

BATH AND NORTH EAST SOMERSET COUNCIL

ARRANGEMENTS FOR DEALING WITH COMPLAINTS ABOUT THE CODE OF CONDUCT FOR MEMBERS –JULY 2022

1. Introduction

- 1.1 Under the Localism Act 2011, the Bath, and North East Somerset Council (“the Council”) must have in place “Arrangements” under which allegations that a member or co-opted member of the Council, or of a committee or Sub-Committee of the Council, has failed to comply with the Code of Conduct for Members (“the Code”) can be investigated and decisions made on such allegations.
- 1.2 Principal councils such as Bath and North East Somerset Council are also required by law to have arrangements in place to investigate and determine code of conduct complaints against councillors of a town or parish council in the district in relation to any allegation of a breach of the code adopted by that body.
- 1.3 These “Arrangements” set out how you may make a complaint that an elected or co-opted member of the Council or a Town or Parish Council has failed to comply with the Code and sets out how the Council will deal with such allegations.
- 1.4 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”.
- 1.5 No Member or officer will participate in any stage of the Arrangements if they have, or may have, any personal conflict of interest in the matter.
- 1.6 These Arrangements provide for the Council to appoint at least one Independent Person, whose views must be sought before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the Council at any other stage, or by a member or co-opted member against whom an allegation has been made.

2. The Code

- 2.1 The Code was adopted by the Council in May 2021 and is available on the Council's website. A paper copy of the Code is available on written request to the Standards Committee Clerk, Bath and North East Somerset Council, Lewis House, Manvers Street, Bath BA1 1JG.
- 2.2 Each Parish/Town Council is also required to adopt a Code of Conduct, which can be requested from the Parish/Town Council Clerk, or which may be available via their website if they have one.

3. Making a complaint

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

The Monitoring Officer
Bath and North East Somerset Council
Guildhall

High Street
Bath
BA1 5AW

OR

Councillor-Complaints@bathnes.gov.uk

- 3.2 The standard complaint form should be used. This can be obtained from the Monitoring Officer or downloaded from the Council's website in order that all required information is included.
- 3.3 The Monitoring Officer is a senior officer of the Council who has statutory responsibility for maintaining the register of members' interests and who is responsible for administering these arrangements.
- 3.4 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 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 will, where possible, have access to an Independent Person to offer an impartial view to assist them in responding to the complaint. That Independent Person will not be the same Independent Person assisting the Monitoring Officer.
- 3.5 The Subject Member may, within 10 working days of receipt, make written representations to the Monitoring Officer which must be considered when deciding how the complaint will be dealt with. Representations received after this time may be considered, at the discretion of the Monitoring Officer, but will in any event not be considered after the Monitoring Officer has issued the Complaint Initial Assessment.

4. Confidentiality

- 4.1 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.
- 4.2 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. In exceptional circumstances, however, the Monitoring Officer may, at the request of the Complainant and supported by evidence, withhold the Complainant's identity provided the Monitoring Officer is satisfied that the Complainant has reasonable grounds for believing that they (or any witness to the facts of the complaint) may be at real risk of physical harm. Further, that their employment may be at risk or medical evidence suggests there are medical risks associated should their identity be disclosed.
- 4.3 If the Monitoring Officer decides to refuse a request by a Complainant for confidentiality, the Complainant will be offered the option to withdraw the complaint rather than proceed with his or her identity being disclosed.

5. Will the complaint be investigated?

- 5.1 Whilst complainants must be confident that complaints are taken seriously and dealt with appropriately, investigating a complaint involves spending public money as well as the cost of officer and Member time. The Council, therefore, adopts a proportionate approach having regard to all the circumstances and bearing in mind the sanctions which can be imposed if a Subject Member is found to be in breach of the Code. Ultimately the performance of Members in terms of how they represent their Wards is a matter for the electorate to decide should a Subject Member seek re-election.
- 5.2 The Monitoring Officer will review the complaint and, after consultation with the Independent Person and Independent Chair, take one of three decisions:
 - 5.2.1 Take no action
 - 5.2.2 Seek to resolve the complaint informally
 - 5.2.3 Refer the complaint for investigation.
- 5.3 A decision will normally be taken within 20 working days of receipt of a complaint.
- 5.4 A complaint will normally be rejected if:
 - 5.4.1 It is not against one or more named Members or co-opted Members of Council or a Town/Parish Council within the Council's area.
 - 5.4.2 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.
 - 5.4.3 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.
- 5.5 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 take no action:
 - 5.5.1 Whether a substantially similar allegation has previously been made by the Complainant to the Standards Committee, or the complaint has been subject of an investigation by another regulatory authority.
 - 5.5.2 Whether the complaint is about something that happened over 6 months ago as 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 acting now.
 - 5.5.3 Whether the allegation is anonymous.
 - 5.5.4 Whether the allegation discloses a potential breach of the Code of Conduct, but the complaint is not serious enough to merit any action and: -
 - 5.5.4.1 The resources needed to investigate and determine the complaint are wholly disproportionate to the allegations.
 - 5.5.4.2 Whether, in all the circumstances, there is no overriding public benefit in carrying out an investigation.
 - 5.5.5 Whether the complaint appears to be malicious, vexatious, politically motivated, or tit-for-tat.

5.5.6 Whether the complaint suggests that there is a wider problem throughout the authority.

5.5.7 Whether it is apparent that the subject of the allegation has apologised for making an error and the matter would not warrant a more serious sanction.

5.5.8 Whether training or conciliation would be the appropriate response.

5.6 The Monitoring Officer may require additional information to assist them in reaching a decision and may request additional information from the Subject Member. Where the complaint relates to Town/Parish Councillor, the Monitoring Officer will inform and may also seek information from the Clerk of the Town/Parish Council.

5.7 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 their 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 investigation.

5.8 If the complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer will refer the matter to the police and other regulatory agencies.

5.9 Both the Complainant and Subject Member will be notified by way of an Initial Assessment Notice.

6. Further Investigation

6.1 If the Monitoring Officer decides that a complaint merits further investigation they may conduct the investigation themselves although an investigating officer will normally be appointed who may be another senior officer of the Council, an officer of another Council or an external investigator (“the Investigating Officer”).

6.2 The Investigating Officer will write to the Subject Member and Complainant to provide them with a copy of the complaint and ask them to provide their explanation of events and details of any supporting documentation or witness they may wish to rely on. The Investigating Officer will decide whether they wish to interview the parties and what, if any, supporting information is taken in to account.

6.3 Where the Monitoring Officer has decided to keep an identity confidential the names and addresses will be redacted from the papers disclosed to the Subject Member.

6.4 Prior to concluding an investigation the Investigating Officer may discuss the matter in confidence with the Independent Person and Independent Chair before producing a draft report (“the Investigation Report”). Copies of the draft Investigation Report will be circulated to the Subject Member and Complainant in confidence giving them both the opportunity to correct any factual inaccuracies.

6.5 Having received and taken account of any comments on the draft Investigation Report the Investigating Officer will send the finalised report to the Monitoring Officer.

7. What happens if the Investigation Report concludes there is no evidence of a failure to comply with the Code?

- 7.1 The Monitoring Officer will review the Investigation Report and following consultation with the Independent Person, if satisfied that the Investigation Report is satisfactory, will within 10 working days confirm by way of Decision Notice the finding of no failure to comply with the Code.
- 7.2 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 Decision Notice including the Investigating Officer's final report (target timescale 10 working days).
- 7.3 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. (This should be done within 10 working days).

8. What happens if the Investigation Report concludes there is evidence of a failure to comply with the Code?

- 8.1 The Monitoring Officer will review the Investigation Report and will then either send the matter for a hearing before the Standards Committee or after consulting the Independent Person seek a Local Resolution.
- 8.2 The decision as to how to proceed will be made by the Monitoring Officer following consultation with the Independent Person and Independent Chair and will be final.

9. Local Resolution

- 9.1 If the Monitoring Officer considers that the matter can reasonably be resolved without the need for a hearing the Independent Person, Independent Chair and the Complainant will be consulted in order to seek agreement on what is considered to be a fair resolution which also helps to ensure higher standards of conduct in the future. Such resolution may include the Subject Member accepting that their conduct was unacceptable and offering an apology and/or other remedial action. If the Subject Member accepts the suggested resolution the Monitoring Officer will report the outcome to the next scheduled Standards Committee (and the Clerk to the Town/Parish Council if appropriate) for information. No further action will be taken. (Timescale: 10 working days of Complaint Initial Assessment).
- 9.2 If the Complainant or the Subject Member refuse Local Resolution in principle, refuse to engage with an agreed outcome or the Monitoring Officer concludes a Local Resolution cannot be reached the complaint will be referred for a Local Hearing to determine whether or not the Code was breached without further reference to the Complainant or Subject Member. (Target Timescale: 15 working days).
- 9.3 At the local resolution stage it is essential that the Monitoring Officer receives Independent, candid and uncensored advice from the Independent Person and Independent Chair to assist the Monitoring Officer in their decision making. It is necessary also to receive a Complainant's candid views on a suitable resolution. Accordingly, in reliance upon section 36 Freedom of Information Act 2000, all advice and views will be treated in confidence and therefore not subject to disclosure to avoid the risk of inhibition and to maintain the effectiveness of the Council's complaint

process and the prospect of early local resolution that might otherwise be undermined.

10. Local Hearing

- 10.1 A Local Hearing is not a Court process but in order to be fair to everyone there is a procedure to be followed. Information about the Standards Committee can be found at Annex A and information on the Hearing Procedure for the Standards Committee can be found at Annex B
- 10.2 If after a Local Hearing the Standards Committee conclude the Subject Member did not fail to comply with the Code the complaint will be dismissed. That will be an end to the matter.
- 10.3 If after a Local Hearing the Standards Committee concludes the Subject Member failed to comply with the Code the Chair will inform the Subject Member of this finding and the Standards Committee will then consider what action, if any, should be taken as a result of the failure to comply with the Code. In doing this, the Subject Member will have an opportunity to make representations and the Independent Person(s) will be consulted.
- 10.4 The Council has delegated to the Standards Committee the power to act in respect of individual Members as may be necessary to promote and maintain high standards of conduct. Accordingly, the Standards Committee may –
 - 10.4.1. Publish its findings in respect of the Member's conduct.
 - 10.4.2. Report its findings to Council (or to the Town/Parish Council) for information.
 - 10.4.3. Recommend to Council that the Member be censured.
 - 10.4.4. 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.
 - 10.4.5. Recommend to the Leader of the Council that the Member be removed from the Cabinet or removed from their Portfolio responsibilities.
 - 10.4.6. Instruct the Monitoring Officer to (or recommend that the Town/Parish Council) arrange training for the Member.
 - 10.4.7. 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).
 - 10.4.8. Withdraw (or recommend to the Town/Parish Council that it withdraws) facilities provided to the Member by the Council for a specified period, such as a computer, website and /or email and Internet access.
 - 10.4.9. 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.

10.4.10. Require an apology in suitable terms to the Complainant/the Council.

- 10.5 The Standards Committee has no power to suspend or disqualify the Subject Member.
- 10.6 Within 10 working days the Monitoring Officer will prepare a formal Decision Notice and send a copy to the Complainant, to the Subject Member (and to the Parish/Town Council if appropriate).
- 10.7 The Decision Notice will be published as part of the minutes of the Standards Committee meeting and placed on the Council's website unless the Monitoring Officer determines that it should remain confidential, or it contains exempt information.

11. Appeals

- 11.1 There is no right of appeal against a decision of the Monitoring Officer or of the Standards Committee.
- 11.2 If a Complainant feels that the Council has failed to deal with their complaint properly, they may make a complaint to the Local Government Ombudsman. The Local Government Ombudsman will not, however, consider complaints made by people in their capacity as councillors (against other councillors) and complaints about failures to disclose disclosable pecuniary interests as these may be criminal matters for the police to investigate.

12. Revision of these arrangements

- 12.1 The Committee may by resolution agree to amend these arrangements and delegate 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, following consultation by the Chair with the Monitoring Officer and the Independent Persons.

INFORMATION ABOUT THE STANDARDS COMMITTEE

1. Membership of the Standards Committee

- 3 Independent Members (elected every 4 years) (Non-Voting Members)
- 5 B&NES Councillors (Appointments will be made having regard to rules on political proportionality) (Voting Members)
- 3 Parish/Town Councillors (nominated by the B&NES Local Councils group) (Non-Voting Members)

2. 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 must be a town/parish council representative. The Standards Committee is chaired by an Independent Member until voting when the Chair will be taken by the B&NES Councillor allocated as Chair at Council (see Para 7.1 in annex b).

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.

3. 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:

3.1. 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.

3.2. 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

3.3. Are a relative or close friend, of a person within paragraph above. For this purpose, "relative" means –

3.4. Spouse or civil partner;

3.4.1. Living with the other person as husband and wife or as if they were civil partners.

3.4.2. Grandparent of the other person.

- 3.4.3. A lineal descendent of a grandparent of the other person.
- 3.4.4. A parent, sibling, or child of a person within paragraphs or.
- 3.4.5. A spouse or civil partner of a person within paragraphs
- 3.4.6. Living with a person within paragraphs as husband and wife or as if they were civil partners.

LOCAL HEARING PROCEDURE OF THE STANDARDS' COMMITTEE**1. Interpretation**

The Code	The Code of Conduct for Members
Complainant(s)	The person/people making the complaint
Subject Member	The councillor, co-optee, parish or town councillor against whom an allegation has been made
Appointed Representative	The Subject Member may be represented or accompanied during the meeting by a Solicitor, Counsel or, with the permission of the Standards Committee, another person.
Independent Person	An Independent Person will be invited by the Monitoring Officer to attend the Standards Committee and their views are sought and taken into consideration before any decision on whether the Subject Member's conduct constitutes a failure to comply with the Code and any action to be taken following a finding of failure to comply with the Code. The Independent Person remains independent of the standards process.
Investigating Officer	The person appointed by the Monitoring Officer to undertake a formal investigation. The Investigating Officer may be another officer of the Council, an officer of another council or an external investigator.
Legal Advisor	The officer responsible for providing legal advice to the Standards Committee. This may be the Monitoring Officer, another legally qualified officer, or someone appointed for this purpose from outside the Council.
Committee	The Standards Committee.

2. Pre-Local Hearing process

- 2.1 The Monitoring Officer will invite the Subject Member to give their written response to the Investigation Report and identify any agreed or disputed facts. This will assist in narrowing the issues in dispute at the Local Hearing.
- 2.2 The Subject Member will be required to identify any witnesses they wish to call.
- 2.3 The Subject Member will be required to provide the dates upon which both they and their witnesses will be unable to attend a Local Hearing.
- 2.4 The Committee, taking account of the advice of the Monitoring Officer, may issue directions for the Local Hearing including timetabling and witness attendance. Directions may be finalised by way of correspondence and issued beforehand or at a Local Hearing.

- 2.5 Any Committee meeting dealing with pre-hearing processes will be held in private without the Complainant or Subject Member present.

3. Documentation

- 3.1 Local Hearings of the Committee are subject to the normal rules for publication of Council agendas and access to information.
- 3.2 The agenda papers for the Local Hearing will include:
- Monitoring Officer report
 - Complaint form and documentation
 - Investigator's report
 - Subject Councillor's written response
 - For reference: Code of Conduct, Arrangements for Dealing with Complaints about the Code of Conduct, and the Local Hearing Procedure for the Standards Committee
- 3.3 The agenda and documents will be published under the Council's rules for exempt information. Prior to the Local Hearing, any documentation issued or exchanged during the process must be treated by all recipients as confidential unless and until the Committee agrees that the press and public should not be excluded from the meeting at which the allegations are going to be heard.
- 3.4 If the Committee agrees that the meeting should be held in public the Investigation Report will be made available to the press and public in attendance at the meeting.

4. At the Local Hearing

Representation

- 4.1 The Subject Member may be represented or accompanied during the meeting by a Solicitor, Counsel or, with the permission of the Committee, another person. The Monitoring Officer should be given prior notification where a Subject Members is to be represented

Legal Advice

- 4.2 The Committee may take legal advice, in private, if necessary, from its legal adviser at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the committee should be shared with the Subject Member and the Investigating Officer if they are present.

Procedural Issues

- 4.3 After all members of the Committee and others present have been introduced the chair will explain how the Committee is to proceed.

- 4.4 A Local Hearing will ordinarily follow normal Council meeting procedures. For example, introductions, apologies, declaration of interests and a request that the Monitoring Officer/Investigating Officer introduce the matter to be determined.
- 4.5 If the Subject Member (or appointed representative) is not present the Committee will consider whether to hear the case in absence or defer to another time or date. If the Subject Member has indicated the hearing should continue in absence this will normally happen.
- 4.6 The Committee will resolve any outstanding issues or disagreements about the conduct of the Local Hearing that were not resolved during the pre-hearing process.

Findings of Fact

- 4.7 If there is no disagreement about the facts the Committee will move on to establish whether or not the Subject Member failed to follow the Code
- 4.8 If the Subject Member disagrees with any fact in the Investigation Report without having given notice under the pre-Local Hearing process, they must give good reason why it has been raised at this late stage. After considering the Subject Member's representation the Committee may:
- Continue with the Local Hearing on the facts as presented in the Investigation Report.
 - Allow the Subject Member to make representations on the issue and invite the Investigation Officer to respond with or without witnesses.
 - Defer the Local Hearing in the public interest to enable witnesses and or the Investigation Officer to attend should they be absent.
- 4.9 If there is disagreement on the facts the Investigating Officer will be invited to make any representations and with the Committee's permission call witnesses. The Committee may give the Subject Member an opportunity to challenge any witness evidence put forward by the Investigating Officer.
- 4.10 The Subject Member will have the opportunity to make representations in support of their version of the facts and call witnesses with the Committee's permission. The Investigating Officer may challenge any witness evidence put forward by the Subject Member.
- 4.11 The Committee may at any time question those involved including witnesses and the Investigating Officer.
- 4.12 The Committee, together with the Legal Advisor, will usually move to a private room to consider the representations and evidence.
- 4.13 On their return, the chair will announce the Committee's findings of fact.

Deciding whether the Subject Member failed to follow the Code

- 5.1 The Subject Member will be invited to give a statement as to why the Committee should conclude they have not failed to follow the code.
- 5.2 The Committee will ask the Investigating Officer for any verbal or written representations.
- 5.3 At any time the Committee may question those making representation.
- 5.4 The Subject Member will be invited to make any relevant closing remarks.
- 5.5 The Committee, together with the Legal Advisor, will usually move to a private room to consider the representations.
- 5.6 On their return, the chair will announce the Committee's decision as to whether the Subject Member failed to follow the Code.

If the subject member has not failed to follow the Code of Conduct

- 6.1 If the Committee concludes that the Subject Member did not fail to comply with the Code it will dismiss the complaint and no further action will be taken. In that event, the Committee may still make general recommendations to the Council, Town or Parish Council on any remedial actions if considers necessary to address the issues raised in all the circumstances.

If the subject member has failed to follow the Code of Conduct

- 6.2 If the Committee determines that the Subject Member has failed to comply with the Code the Chair will inform the Subject Member of this finding. The Independent Person will be invited to give their views on the matter and these views will be recorded in the minutes of the meeting. The Chair of the Committee will also explain the reasons why any advice from the Independent Person has or has not been followed in reaching its decision.
- 6.3 The Committee will then consider what action, if any, should be taken as a result of a finding of failure. The Committee will give the Subject Member an opportunity to make representations on any action and the Independent Person will also be consulted in deciding what action, if any, to take. The Independent Person will not act in the capacity of advocate for any party to the proceedings.
- 6.4 The Committee will then deliberate in private to consider what if any sanction to impose and if so, what that sanction should be.
- 6.5 On their return the Chair will announce the Committee's decision.

Voting

- 7.1 When determining whether the Subject Member has failed to comply with the Code and what sanction should be imposed the standards committee will take an indicative vote of all the Non-Voting Members of the hearing panel. The indicative vote will inform the Voting Members decision which is subject to separate vote by Voting members only. The Voting Members of the panel are limited to the B&NES Councillors.

Recommendations

- 8.1 The Committee will consider whether it should make any recommendations to the Council, Town, or Parish Council with a view to promoting high standards of conduct among Members.

The Written Decision

- 9.1 The Committee will announce its decision on the day and a Decision Notice will be issued within 10 working days of the Committee.

Departure from this procedure

- 10.1 The Chair of the Committee has the right to depart from this procedure, in consultation with the Monitoring Officer or Legal Advisor, at any hearing where it is considered appropriate to deal with the case fairly and effectively.