

Somerset County Council

Standards Committee

10 November 2022

Code of Conduct complaints procedures and transition of City, Town and Parish complaints to Somerset Council

Cabinet Member:

Division and Local Member:

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1. Summary

1.1 As from 1 April 2023 Somerset Council will be responsible for dealing with Code of Conduct complaints both in relation to the 110 members of this Council but also in relation to members from over 278 City, Town and Parish Councils (“Parish Councils”) in Somerset. This will increase to 279 once Taunton Town Council comes into effect.

1.2 The purpose of this report is to update the Committee on the Code of Conduct complaints procedures currently in place at Somerset County Council, to provide an indication of the number of complaints we may expect to receive on an annual basis once Somerset Council is in place in light of the fact that the District Councils currently deal with the Parish Council complaints and to update the Committee on the steps that are being taken by the LGR Governance Board to prepare for the transition of the Parish member Code of Conduct complaints process to Somerset Council.

2. Recommendations

2.1 To note the update including the steps being taken by the LGR Governance Board to ensure a smooth transition of the countywide Code of Conduct complaint process and procedures to Somerset Council.

2.2 To note the likely impact upon resources and the need for sufficient resource in the new structure.

2.3 To invite the Committee to comment upon the proposals.

3. Background

3.1 As from 1 April 2023 Somerset Council will be responsible for dealing with Code of Conduct complaints both in relation to the 110 Unitary members but also in relation to the members of over 279 Parish Councils in Somerset.

3.2 The purpose of this report is therefore to update the Committee on: -

- (a) the Code of Conduct complaints procedures currently in place at Somerset County Council;
- (b) to provide an indication as to the number of complaints we may expect to receive once the new Unitary is in place;
- (c) to update the Committee on the steps that have been taken by the LGR Governance Board to prepare for the transition of the Code of Conduct complaints process to the Unitary Council and;
- (d) the likely resource implications.

4. Existing Code of Conduct complaints procedures

4.1 The Council is legally required under the Localism Act 2011 Section 28(6) to adopt arrangements for dealing with member code of conduct complaints for our own members. In April this year the Council adopted a revised Code of Conduct largely based on the LGA Model Code of Conduct (the Somerset Code), and the Monitoring Officer was granted delegated authority to put in place the processes and procedures for dealing with those complaints.

4.2 Attached at Appendix A is a copy of the Guidance and Procedures for dealing with Code of Conduct complaints as produced by the five Somerset Monitoring Officers and approved by the Monitoring Officer under delegated powers. As the Committee are aware, all four District Councils have adopted the Somerset Code and have therefore adopted the same procedures. Having the same practices and procedures across all five Somerset Authorities will help with transitioning any code of conduct complaints that are still in the process of being considered, when Somerset Council comes into place in April 2023.

4.3 This Council's current Code of Conduct complaints arrangements consist of the following key parts:

a) **First stage:** Acknowledging each complaint within 3 working days and considering whether the complaint is a valid Code of Conduct complaint within 5 working days.

b) **Second Stage:**

Level 1: Lower-level complaints about procedural matters, unhappiness with decisions, those which are not Code related, or may be technical very minor breaches will be determined by the Monitoring Officer in consultation with the Independent Person without further inquiry and the complainant advised of the outcome within approximately 20 working days.

Level 2: If a complaint is beyond Level 1, the subject member will be given details of the complaint and invited to make written representations within 10 working days. The Monitoring Officer will then, in consultation with the Independent Person, decide whether no further action should be taken, other action (e.g. an apology or training) or whether it should proceed to a full investigation. Again, this is dealt with in approximately 20 working days.

c) **Referral for Investigation:** If a formal investigation is needed then this will take place and if the conclusion of the investigator is that there is a potential breach of the Code of Conduct and the Monitoring Officer determines that it is in

the public interest to proceed to a formal hearing, a Code of Conduct Hearing Panel will be constituted consisting of three members. This process (from referral for investigation to hearing) takes up to approximately six months.

5. Arrangements from 1st April 2023

5.1 As from the 1 April 2023 Somerset Council will need to have in place arrangements for dealing with member code of conduct complaints both for our existing 110 members but also for Parish members. There may also be ongoing complaints being considered in relation to former District Councillors that will transfer over and need to be concluded.

5.2 The current Code of Conduct complaints procedures (as outlined above) will therefore need to be updated. The changes required are minimal and will simply require updating the guidance to reflect that complaints can be made about both Unitary members and City, Parish and Town Councillors in Somerset. The other important issue that will need to be reflected is the fact that Somerset Council will not have the power to impose sanctions in relation to members of Parish Councils (should a breach of the Code be found) and can only recommend sanctions to the relevant Parish Council.

6. Anticipated numbers of Code of Conduct complaints

6.1 It is important, in transitioning to Somerset Council, that we anticipate the likely demand that will be placed upon the Monitoring Officer in terms of the number of Code of Conduct complaints that are likely to arise. This is important, bearing in mind that there are currently five Monitoring Officers and additional Deputy Monitoring Officers across Somerset dealing with these complaints, as opposed to the one Monitoring Officer that will be appointed in the new structure. In the circumstances, we have reviewed both the number of complaints received by other Unitary Councils in the last two years and the number of complaints currently received by the four District Councils in Somerset in relation to Parish members.

6.2 Statistics for Cornwall, Dorset and Wiltshire Unitary Councils have been collated and are set out in Table 1 below. This table identifies the number of complaints received per annum in 2020/21 and 2021/22. As can be seen, Cornwall receives approximately 25 per annum, whereas Dorset and Wiltshire receive more than double that number, with an average of approximately 60 per annum. It is important to reflect that these figures relate to formal complaints received. It does not identify the number of informal concerns raised (that did not lead to a formal complaint).

TABLE 1

	Cornwall	Dorset	Wiltshire
2020/2021	23	54	72
2021/2022	28	60	52 (part year only)
Number of Unitary	87	82	98

members			
Number of Parish Councils	196	264	253

6.3 It is anticipated that at least 80% of complaints received by Somerset Council will relate to Parish Councils due to the high number of Parish members in Somerset.

6.4 The number of Parish complaints received by each of the four Somerset District Councils for the 2021/22 financial year are set out in Table 2 below. All four Districts hold accurate records of the number of formal complaints they have received and the outcomes. However, it is important to note that, as with County Code of Conduct complaints, Monitoring Officers receive many enquiries which do not progress to a formal complaint and for which records are not retained.

6.5 In the circumstances the District Monitoring Officers have estimated the number of enquiries they deal with in relation to alleged member misconduct (which do not result in a formal complaint) and the number of enquiries they receive from Parish Clerks seeking advice in relation to governance matters.

6.6 Table 2 shows that a total of 58 formal Parish complaints were received in 2021/22 across Somerset which, with the addition of the number of complaints anticipated in relation to Unitary councillors, indicates a figure of approximately 70 complaints per annum. This is much higher than suggested by the Cornwall figures but in line with those numbers experienced in Dorset and Wiltshire Unitary Councils. One of the reasons for the difference in the Cornwall figures may well be the fact that they have over 50 less Parishes than Dorset or Wiltshire. At 279 the new Council will have more Parishes than all three Unitary Councils.

6.7 In terms of the outcome of these Somerset Parish complaints, only two were referred for investigation, with the vast majority requiring no further action and a small number requiring some other form of action, such as an apology, training, or mediation. As regards those concerns raised that did not proceed to a formal complaint, these were estimated at 48 per annum across Somerset and requests for governance advice from Parish clerks, at approximately 100 per annum.

TABLE 2

	MDC	SDC	SSDC	SWT	Number referred for investigation	Total
Formal Complaints 2021/2022	9	8	29	12	2 (both on hold)	58
Code of Conduct enquiries not proceeding to a formal	12	12	Not known	15-20		Estimated at approx 48 per annum

complaint						
Advice and guidance to Parish Clerks on governance issues	25-30 per annum	30-40 per annum	1	25-30 per annum		Estimated at over 100 per annum

6.8 Whilst there were only 2 referrals for investigation by District Councils in 2021/22, it is very difficult to anticipate the likely level of investigations for the new Unitary. This will depend upon the severity of individual complaints. There are currently three matters being fully investigated by the Districts in 2022/23. The cost of an investigation ranges between £2500 for a straightforward matter to £20,000 for a large-scale investigation.

6.9 It is clearly important that we have robust procedures and sufficient resources in place from vesting, to ensure that we can resolve issues at the earliest opportunity and ideally before they progress to formal complaints. Alongside this, we need to offer regular training to City, Town and Parish Councillors and Parish Clerks to ensure that they are sufficiently aware of the requirements of the Code. We also need to ensure that we have sufficient resource to provide advice to members and Parish Clerks on interpretation of the Code of Conduct and declaration of interests where this is required. Furthermore, sufficient resource will also be needed to provide the general, often governance related, support regularly sought by Parish clerks.

7. LGR Governance Workstream

7.1 Work is currently being undertaken within the LGR Governance Workstream to ensure that Somerset Council has procedures in place for dealing with Parish complaints from 1 April 2023.

7.2 The Somerset Code of Conduct has been adopted by all the District Councils in Somerset in preparation. In addition, a standard set of procedures was produced by the Somerset Monitoring Officers which have also been adopted by all five Councils.

7.3 We have been promoting the Somerset Code with all Town and Parish Councils in Somerset and produced a version of the Code tailored for Parishes. It is important that we continue to promote this Code to Parishes, as at present, District Monitoring Officers are having to advise on more than one version of the Code of Conduct (at least 3, if not more). Having one Code will also make it easier for dual hatted members.

7.4 Another step that will need to be taken between now and vesting, is to make minor changes to the current County Council procedures to cover Parish complaints. We will also need to ensure that appropriate arrangements are in place to conclude any District complaints before vesting where possible, to

transfer those District Member complaints over to Somerset Council where still ongoing and to ensure that any Parish complaints that are in progress upon vesting, also have a seamless transfer to Somerset Council.

8. Resources

8.1 As well as dealing with the high number of Unitary and Parish complaints as from April 2023, Somerset Council will also need to manage the process for declaring interests and gifts and hospitality for the 110 County members and for the 279 Parish Councils across Somerset. This will mean that the level of work currently carried out by the County Council will increase significantly upon vesting when the Somerset Council assumes responsibility for maintaining the register of interests and gifts and hospitality for members of all the Somerset City, Town and Parish Councils.

8.2 The administration this involves is at its most significant in the first three months following an election but continues throughout the quadrennium as members have changes of circumstance, resign, are co-opted/elected. This is estimated to be approximately 37 hours per week for the three months following an election and 12 hours per week thereafter. This will be in addition to the Unitary and Parish Code of Conduct complaints identified in Table 2 above, together with all the informal concerns raised, advice needed in relation to declaration of interests and Parish governance advice. In the circumstances, it will be essential that the Monitoring Officer has sufficient resources, including at least two Deputy Monitoring Officers, to deal with all of these demands. We will also need sufficient Independent Persons in place and with this in mind, we are about (subject to Member approval) to commence a recruitment process to appoint 3 Independent Persons.

9. Options Considered and Consultations undertaken

9.1. This report is for the information of the Committee only. The figures outlined in the report have been provided by the Somerset Monitoring Officers.

10. Implications

10.1. Due to the number of City, Town and Parish Councils in Somerset there will be a significant increase both in relation to the number of Code of Conduct complaints to be dealt with post vesting and the declarations of interests and gifts and hospitality that will need to be administered by Somerset Council. It is important therefore that we have (1) robust procedures in place to manage those complaints and declarations and (2) sufficient resources to deal with those complaints/declarations and to promote ethical standards across Somerset, thereby reducing the likelihood of complaints arising. S5 of the Local Government and Housing Act 1989 confirms that a Monitoring Officer must be provided with sufficient resources to undertake their role. In the circumstances, these additional responsibilities will need to be considered when determining the new structure for Somerset Council.

11. Appendices

Appendix 1 – County Council Code of Conduct complaints procedures