

Note:

Proposed deleted text shown in [red].

Proposed revised text show highlighted in yellow

CODE OF CONDUCT

LOCALISM ACT 2011 SECTION 28 - ARRANGEMENTS FOR DEALING WITH COMPLAINTS

1. Making complaints

Any complaint that a Member has failed to comply with the Code of Conduct should be addressed to:

The Monitoring Officer
Test Valley Borough Council
Beech Hurst
Weyhill Road
Andover
SP10 3AJ

A form for making complaints is available. Its use is encouraged, but is not essential providing the complaint includes all the necessary information.

2. Initial action by Monitoring Officer

On receiving the complaint the Monitoring Officer will dismiss it without further action if:

- (a) The person complained about is no longer a member of the relevant Council; or
- (b) The Monitoring Officer considers the complaint does not relate to behaviour in the Member's official capacity as a Councillor; or
- (c) The matter being complained about happened more than 12 months before the complaint was received; or
- (d) The matter being complained about came to the complainant's notice more than 6 months before the complaint was received; or
- (e) The complaint is made anonymously without any independent evidence to substantiate the complaint.

The Monitoring Officer will inform the complainant and the member accordingly. Before making his/her decision the Monitoring Officer may consult with an Independent Person appointed under section 28 of the Localism Act 2011 if he/she considers it appropriate.

If the Monitoring Officer does not dismiss the complaint on one of the above grounds, he/she will acknowledge it and inform the complainant of the procedure to be followed. The Monitoring Officer may ask the complainant for further information or clarification.

The Monitoring Officer will (except in exceptional circumstances where he/she considers that it is in the public interest not to do so) send the member complained about a copy of the complaint, and invite the member to submit initial written comments within 10 working days.

The Monitoring Officer will also:

- (a) Ask the member if they wish the views of an Independent Person to be invited when the complaint is initially examined; and
- (b) Ask the member any specific questions the Monitoring Officer considers will assist the initial assessment of the complaint.

As an alternative to the above action, the Monitoring Officer may, if he/she considers it appropriate, and, after consultation with the Independent Person, refer the complaint to the Police and take no further action under this procedure unless and until informed by the Police that they will not proceed. (Note: this is only possible where the complaint relates to Disclosable Pecuniary Interest as defined in Section 30(3) of the Localism Act 2011)

3. Alternative action by the Monitoring Officer

If the Monitoring Officer considers it appropriate and if the complainant agrees, the Monitoring Officer can discuss with the member complained about whether he/she is willing to make an apology to the complainant.

If an apology is given this will be the end of the matter.

4. Initial assessment of the complaint

If the Monitoring Officer does not dismiss the complaint or alternative action is inappropriate or the complainant is unwilling to pursue it, the initial assessment will, if practicable, take place within 15 working days of receipt of the member's written comments under section 2 above.

The decision on the initial assessment will be made by the **Monitoring Officer in consultation with the Chairman of the E**mployment Appeals and Ethics Sub-Committee of the General Purposes Committee (the Sub-Committee), together with the Independent Person if the member has requested his/her involvement or the Monitoring Officer considers his/her involvement appropriate.

[Before the Sub-Committee considers the complaint] The Monitoring Officer will send to the Chairman of the Employment Appeals and Ethics Sub-Committee [its members] and (if participating) the Independent Person

- (a) A copy of the complaint
- (b) A copy of the member's comments in response to the complaint
- (c) Any other information in the Monitoring Officer's possession that he/she considers relevant.

The [Sub-Committee's] decision of the Monitoring Officer in consultation with the Chairman of the Employment Appeals and Ethics Sub-Committee (if participating the Independent Person) on the initial assessment, with reasons and the views of the IP (if involved) will be given in writing to the member, the complainant, and the Clerk to the Parish/Town Council (if the complaint was about a Parish/Town Councillor) within 5 working days.

There will be no right of appeal.

The decision will be available for public inspection.

5. Decision Options at Initial Assessment

The options upon initial assessment are [Sub-Committee may decide]:

- (a) To take no action (see Appendix 1); or
- (b) To attempt to resolve the matter informally between the complainant and member, either in writing, by face-to-face meeting, or by any other method they consider appropriate. In this case there will be no formal decision as to whether or not there was a breach of the Code of Conduct. If an attempt to resolve the matter in this way is not achieved to the satisfaction of the member and the complainant, options (a), (c) and (d) will remain open; or
- (c) To arrange a hearing before the Sub-Committee and the IP, at which the member and complainant can state their case and, if appropriate, call witnesses. Procedures are set out at Appendix 2. The hearing will reach a formal decision as to whether the member breached the Code of Conduct; or
- (d) If the complaint is potentially complex, to arrange for a formal investigation to be undertaken, including interview of appropriate witnesses, and to seek the view of the investigator as to whether there has been a breach of the Code of Conduct. If the investigator considers there has been a breach of the Code, a hearing will be arranged as in (c). If the investigator considers that there has not been a breach of the Code, the Monitoring Officer will issue a formal finding to that effect after consultation with the Independent Person.

Note

1. That if the Monitoring Officer considers that it is not appropriate for him/her to act, such as where he/she has advised the member or complainant in relation to the subject matter of the complaint or is otherwise conflicted out, then the Deputy Monitoring Officer will take his/her place.

2. In the event that the Chairman of the Employment Appeals and Ethics Sub-Committee considers that it is not appropriate for him to act, the vice-chairman will take his place.
3. At any stage in the process the Monitoring Officer or the Chairman of the Employment Appeals & Ethics Sub-Committee can consult with one of the Parish Council representatives appointed by the Test Valley Association of Parish and Town Councillors. If a representative is consulted he or she will attend the relevant meeting for the purposes of the Initial Assessment. [of the Sub-Committee]

No action will be taken where the Monitoring Officer in consultation with the Chairman of the Employment Appeals and Ethics Sub-Committee (if participating the Independent Person) considers that [any of the following apply]:

- (a) [the Sub-Committee considers that] there is no prima facie evidence that the Code has been breached;
- (b) taking into account the nature of the allegation, the use of [the Sub-Committee considers that using] public funds to examine the matter further would be disproportionate;
- (c) [the Sub-Committee considers that] the complaint appears to be vexatious, politically motivated, tit-for-tat or made by a persistent complainant;
- (d) the conduct complained about has already been the subject of investigation or enquiry by another public body;
- (e) the same, or substantially the same, issue has been the subject of a previous Code of Conduct allegation, and [the Sub-Committee considers] that there is nothing further to be gained;
- (f) [the Sub-Committee considers that] there is not enough information to take the matter further;
- (g) the complaint was made anonymously;
- (h) where the complainant has requested that their identity as complainant be withheld from the member, [and the Sub-Committee considers that] the matter cannot reasonably be taken further in all the [these] circumstances;
- (i) the member has already apologised for the action that was the subject of the complaint, and [the Sub-Committee considers] that this is sufficient to dispose of the complaint;
- (j) [the Sub-Committee considers that] the complaint is essentially against the action of the Council or a committee as a whole and cannot properly be directed against an individual member(s).

PROCEDURE FOR HEARINGS

General:

Hearings will where possible be held within 2 months of the initial assessment decision where there is no prior investigation, and within 2 months of receipt by the Monitoring Officer of the investigator's report where there has been a prior investigation.

The hearing will be before the Employment Appeals and Ethics Sub-Committee of the General Purposes Committee (the Sub-Committee). [One of the members will be elected Chairman].

The Independent Person appointed under section 28 of the Localism Act 2011 will also be present. His/her views will be requested and taken into account by the Sub-Committee, but by law he/she cannot vote.

The Monitoring Officer or deputy Monitoring Officer will be present as legal advisor to the Sub-Committee and a Democratic Services Officer will be present to take the minutes of the meeting.

Hearings are formal meetings of the Council under the Local Government Acts and are open to the public and press subject to the usual provisions regarding exempt business

Both the member and complainant will be invited to appear. They may present their own case or they may be represented.

If their involvement has been requested the Independent Person and/or Parish Representative will also be present.

They may bring witnesses (of a number the Sub-Committee considers is reasonable), in which case written statements from the witnesses must be lodged with the Monitoring Officer at least 8 working days before the hearing. "Character witnesses" who cannot provide evidence on the matter complained about will not be permitted.

The cost of any attendance/representation must be borne by the party concerned.

All written evidence will be circulated to the Sub-Committee, the Independent Person, the member and the complainant at least 5 clear days before the hearing.

Written statements will not be read out at the hearing as it will be assumed all those present are already familiar with their contents.

The legal advisor can speak at any time to advise the Sub-Committee on technical matters or ask questions of any party.

Proceedings:

The complainant can address the Sub-Committee and call witnesses (if any).

The member can ask the complainant and witnesses questions.

The Sub-Committee and Independent Person can ask the complainant and witnesses questions.

Where there has been an investigation the investigator will attend the hearing and present his/her report and findings.

The complainant can ask the investigator questions

The member can ask the investigator questions

The Sub-Committee can ask the investigator questions.

The member can address the Sub-Committee and call witnesses (if any)

The complainant can ask the member and witnesses questions.

The Sub-Committee and Independent Person can ask the member and witnesses questions.

The complainant can make a closing statement.

The member can make a closing statement.

All those present except the Sub-Committee, the Independent Person, the Parish Representative, the legal advisor and Democratic Services Officer will leave the room while the Sub-Committee makes its decision.

The Sub-Committee's decision will be announced orally as soon as possible.

A written report of the hearing and decision, with reasons, will be prepared, usually within 5 working days. A copy will be sent to all those present at the hearing and to the Clerk of the Parish/Town Council if the complaint was about a Parish/Town Councillor.

The written report will be available for public inspection.

Decisions open to the Sub-Committee:

These are:

- (a) That the member did not fail to comply with his/her Council's Code of Conduct;

- (b) That the member did fail to comply with his/her Council's Code of Conduct, and that
 - (i) no action need be taken; or
 - (ii) where the matter relates to a Borough Councillor that the member be censured; and/or
 - (iii) where the matter relates to a Parish or Town Councillor, that it be recommended to the Council concerned that the member be censured; and/or
 - (iv) whatever publicity the Sub-Committee considers appropriate be given to their findings; and/or
 - (v) it be recommended to the Council that the member be removed from a specific Committee(s).

The Sub-Committee may also make any recommendations it considers appropriate to the Council concerned, whether Test Valley Borough Council or the relevant Parish or Town Council, on procedural amendments that might assist members generally to follow the Code of Conduct.

Code of Conduct for Elected Members

To: The Monitoring Officer

Please read the Guidance Notes before completing this form.

COMPLAINT FORM

A. Your details

Please read note 1 in the accompanying leaflet before completing this section. Anonymous complaints will only be considered if there is independent evidence to substantiate the complaint.

Title:	
First name:	
Surname :	
Address:	
Daytime telephone:	
Evening telephone:	
Mobile telephone:	
Email address:	
Signature:	
Date of complaint:	

Please tell us which complainant type best describes you:

- Member of the public
- An elected or co-opted member of an authority
- Council officer or authority employee
- Other (please indicate)
-

B. Making your complaint

Please read **note 2** in the accompanying leaflet, before completing this section.

Please provide us with the name of the member(s) you believe have failed to comply with the Code of Conduct and the name of their authority:

Title	First Name	Surname	Council or authority name

Please read **note 3** in the accompanying leaflet, before completing this section.

Please provide us with the details of your complaint. Continue on a separate sheet(s) if there is not enough space on this form.

Continue on separate sheet(s) as necessary

C. Confidentiality of complainant and complaint details

Please read note 4 in the accompanying leaflet, before completing this section.

Only complete this next section if you are requesting that your identity is kept confidential.

Please provide us with details of why you believe we should withhold your name and/or details of your complaint:

D. Remedy sought

Please read note 6 in the accompanying leaflet

Please indicate the remedy or remedies you are looking for or hoping to achieve by submitting this form

E. Process from here

Please read note 5 in the accompanying leaflet.

F. Additional Information

Please read **note 7** in the accompanying leaflet.

For further information please contact:

Monitoring Officer
Test Valley Borough Council
Beech Hurst
Weyhill Road
Andover
Hampshire, SP10 3AJ.

Telephone: 01264 : 368401
Fax Number: 01264 : 368449
e-mail address legal@testvalley.gov.uk

Please return this form to:

Monitoring Officer
Test Valley Borough Council
Beech Hurst
Weyhill Road
Andover
Hampshire, SP10 3AJ.

July 2012

(CoC 1 250712)

Code of Conduct for Elected Members

Making a complaint about a Councillor

Please read the information below alongside the Complaint Form (CoC 1 250712)

Your details

Note 1: Please provide your name and contact details. Anonymous complaints will only be considered if there is independent evidence to substantiate the complaint.

A copy of your complaint, including your name and address, will be sent to the following people

- The Member(s) you are complaining about
- Members of the Employment Appeals & Ethics Sub-Committee
- Monitoring Officer of the Borough Council
- the Parish or Town Clerk (if applicable)

If you have serious concerns about a copy of your complaint being released please complete section C of the complaints form. In this case a summary of the complaint will be provided to the Member(s) concerned to enable him/her/them to provide comments.

Making your complaint

Note 2: The procedure to be followed by the Employment Appeals & Ethics Sub-Committee, and the sanctions available, are governed by law.

Note 3: Please explain what the elected Member has done that you believe breaches the Code of Conduct. If you are complaining about more than one Member you should clearly explain what each individual person has done that you believe breaches the Code of Conduct.

It is important that you provide all the information you wish to have taken into account by the Employment Appeals & Ethics Sub-Committee when it decides whether to take any action on your complaint.

For example:

- You should be specific, wherever possible, about exactly what you are alleging the Member said or did. For instance, instead of writing that the Member insulted you, you should state what it was they said.
- You should provide the date(s) of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.

- You should provide any relevant background information or other relevant documentary evidence to support your allegation.

Confidentiality of complainant and complaint details

Note 4: In the interests of fairness and natural justice, Members who are complained about have a right to know who has made the complaint. They have a right to be provided with a summary of the complaint. It is unlikely that the Sub-Committee will withhold your identity or the details of your complaint unless you have good reason to believe that you have justifiable grounds.

For example:

- You believe you may be victimised or harassed by the Member(s) against whom you are submitting a written complaint (or by a person associated with him or her)
- You feel you may receive less favourable treatment from the Council because of the seniority of the Member against whom you are submitting a written complaint in terms of any existing Council service provision or any tender/contract you may have or are about to submit to the Council.
- You suffer from a serious health condition and there are medical risks associated with your identity being disclosed.
- You have reasonable grounds for believing you will be at risk of physical harm if your identity is disclosed.
- You are an officer who works closely with the Member(s) complained about and are afraid of the consequences to your employment or of losing your job if your identity is disclosed.

Please note that requests for confidentiality or requests for suppression of complaint details will not automatically be granted. The Employment Appeals & Ethics Sub-Committee will consider the request alongside the substance of your complaint. The Monitoring Officer will then contact you with the decision. If your request for confidentiality is not granted, we will usually allow you the opportunity, if you so wish, of withdrawing your complaint.

Important: In certain exceptional circumstances where the matter complained about is very serious, we can proceed with an investigation or other action and disclose your name even if you have expressly asked us not to.

Process from here

Note 5: Once a valid complaint relating to an alleged breach of the Code of Conduct of Members has been received it will be considered by the Monitoring Officer to determine whether alternative action is appropriate or whether to refer it to the Employment Appeals & Ethics Sub-Committee for consideration. The Sub-Committee will aim to meet within 15 working days of the receipt of the Member's/Members' comments in response to the complaint.

Alternative action by the Monitoring Officer will take the form of a discussion with you and the Member(s) regarding the possibility of an apology being given and accepted.

The Sub-Committee may decide:

- i. to take no action
- ii. to attempt to resolve the matter informally between you and the Member(s)
- iii. to arrange a hearing before the Sub-Committee and an Independent Person
- iv. to arrange for the complaint to be investigated.

In the event that an informal resolution or a hearing without an investigation takes place it is open to the Employment Appeals & Ethics Sub-Committee to find there has been no failure to comply with his/her/their Council's Code of Conduct by the Member(s)

Options open to the Employment Appeals & Ethics Sub-Committee in the event an informal resolution or hearing without investigation takes place or complaint is investigated and a failure to comply with the Code of Conduct is found:

- i. no action needs to be taken
- ii. where the matter relates to a Borough Councillor, censure of the Member(s)
- iii. where the matter relates to a Parish or Town Councillor, that censure of the Member(s) be recommended to the Council concerned
- iv. whatever publicity the Sub-Committee considers appropriate be given to their findings
- v. it be recommended to the Council that the Member(s) be removed from a specific Committee.

The Sub-Committee may also make any recommendations it considers appropriate to the Council concerned on procedural amendments that might assist members generally to follow the Code of Conduct.

Note 6: If you consider it more appropriate, you can alternative action, such as an apology, through the Monitoring Officer.

Additional Information

Note 7: Complaints must be submitted in writing. This includes fax and electronic submissions (such as e-mail). However, in line with the requirements of the Disability Discrimination Act 2000, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing.

We can also help if English is not your first language.

If you need any support in completing this form, please let us know as soon as possible.

Criteria for Assessment of Complaints

Allegations that an elected Member of Test Valley Borough Council and elected or co-opted Members of Parish and Town Councils within its area have failed or may have failed to comply with their respective Member Codes of Conduct will be considered against the following criteria:

- Sufficient information has to be provided with the complaint to enable the Monitoring Officer and/or Employment Appeals & Ethics Sub-Committee to be satisfied that the complaint should be dismissed, considered for alternative action or referred for investigation. If insufficient information is provided, the Employment Appeals & Ethics Sub-Committee will take no further action on the complaint.
- Where the complaint is about somebody who is no longer a Member of Test Valley Borough Council or one of the Parishes within its area but is a Member of another authority the Employment Appeals & Ethics Sub-Committee will consider whether it wishes to refer the complaint to the Monitoring Officer of that other authority.
- Where the complaint has already been the subject of alternative action or an investigation relating to the Code of Conduct the Sub-Committee will consider whether any further action will be taken.
- Where the complaint is the subject of current alternative action or investigation the Employment Appeals & Ethics Sub-Committee will not order separate alternative action or investigation of the complaint.
- Complaints should be made as promptly as possible after the events that form its subject matter. It should be noted that where the subject matter of the complaint took place more than 12 months ago or came to your attention more than 6 months ago it will not be considered.
- The Sub-Committee will consider the seriousness of the complaint and if it is trivial may decide not to take any further action.
- The Employment Appeals & Ethics Sub-Committee will also consider whether the complaint appears to be malicious or politically motivated. In these circumstances it may well decide that it is insufficiently serious to take further action.
- The Sub-Committee will also consider whether the complaint is essentially against the action of the Council as a whole and cannot properly be directed against an individual Member(s)

For further information please contact:

Monitoring Officer
Test Valley Borough Council
Beech Hurst
Weyhill Road
Andover
Hampshire, SP10 3AJ.

Telephone: 01264 : 368401
Fax Number: 01264 : 368449
e-mail address legal@testvalley.gov.uk

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CoC 2 250712