

Somerset West and Taunton Council Arrangements for Dealing with Standards Allegations Under the Localism Act 2011

1. Context

These “Arrangements” set out how you may make a complaint that an elected Councillor or co-opted Member of this Authority or of a Town or Parish Councillor within its area has failed to comply with the Authority’s Code of Conduct, and sets out how the Authority will deal with allegations of a failure to comply with the Authority’s Code of Conduct.

Under Section 28(6) and (7) of the Localism Act 2011, the Council must have in place “arrangements” under which allegations that a Councillor or co-opted Member of the Authority or of a Town or Parish Council within the Authority’s area, or of a Committee or Sub-Committee of the Authority, has failed to comply with that Authority’s Code of Conduct can be investigated and decisions made on such allegations.

Such 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 an allegation which it has decided shall be investigated, and whose views can be sought by the Authority at any other stage, or by a Councillor or co-opted Member or Councillor of a Town or Parish Council against whom an allegation has been made.

2. The Code of Conduct

The Council has adopted a Code of Conduct for Councillors, which is part of the Constitution and available for inspection.

Each Town or Parish Council within the Authority’s area is also required to adopt a Code of Conduct. If you wish to inspect a Town or Parish Council’s Code of Conduct, you should inspect any website operated by the Town or Parish Council and request the Town/Parish clerk to allow you to inspect the Town/Parish Council’s Code of Conduct.

3. Making a Complaint

If you wish to make a complaint, please write to The Monitoring Officer, PO Box 866, TAUNTON, TA1 9GS
or email a.tregellas@somersetwestandtaunton.gov.uk

Telephone: 0300 304 8000

The Monitoring Officer has a statutory responsibility for administering the system in respect of complaints of Councillor misconduct.

In order to ensure that we have all the information which we need to be able to process your complaint, **please complete and send us the model complaint form**, which can be

downloaded from the Somerset West and Taunton Council's website – www.somersetwestandtaunton.gov.uk – next to the Code of Conduct, and is available on request from Reception at the Council Offices.

If you have difficulty making your complaint in writing, you will be offered assistance. A request for assistance should be made by contacting the Monitoring Officer, whether in person, by phone or by email (whether by yourself or someone assisting you) using the contact details set out above.

Please do provide us with your name and a contact address or email address so that we can acknowledge receipt of your complaint and keep you informed of its progress. If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form, in which case we will not disclose your name and address to the Councillor against whom you make the complaint, without your prior consent. The Council does not normally investigate anonymous complaints, unless the Monitoring Officer (in consultation with the Independent Person) concludes that there is a clear public interest in doing so and that the fairness of the procedure would be maintained.

It is very important that you set your complaint out fully and clearly and provide all the information at the outset. You should also provide any documents or other material that you wish to be considered. If a complaint does not contain sufficient information, it may not be dealt with.

It is helpful if you provide a covering note summarising what you are complaining about, especially if your complaint includes a lot of supporting documentation. In the summary you should tell us exactly what each person you are complaining about said or did that has caused you to complain. If you are sending supporting documentation, please cross-reference it against the summary of your complaint.

You should be as detailed as possible and substantiate your complaint where you can. Although you are not required to prove your complaint at this stage of proceedings, you do have to demonstrate that you have reasonable grounds for believing that the Councillor(s) complained about has breached the Code of Conduct.

The Monitoring Officer will acknowledge receipt of your complaint within 10 working days of receiving it and will keep you informed of the progress of your complaint. In addition, the Monitoring Officer will also notify the subject Councillor of the complaint and the relevant Town or Parish Council if appropriate.

4. Will Your Complaint Be Investigated?

The Monitoring Officer will review every complaint received and, after consultation with the Independent Person, take a decision as to whether it merits formal investigation. This decision will normally be taken within 2 calendar months of receipt of your complaint. Where the Monitoring Officer has taken a decision, you will be informed of that decision and the reasons for it.

Where additional information is required in order to come to a decision, the Monitoring Officer may come back to you and may also request information from the Councillor against whom your complaint is directed. Where your complaint relates to a Town or Parish Councillor, the

Monitoring Officer may also inform the Town or Parish Council of your complaint and seek the views of the Town or Parish Council before deciding whether the complaint merits formal investigation.

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 his/her conduct was unacceptable and offering an apology, or other remedial action by the Authority. Where the Councillor or the Council make a reasonable offer of Local Resolution, but you are not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

Therefore, not every complaint received will be formally investigated or referred for some action. As a starting point, the preference will be to resolve complaints without the need for a formal investigation. The factors to be taken into account in reaching a decision are:

- Whether a substantially similar allegation has previously been made by you, or the complaint has been the 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 Councillor complained about is relatively inexperienced, or has admitted making an error and the matter would not warrant a more serious sanction;
- Whether a simple apology, training or conciliation would be the appropriate response;
- Whether a reasonable offer of Local Resolution is offered by the Councillor the subject matter of the complaint but is rejected by you.

If your 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.

The Monitoring Officer may discontinue a complaint or terminate an investigation if they

consider it appropriate to do so, having regard to whether the balance of the public interest lies in continuing to action the complaint.

5. How Is the Investigation Conducted?

If the Monitoring Officer decides that a complaint merits formal investigation, an Investigating Officer may be appointed. That Investigating Officer 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 you to understand the nature of your complaint. This will allow you to further explain your understanding of events and suggest what documents the Investigating Officer may need to see or who the Investigating Officer may need to interview.

The Investigating Officer would normally write to the Councillor against whom you have complained and provide him/her with a copy of your complaint. They will ask the Councillor to provide his/her explanation of events and to identify what documents they need to see and/or who he needs to be interviewed. In exceptional cases, the Monitoring Officer may delete your name and address from the papers or delay notifying the Councillor until the investigation has progressed sufficiently where it might prejudice the investigation.

At the end of their investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to you and to the Councillor concerned, to give you both an opportunity to identify any matter in that draft report which you disagree with or which you consider requires more consideration.

Having received and taken account of any comments which you may make on the draft report, the Investigating Officer will send their final report to the Monitoring Officer.

6. What Happens If the Investigating Officer Concludes That There Is No Evidence of a Failure to Comply with the Code of Conduct?

The Monitoring Officer will review the Investigating Officer's report and, if after consulting the Independent Person, is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the Councillor concerned and to the Town or Parish Council, where your complaint relates to the Town or Parish Councillor, notifying you that no further action is required. A copy of the Investigating Officer's final report will be given to both of you. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, the Investigating Officer may be asked to reconsider their report.

7. What Happens If the Investigating Officer Concludes That There Is Evidence of a Failure to Comply with the Code of Conduct?

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

a) Local Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the

need for a Hearing. In such a case, the Independent Person will be consulted with you as Complainant and seek to agree what you consider to be a fair resolution, which also helps to ensure higher standards of conduct for the future. Such resolution may include the Councillor accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the Authority. If the Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Audit, Governance and Standards Committee and, if appropriate, to the Town or Parish Council, for information, but will take no further action. However, if you tell the Monitoring Officer that any suggested resolution would not be adequate, the Monitoring Officer will consider whether to refer the matter for a Local Hearing or to still seek the informal resolution route.

b) Local Hearing

If the Monitoring Officer considers that Local Resolution is not appropriate, then the Monitoring Officer will report the Investigating Officer's report to a Hearings Sub-Committee, which will conduct a Local Hearing before deciding whether the Councillor has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Councillor.

The Monitoring Officer will conduct a 'pre-hearing process', requiring the Councillor to give his/her response to the Investigating Officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the Hearing. The Chair of the Hearings Sub-Committee may issue directions as to the manner in which the Hearing will be conducted. At the Hearing, the Investigating Officer will present their report, call such witnesses as they consider necessary and make representations to substantiate their conclusion that the Member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask you as the Complainant to attend and give evidence to the Hearings Sub-Committee. The Member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Hearings Sub-Committee as to why they consider that they did not fail to comply with the Code of Conduct.

If the Hearings Sub-Committee, with the benefit of any advice from the Independent Person, concludes that the Councillor did not fail to comply with the Code of Conduct, they will dismiss the complaint, setting out the principal reasons for the decision.

If the Hearings Sub-Committee concludes that the Councillor did fail to comply with the Code of Conduct, the Chair will inform the Councillor of this finding and the principal reasons for the decision and the Hearings Sub-Committee will then consider what action, if any, the Hearings Sub-Committee should take as a result of the Councillor's failure to comply with the Code of Conduct. In doing this, the Hearings Sub-Committee will give the Councillor an opportunity to make representations to the Sub-Committee and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

8. What Action Can the Hearings Sub-Committee Take Where a Member Has Failed to Comply with the Code of Conduct?

The Council has delegated to the Hearings Sub-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, the Hearings Sub-Committee may:

- a) Publish its findings in respect of the Councillor's conduct;
- b) Report its findings to Council or to the Town or Parish Council for information;
- c) Recommend to the Councillor's Group Leader (or in the case of un-grouped Councillors, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- d) Recommend to the Leader of the Council that the Councillor be removed from the Executive, particular Portfolio responsibilities, as Chair of a committee or from a committee itself;
- e) Instruct the Monitoring Officer to, or recommend that the Town or Parish Council, arrange training for the Councillor;
- f) Remove or recommend to the Town or Parish Council that the Councillor be removed from all outside appointments to which he/she has been appointed or nominated by the Authority or Town or Parish Council;
- g) Withdraw or recommend to the Town or Parish Council that it withdraws facilities provided to the Councillor by the Council, such as a computer, website and/or email and Internet access; or
- h) Exclude, or recommend that the Town or Parish Council 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;
- i) Restricting contact to named officers or requiring contact be through named officers;
- j) Issue a formal letter of advice as to future conduct to the Councillor;
- k) Request that the Councillor tender an apology to such persons as were aggrieved by his or her actions;
- l) Where the Monitoring Officer and the Independent Person are not satisfied that the Councillor has tendered the apology described at k) above or completed such training as arranged at e) above, then the Monitoring Officer shall report the matter to the Chair of the Audit, Governance and Standards Committee who shall cause a meeting of the Hearings Sub-Committee to take place with the purpose of resolving to apply an alternative sanction.

The Hearings Sub-Committee has no power to suspend or disqualify a Councillor or to withdraw Councillors' or special responsibility allowances.

9. What Happens at the End of the Hearing?

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

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Hearings Sub-Committee, and send a copy to the Complainant, to the Councillor, any witnesses and to the Town or Parish Council if appropriate, make the decision notice available for public inspection and report the decision to the next convenient meeting of the Council.

10. Who Are the Hearings Sub-Committee?

The Hearings Sub-Committee is a Sub-Committee of the Council's Audit, Governance and Standards Committee. The Sub-Committee shall be politically balanced and comprise of 5 voting Councillors of the Audit, Governance and Standards Committee. The composition of the Sub-Committee shall be determined by the Monitoring Officer after consultation of the Chair of the Audit, Governance and Standards Committee. A Chair of the Sub-Committee shall be elected from among the voting Councillors.

The Independent Person must be present when misconduct complaints against Councillors and co-opted members are being considered by the Hearings Sub-Committee.

At least one co-opted Town or Parish Councillor Member of the Audit, Governance and Standards Committee and one co-opted independent Member of the Audit, Governance and Standards Committee must be present when misconduct complaints against Councillors and co-opted members are being considered by the Hearings Sub-Committee.

11. Revision of These Arrangements

The Council may by resolution agree to amend these arrangements, and has delegated to the Chair of the Hearings Sub-Committee, the right to depart from these arrangements where they consider it is expedient to do so in order to secure the effective and fair consideration of any matter.

12. Appeals

There is no right of appeal for you as Complainant or for the Member against a decision of the Monitoring Officer or of the Hearings Sub-Committee.

If you feel that the Council has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.