



## **Arrangements for dealing with standards allegations under the Localism Act 2011**

### **1. Context**

These arrangements set out how to make a complaint that an elected or co-opted member of the Council has failed to comply with the Council's Councillor Code of Conduct. They will also be used in relation to any complaint made to the Monitoring Officer about the conduct of Town and Parish Councillors.

Under the Localism Act 2011, the Council must have in place arrangements under which any allegation of a failure to comply with the Code of Conduct can be investigated and decisions made about such allegations.

The arrangements must provide for the authority to appoint at least one Independent Person, whose views must be sought by the authority before it takes a decision on any allegation of a failure to comply with the Code of Conduct. The view of the independent person can be sought at any other stage and by an elected Councillor against whom a complaint has been made.

### **2. The Code of Conduct**

The Council has adopted a Code of Conduct for Councillors, which is available for inspection on the Council's website. These arrangements refer to the Code of Conduct and this document should be read in conjunction with it.

### **3. How to make a complaint**

To make a complaint, please write to or email to the Monitoring Officer, Anthea Lowe on the details set out below:

Anthea Lowe, Monitoring Officer, Director: Policy & Governance, Telford & Wrekin Council, Addenbrooke House, Telford, TF3 4NT.

[anthea.lowe@telford.gov.uk](mailto:anthea.lowe@telford.gov.uk)

### **4. The Role of the Monitoring Officer**

The Monitoring Officer is a senior officer of the authority who has statutory responsibility for maintaining the register of Members' interests and who is responsible for administering the system in respect of complaints of Councillor misconduct.

The Monitoring Officer may appoint a Deputy Monitoring Officer who may be tasked with

undertaking investigations and decisions in line with these arrangements.

In the event of there being a conflict of interest in relation to both the Monitoring Officer and Deputy Monitoring Officer, the Monitoring Officer will, in consultation with the Chief Executive, seek to appoint another Deputy Monitoring Officer, or alternatively, refer the matter to a Monitoring Officer from another Authority.

Complaints should be submitted using the Form for reporting a breach(es) of Councillor Code of Conduct.

In order to ensure that all the information needed to be able to process a complaint is included, please complete and send the complaint form, which can be downloaded from the Council's website.

The complainant should provide their name and a contact address or email address, so that the complaint can be acknowledged and they can be kept informed of its progress. If the Complainant wishes to keep their name and address confidential, they should indicate this on the complaint form along with their reasons, in which case their name and address will not be disclosed to the Councillor against whom the complaint is made without their prior consent only in exceptional circumstances. The authority does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

The Monitoring Officer will acknowledge receipt of your complaint within 5 working days of receiving it and will keep you informed of the progress of your complaint.

## **5. Will your complaint be investigated?**

### **Preliminary tests**

The Monitoring Officer will review every complaint received and take a decision as to whether it merits formal investigation. This decision will normally be taken within 15 working days of receipt of your complaint.

The complaint will be assessed by the Monitoring Officer, or in their absence the Deputy Monitoring Officer, in consultation with the Independent Person against the Stage One Legal Threshold set out in paragraph 5.1 and, if applicable, the Stage Two Initial Assessment test set out in paragraph 5.2 below.

#### **5.1 Stage One - Legal Threshold:**

- (a) Was the person complained of a Councillor at the time of the alleged conduct?
- (b) Was the person complained of acting in an official capacity at the time of the alleged conduct?
- (c) If the facts could be established as a matter of evidence, could the alleged conduct be capable of a breach of the Code of Conduct in force at the material time?
- (d) The complaint is about dissatisfaction with the Council's decisions, policies and priorities, etc.

If the complaint fails one or more of the Stage One Legal Threshold tests, no further action will be taken by the Monitoring Officer and the complaint will be rejected. The Complainant will be notified accordingly with reasons. There is no right of appeal against the Monitoring Officer's decision.

## **5.2 Stage Two – Initial Assessment**

If the complaint satisfies the Stage One Legal Threshold test, the Monitoring Officer will then apply the following Initial Assessment criteria test:

- (a) The complaint is a 'repeat complaint', unless supported by new or further evidence substantiating or indicating that the complaint is exceptionally serious or significant;
- (b) The complaint is anonymous;
- (c) Insufficient information/evidence to substantiate the complaint has been submitted by the Complainant;
- (d) The complaint is malicious, trivial, politically motivated or 'tit-for-tat';
- (e) The Complainant is unreasonably persistent, malicious and/or vexatious;
- (f) The alleged misconduct happened more than 6 months ago;
- (g) The complaint is relatively minor and dealing with the complaint would have a disproportionate effect on both public money and officers' and Councillors' time and it is more appropriate for the matter to be discussed within the Councillor's Political Group;
- (h) The circumstances have changed so much that there would be little benefit arising from an investigation or other action;
- (i) The complaint has been the subject of an investigation or other action and there is nothing more to be gained by further action being taken;
- (j) The complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter, e.g. where there is no firm evidence on the matter;
- (k) The complaint is about a deceased person;
- (l) The complaint is about a person who is no longer a Councillor.

If one or more of the Stage Two Initial Assessment test applies to the complaint, no further action will be taken by the Monitoring Officer and the complaint will be rejected. The Complainant will be notified accordingly with reasons. There is no right of appeal against the Monitoring Officer's decision.

If the complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police and other regulatory agencies.

If none of the criteria in the Stage Two Initial Assessment apply, the Monitoring Officer will go on to apply the Public Interest Test at 5.3.

## **5.3 Stage 3 – Public Interest Test**

Public interest is regarded as "something which is of serious concern and benefit to the public". It has also been held that the public interest does not mean what is of interest to the public, but what is in the interest of the public.

The Council is of the view that it should not use its resources to investigate matters which are trivial or which have little or no impact upon the public. It is important that

the Council focuses on investigations where matters are serious and capable of undermining the relationship between Councillors and the public they serve such as; corruption, bullying, damaging the Council's public image, bringing the Council into disrepute, or the misuse of power in public office.

When applying the public interest test, the Monitoring Officer and Independent Person shall consider each of the following public interest factors set out below. These factors are not exhaustive, and not all may be relevant in every case.

The weight to be attached to each of these factors, and the factors identified, will also vary according to the facts and merits of each case.

- the seriousness of the breach, for example, has the Councillor brought the Council seriously into disrepute? The more serious the breach the more likely investigation and referral for further hearing is required;
- has the Councillor deliberately sought personal gain for himself or another person at the public expense? If there is evidence of this, it is likely that the complaint will be investigated and referred for further hearing;
- are the circumstances of the breach such that a Councillor has misused a position of trust or authority and caused harm to a person? If there is evidence of this it is likely that the complaint will be investigated and referred for further hearing;
- was the breach motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity? If a Councillor's conduct is motivated by any form of discrimination it is likely that the complaint will be investigated and referred for further hearing;
- is there evidence of previous similar behaviour on the part of the Councillor? If so and the matter complained about is serious enough it is likely that the complaint will be investigated and referred for further hearing;
- is the breach such that an investigation or referral to the Standards Committee is required to maintain public confidence in elected Councillors? If so it is likely that the complaint will be investigated and referred for further hearing; and is investigation or referral to the Standards Committee a proportionate response? namely, would the cost of an investigation or hearing by the Standards Committee be regarded as excessive when weighed against any likely sanction?

## **6. What happens once the Monitoring Officer has reached a decision?**

Where the Monitoring Officer has taken a decision, they will inform the Complainant of their decision and the reasons for that decision. The Monitoring Officer must consult with the Independent Person before deciding whether or not a formal investigation should be undertaken.

Where the Monitoring Officer requires additional information in order to come to a decision, they may request further information from the Complainant, and may request information from the Councillor against whom the complaint is directed.

The Councillor against whom the complaint is directed, may seek the views of the Independent Person at any stage in the process. This could be to provide a view on the complaint itself, the process under which the complaint will be dealt with or to provide a view on any other query the Councillor may have relating to the complaint. An Independent Person's role is not to act as an 'advisor' to the Subject Councillor.

## **7. Local Resolution**

In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the Councillor accepting that their conduct was unacceptable and offering an apology, or other remedial action by the authority. Where the Councillor or the authority make a reasonable offer of local resolution, but the Complainant does not agree with that offer, the Monitoring Officer will take account of those views in deciding whether the complaint merits formal investigation.

The Monitoring Officer will complete a decision notice, whether or not a matter is to be investigated, which will outline the reasons for the decision.

The Monitoring Officer will normally only decide to investigate a complaint about alleged conduct that happened within six months of the date of receipt of the complaint. If the Monitoring Officer is of the view that exceptional circumstances apply, then this time limit may be waived.

## **8. Referral for Investigation**

If the Monitoring Officer decides that a complaint merits formal investigation, they will appoint an Investigating Officer/Officers, who may be another senior officer of the authority, an officer of another authority or an external investigator.

The Investigating Officer will decide whether they need to meet or speak to the Complainant to understand the nature of the complaint and so the Complainant can explain their understanding of events and suggest what documents the Investigating Officer needs to see, and who the Investigating Officer needs to interview.

The Investigating Officer would normally write to the Councillor(s) against whom the complaint has been made and provide them with details of the complaint.

The Subject Councillor has the opportunity to provide an explanation of events, identify any documents they believe the Investigating Officer needs to see and who should be interviewed.

In exceptional cases, where it is appropriate to keep the Complainant's identity confidential or disclosure of details of the complaint to the Councillor might prejudice the investigation, the Monitoring Officer can delete the Complainant's name and address from the papers given to the Councillor, or delay notifying the Councillor until the investigation has progressed sufficiently.

The Investigating Officer may ask the Councillor to attend an interview about the complaint. The interview may be tape recorded, unless the Investigating Officer considers there to be good reason not to.

The disclosure of any evidence to the Councillor at any stage of the investigation is a matter for the Investigating Officer, having regard to the rules of natural justice and ensuring fairness to all parties concerned.

If at any point during the investigation, the Investigating Officer forms the opinion that the investigation should cease, they will consult with the Monitoring Officer, who may consult the Independent Person and take a decision to stop the investigation at any stage.

At the end of their investigation, the Investigating Officer will produce a draft report and will send a copy of that draft report, in confidence, to the Monitoring Officer. The Monitoring Officer, if satisfied with the report, will then send the draft report to the Complainant and the Subject Councillor.

The evidence gathered during the course of the investigation is not disclosed to the Complainant or the Subject Councillor at this stage.

The Complainant and the Subject Councillor will be given a period to comment on the draft report. All comments should be directed to the Investigating Officer for consideration.

The Investigating Officer, having received and taken account of any comments made on the draft report, will undertake any further investigation they consider relevant and appropriate. The Investigating Officer will then send their final report to the Monitoring Officer.

**9. What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Councillor Code of Conduct?**

The Monitoring Officer will review the Investigating Officer's report and, if they are satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to the Complainant and to the Councillor, notifying them that they are satisfied that no further action is required, and provide both with a copy of the Investigating Officer's final report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly or has other concerns relating to the complaint or the investigation report, they may ask the Investigating Officer to reconsider their report. The Monitoring Officer may also consult the Independent Person about this.

**10. What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Councillor Code of Conduct?**

The Monitoring Officer will review the Investigating Officer's report and will then either send the matter for local hearing before a Sub Committee of the Standards Committee or, after consulting the Independent Person, seek local resolution.

**11. What action can the Sub Committee of the Standards Committee take where a Councillor has failed to comply with the Councillor Code of Conduct?**

The Council has delegated to the Standards Committee such of its powers to take action in respect of individual Councillors as may be necessary to promote and maintain high standards of conduct. Accordingly a Sub-Committee, on behalf of the

Standards Committee, will publish the breach of the Code of Conduct and the sanction imposed on the Councillor's profile on the Council's website for a period of time to be determined by the Sub Committee, which is to be no less than the time required for compliance with any sanction. If a Councillor fails to comply with a sanction in the timescale set, the information will remain on the profile until compliance is achieved. The Sub Committee will also report its findings to Council for information.

The Standards Committee may –

- 11.1 Recommend to the Councillor's Group Leader (or in the case of ungrouped Councillors, recommend to Council or to Committees) that the Subject Councillor be removed from any or all Committees or Sub Committees of the Council;
- 11.2 Recommend to the Leader of the Council that the Councillor be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 11.3 Instruct the Monitoring Officer to arrange appropriate training for the Councillor;
- 11.4 Recommend to Council to remove the Councillor from all outside appointments to which he or she has been appointed or nominated by the authority;
- 11.5 Withdraw facilities provided to the Councillor by the Council, such as a IT equipment, website and/or email and Internet access;
- 11.6 Exclude the Councillor from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.
- 11.7 Recommend to the Council that the Councillor be issued with a formal censure (i.e. the issue of an unfavourable opinion or judgement or reprimand) by motion.
- 11.8 Instruct the Monitoring Officer to apply the informal resolution process.
- 11.9 Recommend the Council to issue a press release or other form of publicity.
- 11.10 Recommend that the Subject Councillor makes an apology at the next full Council meeting.
- 11.11 Take such steps as appropriate, reasonable and proportionate to the particular conduct that amounted to the breach of the Code of Conduct.

The Standards Committee has no power to suspend or disqualify the Councillor or to withdraw Councillors' or special responsibility allowances.

## **12. What happens at the end of the hearing?**

At the end of the hearing, the Chair will state the decision of the Sub Committee as to whether the Councillor failed to comply with the Councillor Code of Conduct and as to any actions which the Sub-Committee resolves to take.

As soon as reasonably practicable thereafter, and within 5 working days, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Sub-Committee, and send a copy to the Complainant and the Councillor and make that decision notice available for public inspection and report the decision to the next convenient meeting of the Council.

If the Councillor complies with the sanction imposed by the Standards Committee, within the timescale set, the Monitoring Officer will report the matter to the Standards Committee for information. If the Councillor fails to comply with the sanction within the timescale set, the matter will be referred to the Standards Committee and Full Council for information.

### **13. Who are the Standards Committee?**

The Standards Committee is appointed each year by the Council. Details of the current membership of the Committee can be found on the Council's web site.

The Independent Person(s) is/are invited to attend all meetings of the Standards Committee and their views are sought and taken into consideration before a Sub Committee of the Standards Committee takes any decision on consideration of an investigation report on whether the Councillor's conduct constitutes a failure to comply with the Code of Conduct for Councillors and as to any action to be taken following a finding of failure to comply with the Councillor Code of Conduct.

### **14. Who is the Independent Person?**

The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the Councillors of Council.

A person cannot be "independent" if he/she –

14.1 Is, or has been within the past 5 years, a Councillor, co-opted member or officer of the authority;

14.2 Is a relative, or close friend, of a person within paragraph 14.1 above. For this purpose, "relative" means –

14.2.1 Spouse or civil partner;

14.2.2 Living with the other person as husband and wife or as if they were civil partners;

14.2.3 Grandparent of the other person;

14.2.4 A lineal descendent of a grandparent of the other person;

14.2.5 A parent, sibling or child of a person within paragraphs 14.2.1 or 14.2.2;

14.2.6 A spouse or civil partner of a person within paragraphs 14.2.3, 14.2.4 or 14.2.5; or



14.2.7 Living with a person within paragraphs 14.2.3, 14.2.4 or 14.2.5 as husband and wife or as if they were civil partners.

## **15. Publication of Standards Investigations**

The Council acknowledges that there is a need to balance the public interest in transparency of these types of matters with the requirement of fairness to a Councillor who is subject to an allegation.

The contents of the initial assessment of a complaint and the investigation will remain confidential.

When a matter progresses to a local hearing before a Sub Committee of the Standards Committee, the hearing will be in public, unless there is a particular reason for the information that will be disclosed during it, to be exempt. The Monitoring Officer will make this decision prior to the hearing in consultation with the Independent Person(s) and the Chair of the Committee. Each case will be determined on its own merits.

In making this decision, particular consideration will be given to the necessity of transparency, the requirements of witnesses, any Data Protection issues that may become relevant and schedule 12A of the Local Government Act 1972 which outlines what exempt information is.

Consideration will also be given to the disclosure of the papers prior to and or after the hearing and whether any redactions of the papers need to be made.

## **16. Access to Information during an Investigation**

During an investigation and any subsequent hearing, it is important to ensure that information and evidence that has been gathered, is kept confidential in order to protect the integrity of the process. With that in mind, the access to certain information will be restricted.

### **16.1 Subject Access Requests**

The Data Protection Act 2018 entitles individuals (both members of the public and employees) to access personal data held about them by Telford & Wrekin Council. These requests are referred to as Subject Access Requests.

There are certain circumstances where the Council can legitimately withhold personal information, if one of the exemptions within the Data Protection Act applies. Information which has been obtained during an investigation under these arrangements is likely to be exempt, under the Act, as it is likely that disclosure would prejudice the prevention and detection of crime and/or prejudice certain regulatory functions. Therefore, if a Subject Access Request is made during an investigation, relating to information relevant to the investigation, it is unlikely that it will be granted. The final decision will be made by the Monitoring Officer in consultation with the Audit and Governance Team of the Council.

## **16.2 Freedom of Information Requests**

The Freedom of Information Act 2000 places a statutory requirement on the Council to provide information to the public. Any individual has a right to request information held by the Council, regardless of where they reside. This right also extends to employees, businesses, politicians and members of the press.

There are certain circumstances where information is exempt from disclosure. Information which has been obtained during an investigation under these arrangements is likely to be exempt but any request will be considered in accordance with the requirements and exemptions applicable at the relevant time.

The final decision will be made by the Monitoring Officer in consultation with the Audit and Governance Team of the Council.

## **17. Revision of these arrangements**

The Monitoring Officer, in consultation with the Chair, may agree 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.

## **18. Appeals**

There is no right of appeal against a decision of a Sub Committee of the Standards Committee.

If the Complainant or Subject Councillor feels that the authority has failed to deal with the complaint properly, they may seek independent legal advice.

## **Glossary of Key Terms**

Complainant(s)	The person/people making the complaint.
Independent person(s)	The Council must appoint at least one Independent Person and seek that person's views before it takes decision on a complaint that it has decided to investigate. The Independent Person's views can also be sought by the Council on any other issue in the complaints handling process. The Independent Person will also provide, on request, procedural advice to a Subject Councillor.
Investigator	The person appointed by the Monitoring Officer to undertake a formal investigation. This may involve the appointment of an investigating officer, who 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 Sub-committee of the Standards Committee conducting the Local Hearing. This may be the Monitoring Officer, another legally qualified officer, or someone appointed for this purpose from outside the council.
Local Hearing	A meeting of a sub-committee of the Standards Committee at which they consider whether the "Subject Councillor" has breached the Code of Conduct.
Monitoring Officer	The Monitoring Officer is a senior officer of the council who has statutory responsibility for maintaining the register of Councillors' interests and who is responsible for administering the system in respect of complaints of Councillor misconduct.
Public Interest	Public interest considerations are part of the assessment of the complaint.
Subject Councillor(s)	The Councillor or Councillors against whom an allegation has been made.