

## **Standards Procedures**

### **1. Written Complaints**

Complaints must be made in written form – they cannot be accepted over the telephone or in person. Complaints should be submitted on the complaint form, (available via the website) and may also be accepted in writing, via e-mail or post.

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 a Councillor has committed another form of potentially criminal offence (for example, misconduct in public office, assault) 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 to assess its merits. The Monitoring Officer may:

- a) Request further information from the complainant including evidence to support claims made or background to concerns raised;
- b) Inform the complainant that the matter cannot be taken forward as it does not fall under the scope of the Code of Conduct, for example, because it is a complaint against a decision made by a District / Parish / Town Council and not against a Councillor
- c) Following consultation with the Independent Person, inform the complainant that their complaint will not be considered on the grounds that:
  - a. The incident took place some time ago
  - b. The incident was clearly in a personal capacity, not an official capacity as a Councillor
  - c. The complaint is clearly tit for tat, vexatious, politically motivated or exercising a personal vendetta
  - d. The matter is so trivial that there is no public interest in pursuing the matter further
  - e. The complainant is unnecessarily abusive

The following criteria may be used to judge the matters a. to e. above:

The incident took place some time ago	The complainant has not provided legitimate justification for the delay in raising the matter. 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.
The incident was clearly in a personal capacity, not 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)
The complaint is clearly tit for tat, vexatious, politically motivated or exercising a personal vendetta	The complaint was received after a complaint being made against the complainant, and has little / no merit 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

The matter is so trivial that there is no public interest in pursuing it further	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
The complainant is 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.

## **5. Capacity**

The Code of Conduct only applies to Councillors when acting “in capacity”. Whilst, as above, there are cases where Councillors are clearly not in capacity, there are other situations where a finer judgement may be required. The Monitoring Officer shall use the following matters as guidance for determining whether a Councillor was acting in capacity at the time the incident occurred:

- Whether the Councillor had done or said something which would indicate they were acting in capacity (for example, having called themselves Councillor)
- Whether the Councillor had, or had not, been appointed to act on behalf of the Council in dealing with the matter
- Whether the Councillor was using Council resources to deal with the matter
- In relation to social media, whether the Councillor regularly uses the account to post about Council functions and activities, or identifies themselves as a Councillor in their profile

## **6. Referral of complaint**

Following receipt of a legitimate complaint, or further information having been received from the complainant, the Monitoring Officer will then refer the complaint to the subject to provide their views. The subject should be provided 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 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.

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 their impartiality to make a decision, however may request the complainant when responding, to explain particular aspects of the complaint.

## **7. 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 complainant will be notified that is the case. The Parish / Town Council should not discuss the complaint as part of their meeting.

## **8. Initial Assessment**

Upon receipt of the response from the subject, the Monitoring Officer may then seek to clarify any further matters with either subject or complainant.

Having received this information, the information will be provided to an Independent Person who will give their views on the complaint.

Once the Monitoring Officer has received the views of the Independent Person, they may either:

- a) Conclude that no breach of the Code of Conduct has arisen;
- b) Conclude that no breach of the Code of Conduct has arisen but provide any advisory thoughts to the parties concerned;
- c) Conclude that the Code of Conduct has been breached, and recommend sanctions to the Councillor; (local resolution)
- d) Refer the matter to the Standards Committee
- e) Conclude that the matters are of such complexity that further investigation is required
- 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

## **9. 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, the Parish / Town Council should seek to note these without reference to the subject of the complaint.

## **10. 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
- 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 issue a press notice 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.

### **11. Referral to the Standards Committee**

The Monitoring Officer, after consulting with the Independent Person, Chair and Vice-Chair of the Standards Committee, may elect to refer the complaint immediately to the Standards Committee. 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
- 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.

### **12. 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.

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 investigation has concluded, the Monitoring Officer will share the outcome with the Independent Person for their views and then either (in accordance with the above):

- a) Conclude that no breach of the Code of Conduct has arisen;
- b) Conclude that no breach of the Code of Conduct has arisen but provide any advisory thoughts to the parties concerned;
- c) Conclude that the Code of Conduct has been breached, and recommend sanctions to the Councillor; (local resolution)
- d) Refer the matter to the Standards Committee

### **13. 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. Should the Councillors and group leaders be unwilling to seek to resolve the issue, then the Monitoring Officer will close the matter.

### **14. Confirmation of Decision**

Once the Monitoring Officer has determined the outcome of a complaint, they shall write a report 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.

With regards decisions of the Standards Committee, the Monitoring Officer shall write to the subject, complainant and (if relevant) the Parish Clerk, setting out the decision of the Committee.

### **15. Failure to comply with sanctions or recommendations**

Where a subject of a complaint has been deemed to have breached the code of conduct and fails to comply with a sanction recommended by the Monitoring Officer, then the Monitoring Officer should first contact the subject and understand why they had failed to support the action proposed 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. They may agree on appropriate action to undertake which would normally be either:

- A) Referring the matter to the standards committee to consider; 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.

## **16. Appeal**

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

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. In such cases, the subject or complainant should contact the Monitoring Officer who can initiate the Council's complaints process. They must demonstrate what part of the Council's processes were considered to be at fault.

## **17. 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.

## **18. 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

## **19. 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.

## **20. 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.