

APPENDIX 1

BATH AND NORTH EAST SOMERSET COUNCIL

(DRAFT) ARRANGEMENTS FOR DEALING WITH COMPLAINTS ABOUT THE CODE OF CONDUCT FOR MEMBERS

Introduction

1. This procedure applies when a complaint is received that a Member, Co-opted Member or Town/Parish Member has or may have failed to comply with the relevant Code of Conduct for Members.
2. 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”.
3. No Member or officer will participate in any stage of the arrangements if he or she has, or may have, any personal conflict of interest in the matter.

4. Making a complaint

A complaint must be made in writing by post or email to:-

The Monitoring Officer
Bath and North East Somerset Council
Riverside
Temple Street
Keynsham
BS31 1LA

OR

vernon_hitchman@bathnes.gov.uk

The standard complaint form should be used. This can be obtained from the Monitoring Officer or downloaded from the Council’s website [insert ref] in order that all required information is included.

The Monitoring Officer will normally acknowledge receipt of the complaint within 5 working days of receiving it and, at the same time, write to the Subject Member (and in the case of a complaint about a Town/Parish Councillor to the Clerk of the Town/Parish Council as well) with details of the allegations (subject to any representations from the Complainant on confidentiality, which are accepted as valid by the Monitoring Officer). The Subject Member may, within 5 working days of receipt, make written representations to the Monitoring Officer which must be taken into account when deciding how the complaint will be dealt with. Representations received after this time may be taken into account, at the discretion of the Monitoring Officer, but will in any event not be considered after the Monitoring Officer has issued his Complaint Initial Assessment.

5. Complaint Initial Assessment

The Monitoring Officer will review the complaint and, after consultation with the Independent Person and the lead independent co-opted member, take a decision (a Complaint Initial Assessment) as to whether it merits further consideration, or another course of action. This decision will normally be taken within 20 working days of receipt of a complaint.

A complaint will be rejected if:

- It is not against one or more named Members or co-opted Members of the Council or a Town/Parish Council within the Council's area;
- The Subject Member was not in office at the time of the alleged conduct/or a Code of Conduct was not in force at the time;
- The complaint, if proven, would not be a breach of the Code of Conduct under which the Subject Member was operating at the time of the alleged misconduct.

If appropriate, the Monitoring Officer will then go on to apply the following criteria in deciding whether a complaint should be investigated, dealt with informally, or rejected:

- Whether a substantially similar allegation has previously been made by the Complainant to Standards for England, or the Standards Committee, or the complaint has been subject of an investigation by another regulatory authority;
- Whether 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;
- Whether the allegation is anonymous;
- Whether the allegation discloses a potential breach of the Code of Conduct, but the complaint is not serious enough to merit any action and:-
 - (i) The resources needed to investigate and determine the complaint are wholly disproportionate to the allegations;

- (ii) Whether, in all the circumstances, there is no overriding public benefit in carrying out an investigation;
- Whether the complaint appears to be malicious, vexatious, politically motivated or tit-for-tat;
- Whether the complaint suggests that there is a wider problem throughout the authority;
- Whether it is apparent that the subject of the allegation is relatively inexperienced as a Member, or has admitted making an error and the matter would not warrant a more serious sanction;
- Whether training or conciliation would be the appropriate response;

6. Additional Information

The Monitoring Officer may require additional information to come to a decision and may request information from the Subject Member. Where the complaint relates to Town/Parish Councillor, the Monitoring Officer may also inform the Clerk of the Town/Parish Council of the complaint and seek the views of the Clerk of the Town/Parish Council before deciding whether the complaint merits formal consideration or other action. In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for an investigation. Such informal resolution may involve the Subject Member accepting that his/her conduct was unacceptable and offering an apology, or taking other steps. Where the Subject Member or the authority (in appropriate cases) make a reasonable offer of local resolution, but it is rejected by the Complainant, the Monitoring Officer will take account of this in deciding whether the complaint merits further consideration.

If the complaint identifies criminal conduct or breach of other regulations by any person, the Monitoring Officer may report this to the Police or other prosecuting or regulatory authorities.

7. Confidentiality

If a Complainant has asked for their identity to be withheld, this request will be considered by the Monitoring Officer at the Complaint Initial Assessment stage.

As a matter of fairness and natural justice, the Subject Member should 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 on request from the Complainant, or otherwise, 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.

If the Monitoring Officer decides to refuse a request by a Complainant for confidentiality, he 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.

8. Further consideration

Two options are set out below for the Committee's consideration. The first of these – sections 9 – 11, are the sort of procedures which are commonly adopted or have been commonly adopted by other Councils and involve the formal appointment of an investigator, the preparation of a draft report, obtaining comments from interested parties and a conclusion for the recommendation for a Local Hearing – in other words a system not dissimilar from the current arrangements for dealing with the Standards' issues but with the removal of the 'pre hearing process' prescribed under the old regime which was generally agreed served no useful purpose other than to prolong the procedure.

The key feature of this process is the gathering of information and the reaching of conclusions by someone other than the Committee itself with the Committee's role limited to adjudication once the investigation has been completed.

An alternative proposal which would appear to have the merit of simplicity is set out as an alternative in section 12. The essential feature of this process is that the complaint, once it has passed the initial threshold as being worthy of consideration, is considered in its entirety by a Hearing of the Committee in the format set out in section 14. Essentially, the complainant is invited to present their case and produce information/call evidence in support of it; the member complained about has similar facilities. The Committee regulates through the Chair the extent of any examination or cross examination; a common approach to this is to vest in the chair of the panel the power to permit cross examination but reserve the normal power to make enquiries for clarification and so on to the Committee members themselves. Once the evidence is heard, both parties may then 'sum up' and the Committee can retire to reach a verdict.

There are clearly arguments both for and against either system. However Committee members may recall that even when a report has been prepared by an independent investigator under the old regime, then a pre hearing assessment undertaken to try and ascertain which facts were accepted and which were in dispute, that it was not uncommon for the

Committee having to make its' own judgements as to what evidence should be believed and not believed and so on.

My recommendations would be therefore that we adopt the system whereby there is no independent investigator as a matter of course but in the event of there being a particularly complex case reserving the right to have some of investigation undertaken.

9. Procedure A

The Monitoring Officer will appoint an Investigating Officer where a complaint merits formal investigation. The Investigating Officer may be a Council officer, an officer of another Council, or an external investigator.

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 will ensure that the Subject Member receives a copy of the complaint – subject to a Monitoring Officer decision on Confidentiality.

At the end of their investigation, the Investigating Officer will produce a draft report and will send copies of that draft report to the Complainant and to the Subject Member, for comments. The Investigating Officer will take such comments into account, before issuing their final report to the Monitoring Officer.

10. Investigating Officer finding of insufficient evidence of failure to comply with the Code of Conduct

The Monitoring Officer will review the Investigating Officer's report and, if he is satisfied that the Investigating Officer's report is satisfactory, will make a Confirmation Decision to confirm the finding of no failure to comply with the Code of Conduct.

The Monitoring Officer will write to the Complainant and the Subject Member (and to the Clerk of the Town/Parish Council, where the complaint relates to a Town/Parish Councillor), with a copy of the Confirmation Decision and the Investigating Officer's final report.

If the Monitoring Officer is not satisfied that the investigation has been conducted satisfactorily, the Investigating Officer may be asked to reconsider their report and conclusion.

11. Investigating Officer finding of sufficient evidence of failure to comply with the Code of Conduct

The Monitoring Officer will review the Investigating Officer's report and will then either send the matter for Local Hearing before the Standards Committee or, after consulting the Independent Person, seek Local Resolution.

12. Procedure B

Under this procedure, the complaint and the comments made by the member complained of will be collated into a report for Local Hearing. The parties will be informed of the hearing date and the complaint, together with supporting evidence/witnesses and the subject members' comments and supporting evidence/witnesses will be presented to the meeting.

13. Local Resolution

If the Monitoring Officer considers that the matter can reasonably be resolved without the need for a hearing, he will consult with the Independent Person and the Complainant and seek to agree a fair resolution. Such resolution may include the Member accepting that their conduct was unacceptable and offering an apology, and/or other remedial action. If the Member accepts the suggested resolution, the Monitoring Officer will report the outcome to the Standards Committee and the Clerk to the Town/Parish Council (if appropriate) for information, but will take no further action. If the Complainant or the Subject Member refuses Local Resolution in principle or to engage with the agreed outcome, the Monitoring Officer will refer the matter for a Local Hearing without further reference to the Complainant or the Subject Member.

14. Local Hearing

Where, in the opinion of the Monitoring Officer, Local Resolution is not appropriate or the Complainant and /or Subject Member refuse to co-operate, the Monitoring Officer will report on the complaint to the Standards Committee which will conduct a Local Hearing before deciding whether the Member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Member.

The Standards Committee will need to agree a procedure for local hearings in due course.

15. Constitution of the Standards Committee when considering a Local Hearing

When the Standards Committee is conducting a Local Hearing, the quorum for the Committee will comprise of 5 members. At least one member will be an independent member and where the Local Hearing relates to the conduct of a Town/Parish Council member, one member may be a town/parish council representative.

The Independent Person is invited to attend all meetings of the Standards Committee and their views must be sought and taken into consideration before the Committee takes any decision on whether the Member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

16. The Independent Person

The Independent Person must be a person who has applied for the post following advertisement of a vacancy for the post, and appointed by a positive vote from a majority of all the Members of Council at a meeting of the Full Council.

A person is not eligible for appointment if they:

- 16.1 Are, or have been within the past 5 years, a Member, co-opted Member or officer of the Council, with the exception that former Independent Members of Standards Committees can be appointed as Independent Persons;
- 16.2 Are or have been within the past 5 years, a member, co-opted Member or officer of a town/parish council within the Council's area, or
- 16.3 Are a relative or close friend, of a person within paragraph 14.1 or 14.2 above. For this purpose, "relative" means –
 - 16.3.1 Spouse or civil partner;
 - 16.3.2 Living with the other person as husband and wife or as if they were civil partners;
 - 16.3.3 Grandparent of the other person;
 - 16.3.4 A lineal descendent of a grandparent of the other person;
 - 16.3.5 A parent, sibling or child of a person within paragraphs 14.3.1 or 14.3.2;
 - 16.3.6 A spouse or civil partner of a person within paragraphs 14.3.3, 14.3.4 or 14.3.5;
 - 16.3.7 Living with a person within paragraphs 14.3.3, 14.3.4 or 14.3.5 as husband and wife or as if they were civil partners.

17. Action the Standards Committee may take where a Member has failed to comply with the Code of Conduct

Where the Standards Committee finds that a Member has failed to comply with the Code of Conduct, the Council has delegated to the Standards Committee such of its powers to take action in respect of individual Members as may be necessary to promote and maintain high standards of conduct. Accordingly the Standards Committee may –

- 17.1 Publish its findings in respect of the Member's conduct;
- 17.2 Report its findings to Council (or to the Town/Parish Council) for information;
- 17.3 Recommend to Council that the Member be censured;
- 17.4 Recommend to the Member's Group Leader (or in the case of un-grouped Members, recommend to Council) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 17.5 Recommend to the Leader of the Council that the Member be removed from the Cabinet, or removed from their Portfolio responsibilities;
- 17.6 Instruct the Monitoring Officer to (or recommend that the Town/Parish Council) arrange training for the Member;
- 17.7 Recommend to Council (or recommend to the Town/Parish Council that the Member be removed) from all outside body appointments to which they have been appointed or nominated by the Council (or by the Town/Parish Council);
- 17.8 Withdrawn (or recommend to the Town/Parish Council that it withdraws) facilities provided to the Member by the Council, such as a computer, website and /or email and Internet access;
- 17.9 Exclude (or recommend that the Town/Parish Council exclude) the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

18. Revision of these arrangements

The Council may by resolution or delegation to the Monitoring Officer agree to amend these arrangements and has delegated to the Chair of the Standards Committee the right to depart from these arrangements where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

19. Appeals

There is no right of appeal against a decision of the Monitoring Officer or of the Standards Committee.

If a complainant feels that the Council has failed to deal with his or her complaint properly, he or she may make a complaint to the Local Government Ombudsman.