

TO: All Members of West Suffolk Standards Committee

Our reference HMH
Your reference N/A
Contact Helen Hardinge
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22 January 2024

Dear Councillor

West Suffolk Standards Committee - Monday 22 January 2024

I am now able to enclose, for consideration at the **Monday 22 January 2024** meeting **of West Suffolk Standards Committee**, the attached item that was unavailable when the agenda was printed.

To aid discussion, the Monitoring Officer has produced a **second version of Appendix B** which contains the proposed amendments to the document:

Agenda No	Item
6.	<u>Procedure for Handling Standards Complaints (Pages 1 - 12)</u> Report No: STC/WS/24/001 Replacement Appendix B

Hard copies of this document will be available at the meeting for those that require one.

Yours sincerely

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West Suffolk
Council

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Standards Procedures

1. Written Complaints

Complaints must be made in written form. They cannot be accepted over the telephone or in person. Complaints must be submitted on the complaint form, which is available on the website or on request from the Monitoring Officer.

If someone is unable to submit a written form due to a disability or other protected characteristic the Monitoring Officer may assist with transcribing the complaint.

2. Complainants

Complaints may be submitted by individuals or made by a body corporate (such as a Parish or Town Council). In cases where it is an organisation, the individual submitting the complaint must be able to demonstrate they had authority to submit the complaint on behalf of the organisation. Each complaint must have a nominated individual lead person for the Monitoring Officer to liaise with.

The Monitoring Officer will not accept anonymous complaints.

A complainant may request that their details remain confidential, in that they will not be disclosed to the subject of the complaint. The complainant will be expected to justify this. If the Monitoring Officer believes that it would not be possible to comply with such requests (for example, the subject would assume they had made the complaint or would need to know who the complainant was in order to respond) then they will inform the complainant who will have the right to withdraw the complaint, or continue with the knowledge that their information may be disclosed to the complainant.

3. Complaints of failure to declare a pecuniary interest or other breaches of the law

Complaints that a Councillor has failed to declare a pecuniary interest, or allegations that a Councillor has committed a criminal offence will be referred immediately to the police. The Monitoring Officer shall take no further action except as advised by the Police and shall not refer the complaint to the subject for response. The rest of this procedure will not apply unless the Police decide that the complaint does not meet their prosecution threshold. When it is appropriate to do so, the Monitoring Officer will report the outcomes of such complaints to the Standards Committee.

4. Initial Assessment

The Monitoring Officer will initially review the complaint. In reviewing the grounds for the complaint, the Monitoring Officer may take a number of steps, such as:

- a) Request further information from the complainant including evidence to support claims made or background to concerns raised;
- b) Refer the matter to an Independent Person for an objective assessment; or
- c) Determine that the complaint should not be taken forward for further assessment, based on the following criteria:

When did the incident take place?	If the incident took place some time ago and the complainant has not provided legitimate justification for the delay in raising the matter(s) then it may not be considered. The evidence to support the complaint may be limited or impaired as a result of the delay, for example if the complaint was based on a conversation that took place some time ago and therefore recollection of the conversation may be limited. Generally, complaints that are about events that took place more than 3 months before will not be considered.
Was the subject in personal capacity or acting in an official capacity?	The incident took place before the individual was a Councillor. The incident related to purely personal matters where there is no relation to action taken by the Council (such as a disagreement between neighbours).
Is the complaint of a nature that is persistent or unreasonable, politically motivated or exercising a personal vendetta?	The complainant has made a number of complaints, often against the same person which have little / no merit. The complainant is using the complaints system as another avenue for raising matters already considered elsewhere. The complainant is primarily disagreeing with a decision or actions of a political group / party, not the actions / behaviour of the Councillor.
Is pursuing the complaint in the public interest?	The matter was an isolated incident. There are no consequences as a result of the matter (for example, it would not impact on the validity of a decision made). The making of a complaint is disproportionate to the issue. There is little / no evidence to support the complaint and it is unlikely such evidence could be found.
Is the complainant unnecessarily abusive?	The complainant is overtly hostile or excessively abusive in their language and complaint, and clearly shows they have no regard for the Standards Process.

If it is determined that the grounds for referring the complaint are not met, the Monitoring Officer will advise the subject in writing of their decision and the rationale for this. In addition, the Monitoring Officer will notify the subject that a complaint was made but has been closed at the initial assessment stage, and if the complaint relates to a Parish / Town Councillor, the Clerk will be informed (see section 6 below). The Monitoring Officer's decision is final.

5. Referral of complaint

If the Monitoring Officer determines that the complaint meets the criteria for progressing, the Monitoring Officer will then gain further information before referring the matter to an Independent Person. This will include referring the complaint to the subject to provide their views.

The subject should be provided with 10 working days in which to respond to requests for information, in order for them to be able to collate any evidence they wish. The Monitoring Officer may agree to an extension of time with a subject where, for example, they are unable to provide a response due to sickness or holiday absence. The subject will be notified of their right to speak to the Independent Person if they wish to do so. Upon receipt of the response from the subject, the Monitoring Officer may seek to clarify any further matters with either subject or complainant.

The Monitoring Officer will provide guidance to the subject on the standards process and inform them of their right to speak to the Independent Person if they wish. The Monitoring Officer must not compromise the Independent Person's impartiality, however they may request the complainant when responding, to explain particular aspects of the complaint.

6. Notification of complaints:

6. a) Receipt of Parish / Town Council complaints

If the complaint relates to a Parish / Town Councillor, the Parish Clerk shall be informed that a complaint has been received and that the matter is being reviewed. The Parish / Town Council should not discuss the complaint at this stage. The Monitoring Officer may seek further relevant information from the Clerk as necessary.

b) Receipt of complaints from a member of staff

If the complainant is employed by the Council and the subject member is a member of the Council, the Chief Executive (as Head of Paid Service) shall be informed that a complaint has been received and that the matter is being

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reviewed. The Monitoring Officer shall advise the Chief Executive of the outcome of the complaint at its conclusion.

C) Group Leaders

If the subject member is a member of a political group, the Group Leader shall be informed that a complaint has been received and the matter is being reviewed. The Monitoring Officer shall advise the relevant Group Leader of the outcome of the complaint at its conclusion.

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7. Role of Independent Person

All the information that has been obtained will be sent to an Independent Person to give their views on the complaint. The Independent Person is a person appointed by the Council. They must not be a parish, town or district councillor in West Suffolk, nor be closely associated with any councillors (in accordance with government criteria). Their role is to provide a judgement on the complaint as a well-informed observer. The Independent Person may recommend either:

a) Referral for Further Investigation

Following discussion with the Independent Person, the Monitoring Officer may elect to refer the complaint for further investigation where the matter is particularly complex or requires significant supporting evidence to be gathered.

In such cases, the Monitoring Officer will commission a suitably qualified investigator, who may either be an internal officer or an external party. They shall be entitled to conduct the investigation as they wish and seek the views from the Monitoring Officer where they believe appropriate.

Once the Investigation is complete, the Monitoring Officer shall review the draft report and determine whether there is sufficient evidence on which they may draw a conclusion, or whether further work is undertaken.

Once the Monitoring Officer is satisfied that the investigation is complete, all of the material will be sent back to the Independent Person to enable them to provide a view on the matter and then will reach one of the following conclusions;

- a) No breach of the Code of Conduct has arisen;
- b) No breach of the Code of Conduct has arisen but provide any advisory thoughts to the parties concerned;
- c) The Code of Conduct has been breached, and recommend sanctions to the Councillor; (local resolution)
- d) Refer the matter to the Standards Committee (in line with the criteria as set out in "referral to the Standards Committee" below)

b) The complaint be concluded by:

b) (i) Formal Resolution

The Independent Person considers that there is sufficient evidence available on which to reach a conclusion on whether or not the Code of Conduct has been breached.

The Independent Person will be expected to take the following matters into account in forming their judgement:

- That the evidence to support the complaint is valid and verifiable. Where evidence relies on personal recollections, a reasoned conclusion can be made.
- Whether or not they are satisfied that the subject was acting in capacity at the time of the incident.
- Whether the complaint is likely to be a one-off or demonstrates a pattern of behaviour.
- If the complaint is upheld, what action may support forming a lasting resolution on the issue.

(ii) Informal Resolution

♦ The Independent Person considers an informal resolution is a more proportionate way of dealing with relatively minor allegations, one-off incidents or underlying disagreements between individuals. When dealing with a matter by informal resolution there is no finding of fact and the Monitoring Officer must balance the interests of both the complainant and the subject member.

In ~~both~~-all circumstances, the Independent Person is not the final decision maker on the complaint, but their views must be taken into account by the Monitoring Officer when a decision is made.

8. Confirmation of Decision by Monitoring Officer

Once the Monitoring Officer has received the views of the Independent Person, they will reach one of the following conclusions;

- a) Conclude that the matters are of such complexity that further investigation is required;
- b) No breach of the Code of Conduct has arisen;
- c) No breach of the Code of Conduct has arisen but provide any advisory thoughts to the parties concerned (informal resolution);
- d) The Code of Conduct has been breached, and recommend sanctions to the Councillor; (local resolution)
- e) Refer the matter to the Standards Committee; (see "referral to the Standards Committee" below)
- f) Where the matter is a dispute between members of political groups of the District Council or a Parish / Town Council, refer the matter to the relevant group leader(s) to consider.

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Once the Monitoring Officer has determined the outcome of a complaint, they shall write a decision notice outlining the nature of the complaint; the alleged part of the Code that has been breached; the determination of whether or not the Councillor was acting in capacity; their conclusions on the matters raised; the views of the Independent Person, and the outcome of the complaint. If the Councillor has breached the Code, the Monitoring Officer shall identify any recommended sanctions.

A copy of the decision shall be sent to the subject, complainant and (if relevant) Parish Clerk, [Chief Executive or Group Leader](#). [A copy of the decision shall also be published on the Council's website.](#)

With regards decisions of the Standards Committee, the Monitoring Officer shall write to the subject, complainant and (if relevant) the Parish Clerk, [Chief Executive or Group Leader](#), setting out the decision of the Committee. [A copy of the decision shall also be published on the Council's website.](#)

9. Exploring the outcomes/sanctions

- **No Breach of the Code of Conduct or advisory recommendations**

The subject and complainant will be informed of the outcome. No further action shall be taken. If the complainant is a Parish or Town Councillor, the Clerk will be informed. The decision should not be publicised in any form.

If there are advisory recommendations to the Parish Council itself, the Parish / Town Council should seek to note these without reference to the subject of the complaint.

- **Breach of the Code of Conduct (local resolution)**

The subject and complainant will be informed of the outcome of the complaint. If the complainant is a Parish or Town Councillor, the Clerk will be informed.

The Monitoring Officer may make recommendations of action as a result of the breach. These would usually be expected to take one of the following forms, although other action may be suggested where it is appropriate and proportionate to the issue raised:

- a) Recommend the subject apologises in a form to be approved by the Monitoring Officer
- b) Recommend the subject undertakes training
- c) Recommend the subject and complainant take action to restore their relationship, such as mediation
- d) Recommend the subject is removed from appointments to committees

Cases where the Monitoring Officer considers it appropriate to publicise the decision due to the nature of the matters raised should usually be referred to the Standards Committee.

In cases where the Councillor is a Parish / Town Council, the Monitoring Officer will notify the Clerk of the recommendations. The Parish / Town Council may consider whether they support the recommendations suggested and whether they wish to take any action that is necessary to support the recommendations, however may not add additional sanctions to those suggested by the Monitoring Officer.

- **Referral to the Standards Committee**

As set out above, the Monitoring Officer, after consulting with the Independent Person may elect to refer the complaint to the Standards Committee.

The Standards Committee is appointed by the Council to promote and maintain high standards of conduct by members. Referral to the Committee allows councillor peers to make decisions on those matters that may be the most serious breaches, or consider matters which are marginal decisions, and the Standards Committees thoughts may help form decisions on such cases in future. Situations where this may apply are likely to include:

- a) Where there is a high degree of public interest in the matter, as it has been subject to significant local media / social media publicity
- b) Where the nature of the offence is of significant concern (such as physically or verbally threatening behaviour, discrimination against protected groups)
- c) Where the Monitoring Officer believes that their power, or the Council's powers to issue sanctions are not adequate to reflect the gravity of the offence but referral to the Standards Committee would emphasise the importance of the matter
- d) Where the Monitoring Officer, following consultation with the Chair and Vice-Chair of the Standards Committee, otherwise believes the matter should be referred to the committee.

See supplemental paper for how the Standards Committee should undertake consideration of such complaints.

- **Referral to Group Leaders**

Where the matter relates to a difference in personalities or poor behaviour between group members, or between members of two groups, then the Group Leaders will be informed and given the opportunity to seek to resolve the issue informally. Should the Councillors and Group Leaders be unwilling to seek to resolve the issue, then the Monitoring Officer will close the matter.

10. Failure to comply with sanctions or recommendations

Where a subject of a complaint has been deemed to have breached the code of conduct and refuses to or fails to comply with a sanction recommended by the Monitoring Officer, then the Monitoring Officer should first contact the subject and understand why, and, if necessary, emphasise the need to undertake the sanction proposed. If they still fail to do so, the Monitoring Officer will consult with the Independent Person, and then refer the matter to the Chair and Vice-Chair of the Standards Committee for their views;

- a) Escalate the matter to the standards committee to consider, who may decide to change the sanction, e.g. from an apology to removal from a post, or publicise the breach and the subject's refusal to comply; or
- b) Raising the matter at a formal meeting (for example, if a Town / Parish Councillor had failed to apologise, writing to the Clerk requesting that this failure be noted at the next Town / Parish meeting);

If the subject of a complaint fails to comply with a sanction issued by the Standards Committee then the matter will be referred back to the Standards Committee to consider.

11. No right of Appeal

There is no right of appeal to a decision made by the Monitoring Officer or the Standards Committee. The decision is final.

A subject or complainant does have the right to complain if they consider that there was procedural fault in the way the Council handled the complaint (maladministration). In such cases, the subject or complainant may make a complaint via the Council's corporate complaints process. They must demonstrate what part of the Council's processes were considered to be at fault. If they remain dissatisfied, the matter may be raised with the Local Government and Social Care Ombudsman, but only once the Council's complaints procedures have been concluded.

12. Persistent or Unreasonable Complainants

In section 7 above, criteria is provided as to whether an individual complaint may be judged as persistent or unreasonable and therefore not taken forwards for further consideration.

In addition, there may be situations where an individual complainant is behaving unreasonably or being unreasonably persistent. Significant Council resources may be required to manage their behaviour or the issues they raise.

Where a complainant is submitting unreasonable or persistent complaints (for example, the complainant raises the same issue repeatedly or demonstrates

a clear disregard for the standards process) their behaviour will be considered in line with the Council's Corporate Complaints Policy, available on the Council's website.

In accordance with the Complaints Policy, where a complainant's behaviour is unreasonable or persistent, the Monitoring Officer will raise this with the individual and ask them to change their behaviour. If their behaviour continues, the Monitoring Officer will assess further reasonable steps to take.

If their behaviour is unacceptable (in that it could be deceitful, abusive, offensive or threatening towards Councillors or Council staff), further appropriate restrictions may be applied which could include restricting access to Council staff or ceasing to review any further complaints of a similar nature raised by the individual.

13. Confidentiality

Whilst a complaint is subject to review, then parties to the complaint should seek to keep the matters concerned confidential. It is appreciated this can be challenging where, for example, the matters are in the public domain, and parties are entitled to seek advice from the Monitoring Officer on potential responses in such situations.

If a complainant shows a blatant disregard for the need to keep such matters confidential, then the Monitoring Officer may close the matter.

If a subject shows a blatant disregard for the need to keep such matters confidential, then the Monitoring Officer may take this into account as part of the complaint review.

14. Data Protection

The Localism Act requires the Council to put in place procedures to process standards complaints. As this constitutes a lawful obligation, then the Monitoring Officer is entitled to process personal data in dealing with such complaints, under the Data Protection Act 2018, as long as it is processed in a way that is compatible with the rights of the data subjects.

The Monitoring Officer must take steps to ensure that all data processed during the course of Standards investigations is done so in a manner that is consistent with these rights, and with the principles outlined in the Data Protection Act 2018.

Complainants are required to identify whether they would like for their personal data to be treated confidentially by the Monitoring Officer and not be disclosed to the subject or other parties involved. The Monitoring Officer will consider the

request and if they consider this cannot be complied with effectively (for example, the subject is highly likely to expect they will have made the complaint) then the Monitoring Officer will inform the complainant and ask if they wish to withdraw or continue.

The need to ensure fairness of the handling of such personal data may particularly apply in decisions on whether or not information relating to such complaints should be put in the public domain – for example, whether a press notice should be issued, and whether the Standards Committee should meet in public or in private session.

Factors that should be taken into account in making such a decision are:

- a) Whether all parties have consented to their information being placed in the public domain;
- b) That in general, Councillors are held to a “higher regard” by the general public, who have the right to expect high standards of behaviour. Therefore, the test on whether it is fair to put such information in the public domain may have a higher bar than putting information relating to ordinary residents in the public domain;
- c) Whether the matters are already widely known in the public domain;
- d) Whether, through putting the information in the public domain, may give the opportunity to clear misunderstandings or reputations

15. Human Rights

In undertaking reviews of Standards complaints, due consideration should be given to the rights given under the Human Rights Act 1998.

In particular, all complaints should be processed with a view to securing that the process is fair to all parties.

Depending on the nature of the complaint, consideration should continue to be given as to whether specific rights may apply to individuals, such as the right of freedom of expression.

16. Retention

There are no specific legal obligations with regards to the retention of standards complaints.

The Monitoring Officer shall retain information related to complaints which resulted in no breach of the Code of Conduct being identified, or the complaint was not progressed to a formal decision, for a total of 3 years following the conclusion of the case.

The Monitoring Officer shall retain information related to complaints which resulted in the breach of the Code of Conduct being identified for a total of 6 years, in line with the Limitations Act 1980.

