

Part 5

Code of Conduct Arrangements for dealing with complaints

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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 Members' 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 on the Council's website or at the Council's offices. 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 may dismiss it without further action if:

- (a) the person complained about is no longer a Member of the relevant Council;
- (b) the Monitoring Officer considers the complaint does not relate to behaviour in the Member's official capacity as a Councillor;
- (c) the matter being complained about happened more than 12 months before the complaint was received;
- (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 send the Member complained about a copy of the complaint, and invite the Member to submit initial written comments within 10 working days (except in exceptional circumstances where he/she considers that it is in the public interest not to do so).

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 Monitoring Officer will undertake an initial assessment of the complaint. 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, together with the Independent Person if the Member has requested his/her involvement or the Monitoring Officer considers his/her involvement appropriate.

The Monitoring Officer will send to the Independent Person (if participating):

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

The decision of the Monitoring Officer in consultation with the Independent Person (if participating) on the initial assessment, with reasons and the views of the Independent Person (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:

- (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 General Purposes Employment Appeals & Ethics Sub-Committee and the Independent Person, at which the Member and complainant can state their case and, if appropriate, call witnesses. Procedures are set out in 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. 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. At any stage in the process the Monitoring Officer 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/she will attend the relevant meeting for the purposes of the Initial Assessment.

Appendix 1

No action will be taken where the Monitoring Officer (and if participating, the Independent Person) considers that:

- (a) There is no prima facie evidence that the Code has been breached;
- (b) Taking into account the nature of the allegation, the use of public funds to examine the matter further would be disproportionate;
- (c) 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 that there is nothing further to be gained;
- (f) 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, the matter cannot reasonably be taken further in these circumstances;
- (i) The Member has already apologised for the action that was the subject of the complaint, and that this is sufficient to dispose of the complaint; or
- (j) 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 adviser 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 adviser can speak at any time to advise the Sub-Committee on technical matters or ask questions of any party.

Proceedings:

1. The complainant can address the Sub-Committee and call witnesses (if any).
2. The Member can ask the complainant and witnesses questions.
3. The Sub-Committee and Independent Person can ask the complainant and witnesses questions.
4. Where there has been an investigation the investigator will attend the hearing and present his/her report and findings.
5. The complainant can ask the investigator questions.
6. The Member can ask the investigator questions.

7. The Sub-Committee can ask the investigator questions.
8. The Member can address the Sub-Committee and call witnesses (if any).
9. The complainant can ask the Member and witnesses questions.
10. The Sub-Committee and Independent Person can ask the Member and witnesses questions.
11. The complainant can make a closing statement.
12. The Member can make a closing statement.
13. All those present except the Sub-Committee, the Independent Person, the Parish Representative, the legal adviser and Democratic Services Officer will leave the room while the Sub-Committee makes its decision.
14. The Sub-Committee's decision will be announced orally as soon as possible.
15. 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.
16. 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.