

SWINDON BOROUGH COUNCIL

Arrangements for dealing with Member Code of Conduct Complaints

1. Introduction

- 1.1 This procedure applies when a complaint is received that a Member, Co-opted Member or Parish Member has, or may have failed to comply, with the Code of Conduct for Members.
- 1.2 The person making the complaint will be referred to as “the Complainant” and the person against whom the complaint is made will be referred to as the “Respondent.”
- 1.3 No Member or Officer will participate in any stage of the arrangements if he or she has, or may have, any personal conflict of interest in the matter.

2. Making a Complaint

- 2.1 A complaint must be made in writing by post or email to:

Vicki Yull – Committee Officer,
Swindon Borough Council, Wat Tyler West 2nd Floor,
Beckhampton Street, Swindon, SN1 2JG
Tel: 07980 752043
Email: vyull@swindon.gov.uk

- 2.2 The standard complaint form should be used, which can be obtained from the Committee Officer or can be downloaded on the Council’s website, in order that all required information is included.
- 2.3 The Committee Officer will normally acknowledge receipt of the complaint within 5 working days of receiving it and, at the same time, write to the Respondent (and in the case of a complaint about a Town / Parish Councillor to the Clerk of the Town / Parish Council as well) with a summary of the allegations (subject to any representations from the Complainant on confidentiality, which are accepted as valid by the Monitoring Officer).
- 2.4 The Respondent may, within 5 working days of receipt of details of the complaint unless otherwise agreed with the Monitoring Officer, make written representations to the Monitoring Officer which must be taken into account when deciding how the complaint will be dealt with. Representations received after this time may be taken into account, at the discretion of the Monitoring Officer, but will in any event not be considered after the Assessment Panel has issued its Initial Assessment.

3. Initial Assessment Decision

- 3.1 The Assessment Panel is a Sub-Committee of Swindon Borough Council’s (‘the Council’s’) Standards Committee, and membership is drawn from that Committee. This will normally include up to 4 elected

members (one of whom will be the Chair or Vice-Chair of the Standards Committee where possible) and at least 1 of the Lay Members co-opted to the Standards Committee. Where the complaint is about a Parish Member, the Panel will normally include at least 1 of the Parish Members co-opted to the Standards Committee.

- 3.2 The Assessment Panel will normally be chaired by the Chair of the Standards Committee, unless that person has a perceived bias with regards to the Complaint(s) to be considered. If so, the Vice-Chair of the Standards Committee will take the role (unless that person also has a perceived bias with regards to the Complaint(s) to be considered). In that case, the Chair will be appointed at the start of the Panel meeting from within the membership of the Panel.
- 3.3 The co-opted members will sit as assessors without a vote. The Assessment Panel will review the complaint and, after consultation with an Independent Person appointed by the Council if it considers it appropriate, take a decision (an Initial Assessment Decision) as to whether it merits investigation, or another course of action. This decision will normally be taken within 20 working days of receipt of a complaint and will normally be sent in writing to the Complainant and the Respondent within 5 working days of the decision being made.
- 3.4 The co-opted members will sit as assessors without a vote. The Assessment Panel will review the complaint and, after consultation with an Independent Person appointed by the Council if it considers it appropriate, take a decision (an Initial Assessment Decision) as to whether it merits investigation, or another course of action. This decision will normally be taken within 20 working days of receipt of a complaint and will normally be sent in writing to the Complainant and the Respondent within 5 working days of the decision being made.
- 3.5 The decision process to be followed by the Assessment Panel is annexed to these Arrangements (Annex A).
- 3.6 If the complaint fails one or more of the following tests, it will be rejected:
 - Whether the complaint is against one or more named Members or co-opted Members of the Council or a Town / Parish Council within the Borough.
 - Whether the Respondent was in office at the time of the alleged conduct and the Code of Conduct was in force at the time.
 - Whether the complaint, if proven, would be a breach of the Code of Conduct under which the Respondent was operating at the time of the alleged misconduct.
- 3.7 If appropriate, the Assessment Panel will then go on to apply the following criteria in deciding whether a complaint should be accepted for investigation, for other action, dealt with informally, or rejected:

- Sufficiency of Information – Is there sufficient information or evidence provided with the allegation? If it is clear that substantiating evidence may be available, but has not been provided, the Assessment Panel may ask for that additional evidence, but the onus is on the complainant to ensure all relevant information is included.
- Seriousness of the Complaint – Is the complaint trivial, vexatious, malicious, politically motivated or ‘tit for tat’? Are the resources / cost involved in investigating and determining the complaint wholly disproportionate to the allegations?
- Duplication – Is the complaint substantially similar / allegation has previously been made by the Complainant to Standards for England, or the Standards Committee, or the complaint has been the subject of an investigation by another regulatory authority?

If a single event gives rise to similar complaints from a number of different complainants, wherever possible these complaints will be considered at the same meeting of the Assessment Panel, but will be determined individually.

- Length of Time – Did the events or behaviour to which the complaint relates take place more than 6 months ago? Does the time lapse involved mean 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? Such allegations are only likely to be considered in exceptional circumstances, such as where the conduct relates to a pattern of behaviour which has recently been repeated.
- Public Interest – Would the public interest or any public benefit be served in referring the complaint for investigation or other action? For example, it may be not in the public interest where the member has died, resigned or is seriously ill, the member has offered an apology or other remedial action, or it is clear that the subject of the allegation is relatively inexperienced as a Member, or has admitted making an error, and the matter would not warrant a more serious sanction.
- Anonymous – Is it anonymous? Such complaints will not normally be entertained unless there is additional documentary evidence to support the complaint and it is sufficiently serious to consider.
- Other Action – Whether the complaint can be dealt with best by informal resolution, including training or conciliation.
- Wider Application – Does the complaint have wider applications, such as suggesting a wider problem throughout the Authority or Town / Parish Council?

4. Additional Information

- 4.1 The Assessment Panel may require additional information to come to a decision, and may request information from the Respondent in accordance with a specified timetable. Where the complaint relates to a Town / Parish Councillor, the Assessment Panel may also inform the Clerk of the Town / Parish Council of the complaint and seek the views of the Clerk of the Town / Parish Council before deciding whether the complaint merits formal investigation or other action.
- 4.2 In appropriate cases, the Assessment Panel may seek to resolve the complaint informally, without the need for an investigation. Such informal resolution may involve the Respondent accepting that his / her conduct was unacceptable and offering an apology, or taking other steps. Where the Respondent or the authority (in appropriate cases) make a reasonable offer of local resolution, but it is rejected by the Complainant, the Assessment Panel will take account of this in deciding whether the complaint merits formal investigation.
- 4.3 The Respondent whose behaviour is the subject of the complaint may seek the views of an Independent Person appointed by the Council.

5. Criminal Conduct

- 5.1 If the complaint identifies criminal conduct or breach of other regulations by any person, the Monitoring Officer is authorised to report this to the Police or other prosecuting or regulatory authorities.

6. Confidentiality

- 6.1 If a Complainant has asked for their identity to be withheld, this request will be considered by the Assessment Panel at the Initial Assessment stage.
- 6.2 Unless the Assessment Panel otherwise agrees, the Respondent will be given a summary of the complaint but will not normally be told the identity of the Complainant at the Initial Assessment stage. The identity may subsequently be released in the event of an investigation, however, in exceptional circumstances, the Assessment Panel may withhold the Complainant's identity if on request from the Complainant, or otherwise, they are satisfied that the Complainant has reasonable grounds for believing that they or any witness relevant to the complaint may be at risk of physical harm, or his or her employment may be jeopardised if their identity is disclosed, or where there are medical risks (supported by medical evidence) associated with the Complainant's identity being disclosed.
- 6.3 If the Assessment Panel decides to refuse a request by a Complainant for confidentiality, they may offer the Complainant the option to withdraw the complaint, rather than proceed with his or her identity being disclosed.

7. Investigation

- 7.1 The Monitoring Officer will appoint an Investigating Officer where a complaint merits formal investigation. The Investigating Officer may be a Council officer, an officer of another Council, or an external investigator.
- 7.2 The Investigating Officer will follow guidance issued by the Monitoring Officer on the investigation of complaints and shall agree a timetable for the investigation with the Monitoring Officer. The guidance will follow the principles of proportionality and the cost-effective use of Council resources and shall be interpreted in line with these principles.
- 7.3 The Investigating Officer will ensure that the Respondent receives a copy of the complaint subject to the Assessment Panel's decision on confidentiality.
- 7.4 At the end of the investigation, the Investigating Officer will produce a draft report and will send copies of that draft report to the Complainant and to the Respondent for comments, which should normally be submitted within 5 working days of receipt of the draft report. The Investigating Officer will take such comments into account, before issuing the final report to the Monitoring Officer.

8. Investigating Officer finding of insufficient evidence of failure to comply with the Code of Conduct

- 8.1 The Assessment Panel, in consultation with an Independent Person, will review the Investigating Officer's report. If they are satisfied that the Investigating Officer's report is satisfactory, they will make a Confirmation Decision to confirm the finding of no failure to comply with the Code of Conduct.
- 8.2 The Monitoring Officer will write to the Complainant and the Respondent (and to the Clerk of the Parish Council, where the complaint relates to a Parish Councillor), with a copy of the Confirmation Decision and the Investigating Officer's final report.
- 8.3 If the Assessment Panel are not satisfied that the investigation has been conducted satisfactorily, the Investigating Officer may be asked to reconsider their report and conclusion.

9. Investigating Officer finding of sufficient evidence of failure to comply with the Code of Conduct

- 9.1 The Assessment Panel will review the Investigating Officer's report and will then, after consulting an Independent Person, **either** seek a Local Resolution **or** refer the matter for a Hearing.

10. Local Resolution

- 10.1 If the Assessment Panel considers that the matter can reasonably be resolved without the need for a hearing, it will consult with the Independent Person and the Complainant and seek to agree a fair

resolution. Such resolution may include the Member accepting that their conduct was unacceptable and offering an apology, and / or other remedial action.

- 10.2 If the Member accepts the suggested resolution, the Monitoring Officer will report the outcome to the Standards Committee and the Clerk to the Town / Parish Council (if appropriate) for information, but will take no further action. If the Complainant or the Respondent refuses Local Resolution in principle, or to engage with the agreed outcome, the Monitoring Officer will refer the matter for a Hearing without further reference to the Complainant or the Respondent.

11. Hearing

- 11.1 Where, in the opinion of the Assessment Panel, Local Resolution is not appropriate, or the Complainant and / or Respondent refuse to co-operate in any Local Resolution, then the Monitoring Officer will report the Investigating Officer's report to the Hearings Panel, which will conduct a Hearing before deciding whether the Member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Member.

12. Pre-Hearing Procedure

- 12.1 Prior to the convening of a Hearing Panel the Monitoring Officer will issue the forms annexed to these Arrangements (Annex B) to the Complainant and Respondent for completion by them to facilitate the pre-hearing process and the preparation for the Hearing. The Monitoring Officer will then ask the Investigating Officer to comment on the responses. The Hearing Panel will then be convened to consider the responses, and any comment from the Investigating Officer, and finalise the arrangements for the Hearing.

13. Constitution of the Hearings Panel

- 13.1 The Hearings Panel is a Sub-Committee of the Council's Standards Committee. This will comprise at least 5 Members of the Standards Committee. This will normally include at least 1 of the Lay Members co-opted to the Standards Committee, and where the complaint is about a Parish Member, the Hearings Panel will normally include at least 1 of the Parish Members co-opted to the Standards Committee. The co-opted members will sit as assessors without a vote.
- 13.2 The Independent Person may be invited to attend all meetings of the Hearings Panel, and his or her views must be sought and taken into consideration before the Hearings Panel takes any decision on whether the Respondent's conduct constitutes a failure to comply with the Code of Conduct, and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

14. The Hearing

- 14.1 The Hearing will be conducted in accordance with the 'Practical Arrangements for the hearing of the Standards Committee' annexed to these Arrangements (Annex C).

15. Right to Representation

- 15.1 The Complainant and the Respondent may be represented or accompanied during the hearing by a solicitor, barrister, or (with the permission of the Panel) another person.
- 15.2 The Complainant and Respondent should meet their own costs of such representation, unless the Council has otherwise agreed.

16. Legal Advice

- 16.1 The Panel may take legal advice from its Legal Advisor at any time during the hearing or while it is considering the outcome. The substance of any legal advice given to the Panel should be shared with the Complainant and the Respondent, and the Investigator, if they are present at the hearing.

17. Action the Hearings Panel may take where a Member has failed to comply with the Code of Conduct

- 17.1 Where a Hearings Panel finds that a Member has failed to comply with the Code of Conduct, the Hearings Panel may impose any one or a combination of the following sanctions:
- censure the Respondent;
 - request the Respondent to submit a written apology in a form specified by the Panel;
 - request the Respondent to undertake such training as the Panel may specify;
 - request that the Respondent participates in such conciliation as the Panel may specify;
 - report to the relevant Council on the outcome of the hearing with an appropriate recommendation;
 - advise the Leader of the Council and / or Leader of the Political Group to which the person belongs, of the outcome of the hearing in order that they can consider what appropriate disciplinary or other action should be taken, taking into account any relevant case law, which could include:
 - Formal letter of censure from them;
 - Formal censure of members e.g. through a motion at Council or Committee of the Council;
 - Securing the removal of a member from cabinet / committees;
 - Issuing a press release setting out the outcome of the hearing;
 - The withdrawal of facilities.
 - such other sanction as may be permitted under the law.

18. Revision of these arrangements

- 18.1 The Monitoring Officer may amend or depart from these arrangements where s/he considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

19. Appeals

- 19.1 There is no right of appeal available against a decision on a Code of Conduct complaint, except through the courts by way of judicial challenge.

July 2014

Initial Assessment Complaint Handling Chart

