

Winchester City Council's

# Code of Conduct for Councillors

The Arrangements.

November 2024



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## **1. Purpose of this document.**

Reading this document before submitting a complaint will help complainants understand the process, requirements, and how a complaint will be assessed and managed effectively. Additionally, we encourage complainants to contact the Monitoring Officer via email in the first instance to discuss a complaint informally before submission.

Anyone wishing to make a complaint should complete our online form at: [www.winchester.gov.uk/councillors-committees/code-of-conduct](http://www.winchester.gov.uk/councillors-committees/code-of-conduct) or email: [monitoringofficer@winchester.gov.uk](mailto:monitoringofficer@winchester.gov.uk).

This document will also aid a Councillor who is subject to a complaint in understanding the arrangements for dealing with a complaint.

## **2. Background**

These arrangements relate to the processing of code of conduct complaints for all City, Town, and Parish Councillors within the Winchester District. Each council must adopt a code of conduct and Winchester City Council has adopted the Local Government Association Model Code of Conduct without amendment. Each complaint will be assessed against the code of conduct relevant to the Councillor the complaint is being made about.

These arrangements do not apply to County Councillors, who are subject to separate arrangements and their own code of conduct operated by the County Council.

## **3. Those Involved in the Complaint Process**

**The Complainant.** This is the person making the complaint.

**The Subject Member.** This is the Councillor being complained of.

**The Monitoring Officer.** The Monitoring Officer is a senior officer of the council with statutory responsibility for administering the process for dealing with complaints relating to the Code of Conduct alongside their small team, collectively known as the office of the Monitoring Officer.

**The Independent Person.** An Independent Person is an individual appointed by the council in accordance with the requirements of the Localism Act 2011 to provide an impartial perspective on complaints made against Councillors. They offer independent advice and input during the complaint-handling process to ensure fairness and transparency. The Independent Person is not affiliated with the Council as a Councillor, officer, or in any related capacity. Winchester City Council has appointed three Independent Persons.

#### **Standards Sub Committee**

A Sub-Committee comprising three Members of the Council's Audit and Governance Committee.

#### **4. Confidential and Anonymous Complaints**

If a complainant wants to keep their name and address confidential, they can indicate this in the space provided on the complaint form. The Monitoring Officer will consider this request and if granted will not disclose the name and address to the Subject Member without prior consent.

The council does not normally investigate anonymous complaints unless there is a clear public interest in doing so.

#### **5. Potential Criminal Conduct**

If the complaint identifies criminal conduct or breach of other regulation by any person the Monitoring Officer has the power to refer the matter to the Police or other regulatory agencies. In such circumstances, the code of conduct complaint will be held pending the outcome of that separate process.

## 6. Timescales

The timescales below are indicative. They are not guaranteed and are included here to illustrate the likely duration of the complaints process. Actual timescales may be significantly shorter or longer depending on the complexity and content of the complaint as well as the cooperation of those involved with the complaint including witnesses.

<b>Stage in complaints process</b>	<b>Indicative timescales</b>
Acknowledge receipt of complaint	Within 5 working days of receipt of the complaint
Initial Assessment stage decision (following response from subject member and IP)	Issued to Subject Member and Complainant within 25 working days of receipt of complaint.
Investigation (if applicable)	A formal investigation normally takes around 8 - 12 weeks from the appointment of an appropriate investigator.
Standards Sub Committee (if applicable)	<p>Within 25 working days of receipt of the final investigation report – which includes:</p> <ul style="list-style-type: none"> <li>• 10 working days to convene a quorate Standards sub-committee meeting and prepare hearing papers</li> <li>• 10 working days for the Subject Councillor to submit a response to the Investigator's report and hearing papers</li> <li>• 5 working days for agenda publication</li> </ul>
Standards Sub Committee decision (if applicable)	Issued to Subject Member and Complainant and published within 10 working days of the Standards Sub-Committee Hearing meeting

## **7. The Process**

Upon receiving a complaint, the Monitoring Officer will determine if it falls within a category that would not proceed to investigation, as outlined in Appendix 2. If it is clear to the Monitoring Officer that the complaint meets one of these criteria, the Monitoring Officer will inform the complainant, and no further investigation will take place.

If the complaint at this stage does not appear to meet the criteria in Appendix 2 then the next step is for the Monitoring Officer to forward the complaint to the Subject Member, allowing enough time for a detailed response from them. If the complaint concerns a Parish or Town Councillor, the Clerk of the relevant council may also be asked to provide relevant information in respect of the circumstances surrounding the complaint.

Once these first-stage responses are received, the Monitoring Officer will forward the complaint, along with the responses, including any video/audio/documentary evidence relevant to the complaint to one of the Council's Independent Persons for their review and input.

After receiving the response from the Independent Person, the Monitoring Officer will review all the documentation and decide on the appropriate next steps as described in the following sections. As part of this process, the Monitoring Officer may also reassess the complaint against the criteria outlined in Appendix 2.

Following this review, the Monitoring Officer will agree on the next steps which may include; seeking further information, referring for formal investigation, seeking an informal resolution or deciding no further action.

### **7.1. Will the complaint be investigated?**

If the Monitoring Officer needs further information to make a decision, they may contact the complainant and the Subject Member for additional details.

In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally without the need for a formal investigation. Such informal resolution may, for example, involve the Subject Member accepting that their conduct was unacceptable and offering an apology or other remedial action. Where the Subject Member or the council makes a reasonable offer of informal resolution but the complainant is not willing to accept the offer the Monitoring Officer will take account of this in deciding whether the complaint merits further investigation.

## **7.2. How is the investigation conducted?**

If the Monitoring Officer decides that a complaint merits further investigation, they will appoint an Investigating Officer who may be another officer of the council, an officer of another council or an external investigator. This decision usually relates to the capacity and availability as well as any complexities of the individual complaint.

The Investigating Officer will decide whether they need to meet or speak to the Complainant and the Subject Member to understand the nature of the complaint and so that all parties can explain their understanding of events and suggest what further information the Investigating Officer may need to see and whom they may need to interview.

In exceptional cases where it has been agreed to keep a complainant's identity confidential or disclosure of details of the complaint to the Subject Member might prejudice the investigation the Monitoring Officer can remove their name and address from the papers given to the Subject Member or delay notifying the Subject Member until the investigation has progressed sufficiently.

At the end of the investigation, the Investigating Officer will produce a draft report ("the Investigation Report") and will send copies of that draft report in confidence to the Complainant and the Subject Member to give both an opportunity to identify any matter in that draft report which they disagree with or which they consider requires more consideration.

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

## **7.3. 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 they are satisfied that the Investigating Officer's report is sufficient the Monitoring Officer will write to the Complainant and the Subject Member concerned, and if applicable to the Town or Parish Council, notifying that they are satisfied that there has been no failure to comply with the relevant code of conduct and no further action is required and give you both a copy of the Investigation Final Report and decision notice.

If the Monitoring Officer is not satisfied that the investigation has fully considered all the relevant points, they may ask the Investigating Officer to reconsider their report.

#### **7.4. 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 will then either send the matter for a hearing before the Standards Sub-Committee or after consulting the Independent Person seek an informal resolution.

#### **7.5. Informal Resolution**

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a Standards Sub-Committee hearing. In such a case they will consult with the Independent Person and the complainant and seek to agree a fair resolution and one which also helps to ensure higher standards of conduct for the future.

Such resolution may include the Subject Member accepting that their conduct was unacceptable and offering an apology and/or other remedial action by the council. If the Subject Member complies with the suggested resolution the Monitoring Officer will report the matter to the next meeting of the Audit and Governance Committee for them to note and the Town or Parish Council for information but will take no further action.



## **8. Standards Sub-Committee Hearing**

In cases where the Monitoring Officer refers a complaint for a hearing, this will be dealt with by the Standards Sub-Committee. This is a public hearing before a panel of three City Councillors who are members of the Audit and Governance Committee. The procedure to be adopted by the Sub-Committee is set out in Appendix 4.

The Monitoring Officer will conduct a "pre-hearing process" requiring the member to give their 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 and give pre-hearing directions to help the hearing stage move forward smoothly.

At the hearing, the Investigating Officer will present their report and call such witnesses as they consider necessary and make representations to substantiate their conclusion that the Subject Member has failed to comply with the Code of Conduct.

For this purpose, the Investigating Officer may ask the complainant to attend the Sub-Committee and give evidence/be asked questions.

The Subject Member will then have an opportunity to present their evidence and to call witnesses and to make representations to the Sub-Committee.

The Sub-Committee, with the benefit of any advice from the Independent Person and/or the Monitoring Officer (acting as Legal Advisor to the Standards Sub-Committee) may conclude that the Subject Member did not fail to comply with the Code of Conduct and dismiss the complaint.

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

The Council has agreed a procedure for the hearings which is attached.

### **8.1. What action can the Standards Sub-Committee take where a member has failed to comply with the Code of Conduct?**

The Sub-Committee may decide to take action in respect of individual Subject Members as may be necessary to promote and maintain high standards of conduct. Accordingly, the Sub-Committee may consider:-

1. A formal letter to the Councillor found to have breached the code;
2. Formal censure by motion;
3. Publish its findings that a member has broken the code of conduct in respect of the member's conduct;
4. Report its findings to the council [or to the Parish/Town Council] for information;
5. Advise the member's Group Leader of the finding;
6. Instruct the Monitoring Officer to [or recommend that the Parish/Town Council] arrange training for the member;
7. Withdraw [or recommend to the Parish/Town Council that it withdraws] facilities provided to the member by the Council such as a computer website and/or email and Internet access;
8. Issue a press release or other appropriate publicity;

The Sub-Committee has no power to suspend or disqualify the Subject Member or to withdraw a member's basic or special responsibility allowances.

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

At the end of the hearing, the Sub-Committee will adjourn to consider their decision in private and will usually then reconvene to confirm the decision as to whether the Subject Member failed to comply with the Code of Conduct and as to any actions which the Sub-Committee resolves to take. In some cases, the committee may agree to write to all parties to confirm the outcome.

In all cases, the Standards Sub Committee will prepare a formal decision notice and send a copy to the complainant and the Subject Member and to the Town or Parish Council Clerk (if applicable) making that decision notice available for public inspection.

## **9. Publication of Complaints**

Complaints that are not investigated for any of the reasons contained in Appendix 2 will not be published on the council's website. Complaints that are not rejected for any of the reasons within Appendix 2 and are further investigated, whether they result in a finding of breach or no breach will be published on the council website and reported to the Audit & Governance Committee via its quarterly governance reports.

## **10. Revision of these arrangements**

The Council may by resolution agree to amend these arrangements.

In the case of a Standards Sub-Committee, the Chairperson of the Sub-Committee can 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 in the best interests of the council.

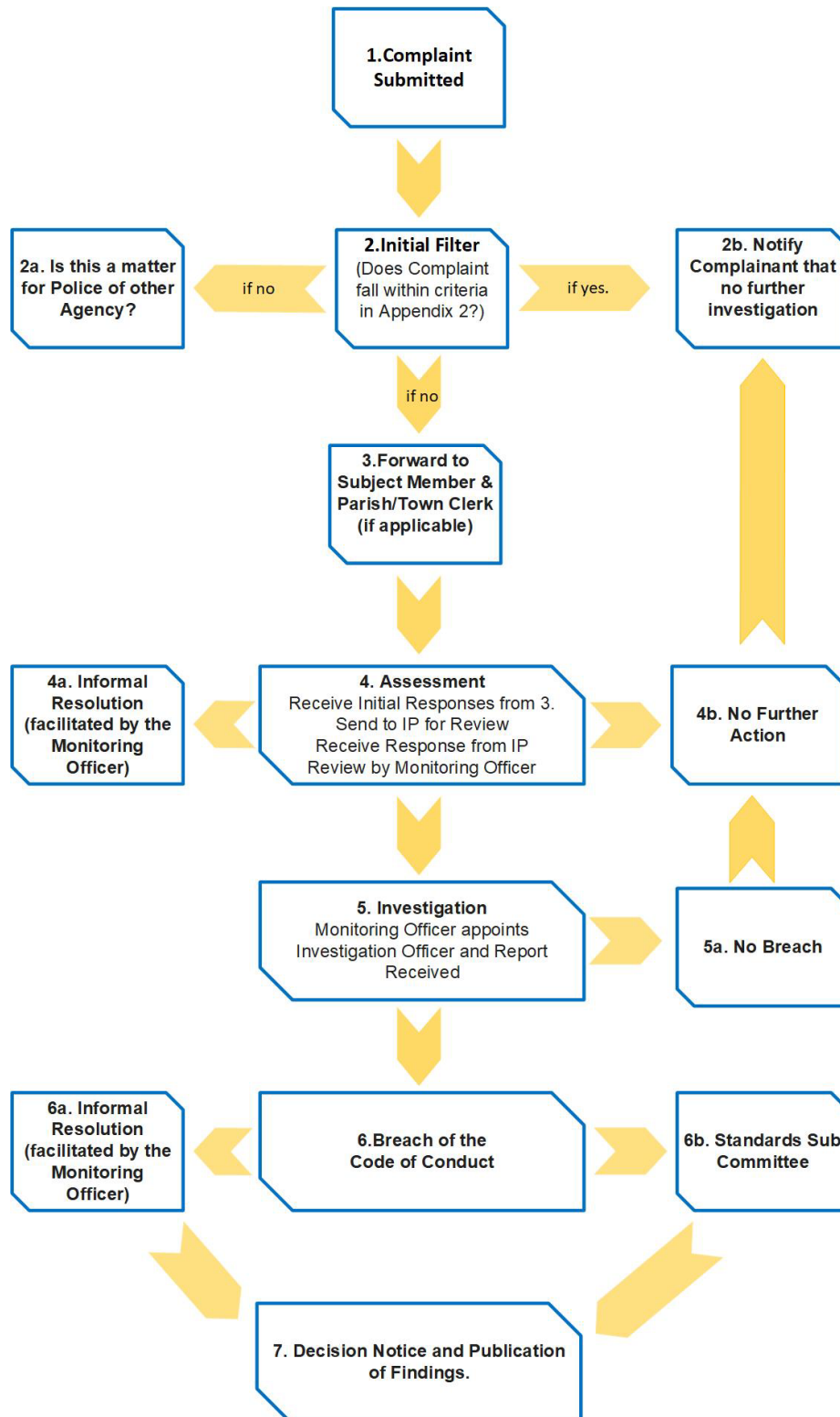
## **11. Appeals**

There is no right of appeal for the complainant or for the Subject Member against a decision of the Monitoring Officer or of the Standards Sub-Committee.

If it is believed that the council has failed to process a complaint properly a complaint can be made to the Local Government Ombudsman.

**November 2024**

## Appendix 1 - Complaints Procedure Flowchart



## **Appendix 2 - Standards Complaints Assessment Criteria**

Complaints which would not normally be referred for investigation

1. The complaint is not considered sufficiently serious to warrant investigation; or
2. The complaint appears to be simply motivated by malice or is “tit-for-tat”; or
3. The complaint appears to be politically motivated; or
4. It appears that there can be no breach of the Code of Conduct; for example, that it relates to the Councillor’s private life or is about dissatisfaction with a Council decision; or
5. It is about someone who is no longer a Councillor;
6. There is insufficient information available for a referral; or
7. The complaint has not been received within 3 months of the alleged misconduct unless there are exceptional circumstances e.g., an allegation of bullying harassment etc.
8. The matter occurred so long ago that it would be difficult for a fair investigation to be carried out; or
9. The same or similar complaint has already been investigated and there is nothing further to be gained by seeking the sanctions available to the Council; or
10. It is an anonymous complaint unless it includes sufficient documentary evidence to show a significant breach of the Code of Conduct.
11. Where the Member complained of has apologised and/or admitted making an error and the matter would not warrant a more serious sanction.

## **Appendix 3 - Standards Sub-Committee Procedure**

### **Quorum**

Three Members must be present throughout the hearing to form a quorum. The Sub-Committee shall elect a Chairperson for the meeting.

### **Opening**

The Chairperson explains the procedure for the hearing and reminds all parties to turn off mobile phones.

The Chairperson asks all present to introduce themselves.

The Subject Member will be asked whether they wish to briefly outline their position.

### **The Complaint**

The Investigating Officer shall be invited to present their report including any documentary evidence or other material (and to call witnesses as required by the Investigating Officer). This report and documentary evidence must be based on the complaint made to the Council – no new points will be allowed.

The Subject Member may question the Investigating Officer upon the content of their report and any witnesses called by the Investigating Officer. (This is the Subject Members opportunity to ask questions arising from the Investigator's report and not to make a statement.)

Members of the Sub-Committee may question the Investigating Officer and/or any witnesses.

### **The Subject Member's case**

The Subject Member may present their case and call any witnesses as they require.

The Investigating Officer may question the Subject Member and/or any witnesses.

Members of the Sub-Committee may question the Subject Member and/or any witnesses.

### **Summing Up**

The Investigating Officer may sum up the Complaint.

The Subject Member may sum up their case.

### **The Decision**

The Sub Committee will then adjourn to consider its findings and make its decision.