

New Somerset Council logo

How to make a

# Complaint

about the behaviour of a  
local authority councillor  
in Somerset

## **CODE OF CONDUCT FOR COUNCILLORS: INFORMATION AND GUIDANCE FOR POTENTIAL COMPLAINANTS**

### **1. Code of Conduct complaints**

- 1.1 Somerset Council ("the Council") has adopted a Code of Conduct for councillors which is available using the following link: [\(insert link\)](#)
- 1.2 This guidance sets out how you may make a complaint that a Somerset councillor has failed to comply with the Council's Code of Conduct.
- 1.3 The Council is also responsible for dealing with complaints that City, Town, or Parish councillors in Somerset have breached their particular council's Code of Conduct. Somerset Council provides a copy of City, Town or Parish Council Code's upon its website. Please search against the name of the relevant City, Town or Parish council.
- 1.4 The responsibility for considering written complaints against elected or co-opted councillors of Somerset Council and the City, Town and Parish Councils within our area sits with Somerset Council's Constitution and Standards Committee.
- 1.5 This Committee is a group of councillors appointed by Somerset Council to help maintain and promote high ethical standards. In addition to councillors from Somerset Council, parish council representatives are also co-opted onto this Committee. The Council also appoints independent persons to advise the Committee.
- 1.6 This guidance sets out how the Council will deal with your complaint once received.

### **2. Making a complaint**

- 2.1 **If you wish to make a complaint, please write to the Monitoring Officer at the address set out at the end of this guidance.**
- 2.2 The Monitoring Officer is a senior officer of the Council who has statutory responsibility for maintaining the register of councillor' interests. They are responsible for administering the process in respect of complaints of alleged councillor misconduct on behalf of the Constitution and Standards Committee.
- 2.3 In order to ensure that we have all of the information which we need to be able to process your complaint, we would recommend that you use our standard complaint form. This is available on request or can be downloaded at the following link :

[XXXXXXXX](#)

- 2.4 Your complaint must be made in writing. If a disability prevents you from making your complaint in writing we will offer to put your complaint

into writing and you will be asked to sign or otherwise indicate that you want to make a complaint in the terms set out. It will be your responsibility to provide any supporting documentation. If you are unwilling to sign the documentation or indicate your satisfaction, your complaint will be rejected unless the Monitoring Officer is satisfied that the circumstances justify an exception being made. We can also help if English is not your first language.

- 2.5 You are encouraged to read all of this guidance before submitting your complaint. We will acknowledge receipt of your complaint within three working days.

### **3. Is this a complaint that can be dealt with?**

- 3.1 The assessment of a complaint will follow a two stage process. The first stage is to establish whether we can deal with your complaint.
- 3.2 The points listed under First Stage at Paragraph 4 below will help you decide whether this is something that can be dealt with by the Monitoring Officer on behalf of the Standards Committee. You should speak to the Monitoring Officer if you are not clear whether we can consider your complaint.
- 3.3 Please note that trivial, frivolous, vexatious and politically motivated tit-for-tat complaints are likely to be rejected.

### **4. First stage**

- 4.1 When a complaint is received, the Monitoring Officer will carry out a jurisdictional test against which complaints will be filtered to determine whether the allegation is within these procedures and, if so, whether it should be rejected or proceed to Second Stage assessment.
- 4.2 When there is insufficient information to make a determination as to whether the conduct complained of may demonstrate a potential breach of the Code of Conduct the Monitoring Officer may offer you a further 14 days to provide further information to support the complaint. If further information is not provided within 14 days of being requested, the complaint will be rejected.
- 4.3 The Monitoring Officer (or his/her deputy) or the Standards Committee (as appropriate) will make the decision about what action, if any, to take on your complaint. The matters that will be considered at this stage of the process are:-
- Your complaint must be about one or more named councillors of the authorities listed on the attached Schedule A.
  - Your complaint must be about conduct that occurred while the councillor(s) complained about were in office. Conduct of an individual before they were elected, co-opted or appointed to the authority, or after they have resigned or otherwise ceased to be a councillor, cannot be considered.

- Your complaint must be that the councillor has, or may have, breached the relevant Council's Code of Conduct.
- Your complaint must relate to matters where the councillor was acting as a councillor or representative of their council and therefore is not a private matter.
- Your complaint, if proven, would be a breach of the Code of Conduct under which the councillor was operating at the time of the alleged conduct.

4.4 This First Stage process will normally be completed within approximately five working days.

## **5. Complaints against a council as a whole**

5.1 Complaints against a council as a whole will be rejected and need to be referred directly to the council in question for consideration under their own procedures. We can tell you who to contact. These complaints should be pursued through the relevant council's own internal complaints procedure. For example, if a complaint relates to a councillor's behaviour in relation to the determination of a planning application, this procedure will relate only to the councillor's conduct and will not comment on the decision relating to the planning application, save to the extent necessary to explain the decision in relation to the code of conduct complaint.

## **6. Complaints about employees**

6.1 Complaints about the actions of people employed by the relevant council e.g. the clerk of a city, town or parish council, also do not fall within the jurisdiction of the Standards Committee. Again these complaints should be pursued through the relevant council's own internal complaints procedure.

## **7. Second Stage**

7.1 Complaints that satisfy the initial jurisdictional test at the first stage will then be considered further to determine whether they merit further investigation. The criteria to be taken into account in reaching a decision are set out below. Your complaint will usually be rejected at this stage if, in the opinion of the Monitoring Officer, any of the following criteria applies:

- It appears the complaint relates to a councillor acting in their private capacity;

- The complaint is the same or substantially the same as a complaint previously dealt with whether submitted by you or some other person;
- It is over 6 months since the alleged behaviour occurred and it would be unfair, unreasonable or otherwise not in the public interest to pursue unless there are, in the Monitoring Officer's opinion, exceptional circumstances, such as there has been a failure to declare a disclosable pecuniary interest which would warrant the complaint being progressed;
- The allegation is anonymous and there are no exceptional compelling reasons to progress the complaint;
- 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; and/or
  - (ii) whether, in all the circumstances, there is no overriding public benefit in carrying out an investigation;
- The complaint appears on an objective basis to be malicious, vexatious, politically motivated or tit-for-tat or is part of a series of complaints from the complainant and it is not in the public interest to pursue it;
- The councillor has remedied or made reasonable endeavours to remedy the issues to which the complaint relates and the complaint does not disclose sufficiently serious potential breaches of the Code of Conduct to merit further consideration;
- The complaint is about a person who is no longer a councillor of a relevant council and there are no overriding public interest reasons to merit further consideration;
- The complaint is from a councillor about another councillor of their council and the Monitoring Officer considers the allegations to be such that the issues between the councillors ought to be capable of resolution between them, whether with or without the assistance of their Clerk or some other person; and
- That a simple apology, training or conciliation would be the appropriate response;
- That a reasonable offer of local resolution is offered by the councillor but is rejected by you;
- It would otherwise be inappropriate to expend the Council's resources on determining the complaint having regard to the circumstances of the complaint, any previous related complaints and the public interest.

**Commented [MW1]:** Six months is what is suggested by the LGA. The Ombudsman is 12 months.

7.2 It is important to note that not every complaint that falls within the jurisdiction of the Standards Committee will be referred for investigation. The Monitoring Officer or the Standards Committee (as

appropriate) must decide whether this is appropriate. The Monitoring Officer will endeavour to resolve complaints without the need for a formal investigation wherever possible.

## **8. Behaviour that constitutes a criminal offence**

- 8.1 Where a complaint is received which discloses behaviour that may constitute a criminal offence the Monitoring Officer will determine whether to refer such allegations to the police or other appropriate body. If the conduct relates to the failure to declare a disclosable pecuniary interest this will be done by initially undertaking the assessment of the complaint in the manner set out at the First Stage 1 prior to referral in order to determine if a potential failure to declare a disclosable pecuniary interest has occurred.
- 8.2 Where a complaint is referred to the police or some other body the Council will not take any action on the complaint, other than the referral, until the body to whom the complaint has been referred to decide to take no action or any action they take has been finally determined.
- 8.3 The Council will take such action as is necessary to ensure that it does not compromise the integrity of any investigation or proceedings undertaken by another body in relation to the allegations.
- 8.4 If the police or other body decide to progress the complaint, then no further action will be taken on the complaint by this Council. If they decide not to progress the complaint, the Council will proceed to consider the complaint at Second Stage of the process (see paragraph 7 above).

## **9. Multiple complaints about a councillor**

- 9.1 There may be instances when a number of complaints will be received about the same councillor from different complainants that relate to the same incident. When a complaint is substantially the same, it will be processed as a single complaint taking into consideration all of the complaints received up to the time the complaint is processed. A single decision notice will be issued and will reflect the fact there has been more than one complainant associated with the matter, though all may not be named. If further complaints relating to the same matter are received after the complaint is being processed these will not be added to the complaint but the complainants will be advised that a complaint about this matter is already being considered.

## **10. Complaints about a matter that has been assessed**

10.1 There are occasions when a complaint is received on a matter that is the same or similar to a matter that has already been assessed. If this is the case the complaint will be rejected. In these circumstances you will be sent a copy of the decision notice that has previously been issued. The name of the original complainant(s) will be redacted from the decision notice.

## 11. Anonymous complaints

11.1 The Council will not normally allow anonymous complaints as that would be against the principles of transparency and fairness and make matters more difficult to investigate. However, there may be exceptional compelling reasons as to why an anonymous complaint could be accepted without detriment to the process and where the allegation can be evidenced without reference to the complainant.

## 12. What happens once you submit your complaint?

**12.1 First Stage:** When you submit your complaint we will write to you to let you know we have received it, usually within 3 working days. The Monitoring Officer will then consider whether the complaint meets the jurisdictional tests at the First Stage (see paragraph 4 above). The Monitoring Officer will advise you within 5 working days as to whether your complaint meets the test at Stage 1 and if so, the procedure that will then follow to consider whether the Second Stage criteria (at paragraph 7 above) are met.

**12.2 Second Stage:** Complaints will be categorised as follows and an assessment will be made as to whether there is some evidence which would suggest that there may have been a material breach of the Code of Conduct. The decisions that can be reached at any of these levels are;

- No further action should be taken in relation to the complaint
- The complaint should be dealt with through a process of informal resolution in the first instance
- The matter should be referred for formal investigation

12.3 In reaching this decision, no finding of fact will be made.

### **Level 1 Complaint**

12.2.1 Complaints which are about procedural issues or unhappiness with decisions and are not Code related or which do not contain any evidence of any breach of the Code or are technical minor breaches will be determined at this stage by the Monitoring Officer without further inquiry and the Complainant advised accordingly within approximately 15 working days of receipt of the complaint. The Monitoring Officer may confer with an Independent Person where he/she thinks fit, when determining a complaint at Level 1. This is an individual who is not a

**Commented [MW2]:** This is the criteria most of us currently have. Should we make any changes?

**Commented [MW3]:** The LGA guidance seems to suggest 15 working days for the process. This is not very long. Should we change ours to 20 working days. Mine is currently 25!

councillor and who the Council is required to appoint to assist it in dealing with complaints against councillors.

12.2.2 The authority may also notify the councillor that a complaint has been received against them and invite their comments on it within ten working days. In deciding whether or not to notify the councillor we will weigh up different factors. For example, would telling the councillor risk the complainant being intimidated or evidence destroyed, or if the complaint seems to fall outside of the jurisdiction of the Code of Conduct is there any need to hear from the councillor? If the decision is made not to notify the councillor about the complaint but the councillor becomes aware of the complaint and wishes to know what has been alleged and the identity of the complainant, then this information will be provided to them (unless the complainant has requested confidentiality and the Monitoring Officer has agreed to this request).

12.2.3 If the Monitoring Officer receives numerous complaints about a councillor, all of which could be classed as Level 1, then the Monitoring Officer can decide to treat ~~any~~ of those complaints as a Level 2 complaint.

### **Level 2 Complaint**

12.2.4 If the complaint does not fall within Level 1 then we will notify the councillor to whom the complaint relates, provide details of the complaint and invite them to make representations. These must usually be received by the Monitoring Officer within 10 working days of receiving the notification. The Monitoring Officer may also contact the clerk of the City, Town or Parish council, where appropriate and such other persons as the Monitoring Officer feels appropriate, to provide additional information.

12.2.5 The Monitoring Officer will assess the complaint, any representations by the councillor and any additional information requested. However the purpose of this stage is not to conduct a formal investigation and only preliminary enquiries will be made, such as to establish whether a councillor was in fact present at the meeting to which the complaint relates.

12.2.6 On the completion of this initial assessment the Monitoring Officer will contact you to advise you whether your complaint relates to a potential breach of the code of conduct and what action is proposed, if any. The councillor will be similarly informed. This will all happen within an average of 15 working days of the date we receive your complaint or additional information (where requested). Before making any decision, the Monitoring Officer will discuss your complaint with the "Independent Person".

Commented [MW4]: Comment as above

## **13. Informal Resolution**

13.1 An informal resolution is a more proportionate way of dealing with relatively minor allegations, one-off incidents or underlying disagreements between individuals. It is important to note that dealing



with a matter by alternative resolution at the initial assessment stage is making no finding of fact as there has been no formal investigation.

13.2 Matters which the Monitoring Officer might consider appropriate for informal resolution may include:

- the same particular breach of the Code by many councillors, indicating poor understanding of the Code and the authority's procedures;
- a general breakdown of relationships, including those between councillors and officers, as evidenced by a pattern of allegations of minor disrespect, harassment or bullying to such an extent that it becomes difficult to conduct the business of the relevant council;
- misunderstanding of procedures or protocols;
- misleading, unclear or misunderstood advice from officers;
- lack of experience or training;
- interpersonal conflict;
- allegations and retaliatory allegations from the same councillors;
- allegations about how formal meetings are conducted;
- allegations that may be symptomatic of governance problems within the council, which are more significant than the allegations in themselves.

13.3 Informal resolution could either be directed at the councillor who is the subject of the complaint, the councillor and yourself as complainant, or at the council more generally.

13.4 Informal resolution can include such things as training, providing an apology, withdrawing a remark, mentoring, conflict resolution, mediation.

13.5 Both yourself and the councillor will be consulted before a decision is made to proceed with informal resolution.

#### **14. Referral for Investigation**

14.1 If the Monitoring Officer considers that the complaint is both very serious in terms of the potential breach of the code and an investigation is warranted in the public interest *to establish* the facts then the Monitoring Officer or someone acting on their behalf will undertake this. Only very exceptionally will a complaint result in an investigation.

14.2 The Monitoring Officer will let all those involved know that this is the case and the process that will be followed.

14.3 At the end of an investigation, the Monitoring Officer will issue a draft report and invite comments from the complainant and councillor. The Monitoring Officer will then issue a final report which he/she send to the complainant, the Standards Committee, the councillor complained about, the Independent Person and the Clerk to the City, Town/Parish Council (where relevant).

**Option 1** - If the investigation reveals no failure to comply with the code or a minor/technical breach may have occurred or identifies a training requirement as opposed to any other form of sanction as being the appropriate response, then the Monitoring Officer, after consulting with the Independent Person, is authorised to issue guidance to either party, close the matter and issue the report to the complainant and the councillor complained about. The Monitoring Officer has the discretion to refer the matter to the Standards Committee before exercising that power if they consider it appropriate.

**Option 2** - If the investigation reveals a more significant failure to comply with the code (which is not minor or technical in nature or where a need for training is not really the issue) then the Monitoring Officer in consultation with the Independent Person is authorised to seek a local resolution of the complaint providing all parties agree (acting reasonably). If a local resolution is not appropriate or not agreed by the parties then the outcome of the investigation will either be (1) reported to the Hearings Panel (*a Sub-Committee of the Constitution and Standards Committee*) for a local oral hearing or (2) where local resolution is considered by the Monitoring Officer to be appropriate but has not been agreed by the parties, the outcome of the investigation will form the basis of an Investigation Outcome report which will be published and issued to all parties. This will set out the nature of the complaint, the outcome of any investigation, the local resolution suggested by the Monitoring Officer and the response from the parties to this.

**Commented [MW5]:** Correct name of Hearings sub-Committee to be inserted

14.4 The decision as to whether to proceed with Option 1 or 2 above shall rest with the Monitoring Officer in consultation with the Independent Person. In making his/her decision, the Monitoring Officer will have regard to the relative costs involved and which option best serves the public interest.

14.5 **Oral Hearing stage** - In the event of an oral hearing, this hearing will generally be held in public and although it will be conducted on a relatively informal basis, both parties will be able to make representations and call witnesses. At the end of the hearing the Panel, after consulting with the Independent Person will decide whether, on the balance of probabilities there has been a failure to comply with the Code of Conduct and what "sanction" or "sanctions" (if any) should be imposed.

14.5.1 If an oral hearing is required and reaches a finding that there has been a failure to comply with the Code then there is a limited range of sanctions available as set out at Appendix B to this guidance. There is no ability for the Standards Committee to suspend or disqualify a councillor.

14.5.2 Although there is no right of appeal against the decisions of the Monitoring Officer or Panel, if you are unhappy with the procedures followed (as opposed to the outcome) then you are still entitled to complain to the Local Government Ombudsman or challenge a decision through the Courts by way of Judicial Review.

14.5.3 The procedure the Council has adopted is designed to be proportionate, timely and fair to both sides. Its overriding objective is to seek to provide pragmatic local solutions to local problems wherever possible and to avoid costly and time consuming investigations/hearings.

## **15. How should I set out my complaint?**

15.1 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 then it may be rejected.

15.2 We recommend that you use our complaint form or 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.

15.3 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.

15.4 You may wish to take consider taking advice, for example from the Citizen's Advice Bureau.

## **16. I am the complainant but I don't want my identity revealed**

16.1 If you ask for your identity to be withheld, this request will be considered by the Monitoring Officer at the First Stage of the process.

16.2 As a matter of fairness and natural justice, the councillor you complained about should usually be told who has complained about them and receive details of the complaint. However, in **very** exceptional circumstances, the Monitoring Officer may withhold your identity. Each case will be considered on its merits and the following will be taken into consideration:-

16.3 Whether on request from you, or otherwise, the Monitoring Officer is satisfied that:-

- (1) You have reasonable grounds for believing that you or somebody closely connected to you, will be at risk of physical harm if your or their identity is disclosed,
- (2) You are reasonably concerned about the consequences to your employment or that of somebody closely connected to you, if your or their identity is disclosed,

- (3) That you or someone closely connected to you suffers from a medical condition and there is evidence of medical risks associated with your or their identity being disclosed or confirmation from an appropriate medical professional that this is the case
- (4) Whether the specifics of the complaint will disclose who has made the complaint even without confirming your identity; and
- (5) The public interest: in some cases the public interest in proceeding with the complaint may outweigh your wish to have your identity withheld.

16.4 If the Monitoring Officer decides to refuse your request for confidentiality, they will offer you the option to withdraw the complaint, rather than proceed with your identity being disclosed. The Monitoring Officer will balance whether the public interest in taking action on a complaint will outweigh your wish to have your identity withheld.

## **17. What you should do if you wish to submit a written complaint**

- Get a copy of the code of conduct for the relevant council to see whether the behaviour you wish to complain about is covered by their code. **If it is not covered by the relevant code then we will not be able to deal with it.**
- Talk to / raise the matter with the Council's Monitoring Officer for general advice before submitting a formal complaint.
- Fully complete the attached complaint form (or ensure your letter of complaint addresses, in full, all of the issues covered in the complaint form).
- Submit the written complaint by post, e-mail or fax to the address set out below, as soon as possible after the date of the alleged breach.

### **Address for submission of a written complaint**

Monitoring Officer  
Somerset Council  
Address  
Tel:

Or e-mail the Monitoring Officer at :-

(insert email address)

## **Behaviour covered by the Somerset Council Code of Conduct**

You can complain about a councillor breaking any part of their council's Code of Conduct. As each council can adopt their own code there is no longer a standard code of conduct that applies to all local authorities. This means you need to have seen the code of conduct relating to the councillor about whom you wish to complain and that the behaviour you wish to complain about is covered by the code. The Standards Committee cannot consider any complaints that fall outside of the relevant code of conduct.

The code that relates to councillors of Somerset Council covers the following areas:-

- Treating others with respect
- Not bullying any person
- Not harassing any person
- Promoting equalities and not discriminating unlawfully against any person
- Not compromising or attempting to compromise, the impartiality of anyone who works for or on behalf of the Council
- Not intimidating any person likely to be involved in any investigation or proceedings about someone's misconduct
- Not disclosing confidential information given in confidence or acquired or improperly using information gained as a result of their role for the advancement of those connected with them or preventing anyone from getting information they are entitled to by law
- Not bringing their role or the Council into disrepute
- Not using their position improperly, to their own or someone else's advantage or disadvantage
- Not misusing the Council's resources
- When using resources or authorising their use, acting in accordance with the Council's requirements and not used for political purposes
- Undertaking Code of Conduct training and co-operating with any Code of Conduct investigation and/or determination
- Not making trivial or malicious complaints against other councillors

- Complying with any sanction imposed where they have been found to have breached the Code of Conduct
- Failing to register or disclose their interests
- Taking part in the discussion or making a decision where they have a “disclosable pecuniary interest”
- Failing to register any gifts or hospitality (including its source) that they have received in their role or refused as a councillor worth over £50.

Any breaches in relation to requirements around “disclosable pecuniary interests” are matters for the Police as a criminal offence may have been committed. We suggest you speak to the Council’s Monitoring Officer first as they should be able to advise you whether or not it is a matter for the Police.

Although we have encouraged the Town & Parish Councils to adopt similar provisions they are not required to do so. Accordingly, their code may look quite different so you do need to see a copy. The Clerk to the relevant City, Town or Parish Council should be able to provide you with a copy. Alternatively, once provided, we hold copies of all City, Town and Parish Council codes on our website. The Code adopted by this Council is also available on our website at (insert web link)

## Sanctions available to Standards Committees

The sanctions available to the Standards Committee are as set out below. In relation to the Town & Parish Councils in our area, we can only **recommend** a particular sanction to them but we do not have the power to enforce compliance.

**The Standards Committee does not have the power to suspend or disqualify a councillor.** The sanctions available are:-

- Report its findings to Council or City/Town/Parish Council for information;
- Issue (or recommend to City/Town/Parish to issue) a formal censure
- Recommending to the councillor's Group Leader (or in the case of ungrouped councillors, recommend to council) that he/she be removed from any or all Committees or Sub-Committees of the Council (or recommend such action to the City/Town/Parish Council);
- Recommending to the Leader of the Council that the councillor be removed from the Executive, or removed from particular Portfolio responsibilities;
- Instructing the Monitoring Officer to (or recommend to the City/Town/Parish) to arrange training for the councillor;
- Removing from all outside appointments to which he/she has been appointed or nominated by the authority (or recommend to the City/Town/Parish Council);
- Withdrawing facilities (or recommend to the City/Town/Parish Council) provided to the councillor by the Council, such as a computer, website and/or email and internet access;
- Restricting contact (or recommend to the City/Town/Parish Council) to named officers or requiring contact be through named officers;
- Excluding the councillor from the Council's offices or other premises (or recommend to the City/Town/Parish Council), with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings;
- If relevant, recommend to council that the councillor be removed from their role as leader of the Council;

- If relevant, recommend to the secretary or appropriate official of a political group that the councillor be removed as group leader or other position of responsibility.
-