Officer may also seek input from the clerk of the town or parish council before deciding whether the complaint merits formal investigation or other action.
- 3.5 If the complaint has not been rejected on either of the grounds in 3.1 the Monitoring Officer will then go on to apply the following criteria¹¹ in deciding whether a complaint should be accepted for investigation, dealt with informally, or rejected:
- Unless a pattern of behaviour is established, a substantially similar allegation has previously been made by the complainant to the Monitoring Officer (unless sufficient new evidence is provided), or the complaint has been the subject of an investigation by another regulatory authority;
 - The complaint is about something that happened so long ago 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;
 - The allegation is anonymous
 - The complaint is of an interpersonal nature that would more properly be dealt with by referring the matter to the members Group Leader for informal resolution

¹⁰ **Best practice 8:** An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation and should be given the option to review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious, or trivial.

¹¹ **Best practice 6:** Councils should publish a clear and straightforward public interest test against which allegations are filtered.

- The allegation discloses a potential breach of the Code of Conduct, but the alleged conduct is not serious enough to merit any action and
- The resources needed to investigate and determine the complaint are wholly disproportionate to the allegations or
- In all the circumstances there is no overriding public benefit in carrying out an investigation.
- The complaint appears to be malicious, vexatious, politically motivated or tit for tat;
- The complaint suggests that there is a wider problem throughout the Authority;

3.6 After consulting with the Independent Person the Monitoring Officer will then give his/her decision on how the complaint will be dealt with. The Monitoring Officer may in exceptional circumstances refer the question as to how to proceed to the Chair person of the Audit Committee.

3.7 If the Monitoring Officer decides that no further action is appropriate, a decision notice will be sent to the complainant and the subject member. The decision notice will summarise the allegation, give the decision of the Monitoring Officer and the reasons for their decision.

4. Stage 2 - Informal Resolution

4.1 In appropriate cases, and at any stage, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Informal resolution may be appropriate for example where: -

- There is a breach of the Code but this is minor, trivial or technical in nature
- It is apparent that the Subject member is relatively inexperienced as a member
- The member has admitted making an error which would not warrant a more serious sanction and has taken action to address this e.g. withdrawing comments.
- The member has apologised
- Training or conciliation would be a more appropriate response.

4.2 Types of informal resolution might include:

- An explanation by the subject member to the complainant of the circumstances surrounding the complaint;
- An apology from the subject member;
- An agreement from the subject member to attend relevant training or to take part in a mentoring process;
- Offering to engage in a process of mediation or conciliation between the subject member and the complainant; or
- Any other action capable of resolving the complaint.

4.3 Where the Monitoring Officer seeks to resolve the complaint informally he or she will provide the subject member with a reasonable timescale within which to attempt to resolve the complaint (usually this will be 10 working days) and provide the subject member with the contact details for an Independent Person who will be available to the subject member to give them advice on the severity of the complaint and what form of resolution they would consider appropriate. (Providing such guidance will not prevent the Independent Person from giving a view to the Hearings Panel.)

4.4 Before deciding upon a course of action the subject member may seek guidance from a Group Whip, Leader of the Group, the Independent Person, and/or the Monitoring Officer. The Monitoring officer may also seek the complainant's views to ascertain what form of informal resolution they would find acceptable, particularly if the form of resolution they have specified in their complaint is not possible.

4.5 At the end of the 10 working day period referred to at paragraph 4.3 above, the Monitoring Officer will, in consultation with the Independent Person, seek to establish whether the subject member has resolved the complaint to the Complainant's satisfaction.

4.6 Where it has been possible to agree a form of resolution between the subject member and the complainant there will be no further action taken in respect of the complaint and the Monitoring Officer will notify both the complainant and the subject member of this decision.

4.7 Where it has not been possible to agree a form of resolution between the subject member and the complainant, the Monitoring Officer will decide if the complaint merits formal investigation. Where the subject member makes a

reasonable offer of local resolution, but it is rejected by the complainant, the Monitoring Officer will take account of this in his or her decision.

5. Stage 3 – Formal Investigation

- 5.1 Where the Monitoring Officer, in consultation with the Independent Person, decides that a complaint merits investigation he/she will appoint an Investigating Officer who may be a Council officer, an officer from another Council, or an external investigator. However, if the facts and evidence are self-sufficient, the Monitoring Officer may dispense with a formal investigation and present the facts him / herself.
- 5.2 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. The Investigating Officer should aim to complete their investigation within a maximum of 1 month of their appointment.
- 5.3 At the end of their investigation, the Investigating Officer will produce a draft report and send copies to the complainant and subject member for comments on matters of fact. The Investigating Officer will take any such comments received during a period to be specified by the Investigating Officer into account before issuing their final report to the Monitoring Officer.

6. Investigating Officer finding of no failure to comply with the Code of Conduct

- 6.1 Where the Investigating Officer's report finds that the subject member has not failed to comply with the Code, the Monitoring Officer, in consultation with the Independent Person, will review the Investigating Officer's report and if satisfied, will confirm the finding of no failure to comply with the Code.
- 6.2 The Monitoring Officer will write to the complainant and the subject member (and to the clerk of the town or parish council, where the complaint relates to a town or parish council member), with a copy of the decision and the Investigating Officer's report.
- 6.3 If the Monitoring Officer is not satisfied that the investigation has been conducted thoroughly, the Investigating Officer may be asked to reconsider the report and the conclusions.

- 7 Investigating Officer finding of sufficient evidence of failure to comply with the Code of Conduct

- 7.1 Where the Investigating Officer's report finds that the Subject member has failed to comply with the Code, the Monitoring Officer will review the Investigating Officer's report and will then, having consulted the Independent Person, either send the matter for hearing before the Hearings Panel or seek informal resolution in accordance with paragraph 7.2 below.
- 7.2 Informal Resolution - If the Monitoring Officer believes that the matter can reasonably be resolved without the need for a hearing, for example because informal resolution has not yet been considered, they will consult with the Independent Person and the complainant and seek to agree a fair resolution. The types of resolution available are as set out in paragraph 4.2 of these Arrangements.
- 7.2 If the subject member and the complainant accept the suggested resolution, the Monitoring Officer will report the outcome to the Standards Panel and the clerk to the town or parish Council (if appropriate) for information but will take no further action.
- 7.3 If the complainant or the subject member refuses informal resolution in principle or to engage with the agreed outcome, the Monitoring Officer will refer the matter for a hearing without further reference to the complainant or the subject member.

8. Stage 4 - Hearing

Where, in the opinion of the Monitoring Officer, informal resolution is not appropriate or the complainant and/or subject member refuses to accept informal resolution, then the Monitoring Officer will report the Investigating Officer's findings to the Hearings Panel which will conduct a hearing before deciding whether the Member has failed to comply with the Code and, if so, what action (if any) to take in respect of the Member. The Hearings Panel will be constituted in accordance with council Standing Orders and will adopt whatever process it considers appropriate.

9. Action available to the Hearings Panel

Where the Hearings Panel finds that a subject member has failed to comply with the Code, it will publish a decision notice on its website (in the case of a town or parish council the Hearings Panel will provide a decision notice to be published on its website) of its findings in respect of the Subject member's conduct¹² setting out the following:

- A brief statement of facts
- The provisions of the code engaged by the allegations
- The view of the Independent Person
- The reasoning of the decision-maker
- Any sanction applied.
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- and it may -
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- Recommend to the relevant council that the member should be censured;
- Require the member to provide an apology
- Request the member remove any social media content which led to the complaint
- Recommend to the subject member's Group Leader (or in the case of ungrouped members recommend to Council) that he/she be removed from any or all committees or sub committees of the Council;
- Instruct the Monitoring Officer (or recommend to the town or parish council) to arrange training for the Member;
- Recommend to Council (or recommend to the town or parish council) that the subject member be removed from all outside appointments to which they have been appointed or nominated by the Council (or by the town or parish council);
- Withdraw (or recommend to the town or parish council that it withdraws) facilities provided to the subject member by the council such as a computer, website and/or e-mail and internet access; or
- Place such restrictions on the Subject member's access to staff, buildings or parts of buildings which may be reasonable in the circumstances.

10. Appeals

There is no right of appeal against the substantive decision of the Monitoring Officer or of the Hearings Panel

¹² **Best practice 9:** Where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.

11. Withdrawal of a Complaint

In the event that a complainant withdraws a complaint at any time prior to a decision having been made by the Hearings Panel, the Monitoring Officer may, following consultation with the Independent Person, decide that no further steps be taken in respect of that complaint.

In taking such a decision the Monitoring Officer will take into account whether there has been any intimidation or attempt to intimidate any person who is or is likely to be:

- a complainant,
- a witness, or
- involved in the administration of any investigation or proceedings, in relation to the allegation that the subject member has failed to comply with the Council's Code.

12. Revision of these Arrangements

In individual cases the Monitoring Officer may, in consultation with the Chairperson of Audit & Standards Committee, revise these Arrangements, as he or she considers appropriate, to enable the process to be dealt with efficiently. Any such revisions are to be reported to the next meeting of the Audit Committee.

13. Review of these Arrangements

These Arrangements were last reviewed and adopted in 2021 and shall be reviewed every 3 years thereafter or earlier where there is a change in law or where circumstances warrant an earlier review. The Monitoring Officer will seek to meet regularly with political group leaders or group whips to discuss standards issues.¹³

¹³ **Best practice 15:** Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.