



Warwick District Council
Arrangements for Dealing with Councillor Misconduct
Complaints Procedure

1. Background

- 1.1 The Localism Act 2011 requires local authorities, including each district, town and parish council to adopt a code of conduct to regulate the behaviour of its councillors. In this document the term "councillor" or "member" means any Councillor or co-opted member of and Warwick District Council (WDC).

In addition, district councils such as WDC must also have arrangements in place to investigate and settle allegations that a Councillor, or co-opted Councillor of a Committee or Sub-Committee of the authority (or of a Parish/Town Council within the authority's area), has broken the Council's Code of Councillors' Conduct. Warwick District Council (WDC) has adopted this Procedure for that purpose.

- 1.2 The Procedure sets out how to make such a complaint and how the Monitoring Officer will deal with complaints about the Conduct of Councillors.
- 1.3 The Council is required by law to appoint at least one Independent Person, whose views must be sought before it takes a decision whether or not to investigate a complaint, and whose views can be sought at any other stage of the complaints process, or by a Councillor or co-opted Member (or a Councillor or co-opted Member of a Parish/Town Council) against whom a complaint has been made.
- 1.4 An Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is then appointed by a positive vote from a majority of all the Councillors of the Council. The job description and a protocol for the role are available on both Councils websites.
- 1.5 Warwick District Council has appointed two Independent Persons each. When a formal complaint is received the Monitoring Officer will seek views from at least one Independent Person appointed by that Council.

2. The Code of Conduct

- 2.1 The Council has adopted a Code of Conduct, which is available for inspection on the authority's website or as a hard copy on request from the Monitoring Officer.
- 2.2 Each Parish/Town Council is also required to adopt a Code of Conduct. Parish/Town Council's Code of Conduct can be requested from Parish/Town Council Clerk or may be available via the Parish/Town Council website.

3. Making a Complaint

- 3.1 A complaint regarding the conduct of a Councillor, should be made using the complaint form which is available on line. This can then be sent via email to the monitoringofficer@warwickdc.gov.uk or call 01926 456114. Alternatively write to:

Monitoring Officer
Riverside House
Milverton Hill
Royal Leamington Spa
CV32 5HZ

- 3.2 The Monitoring Officer is a senior officer of the authority who has statutory responsibility for maintaining the register of interests and who is responsible for administering the system in respect of complaints of Councillor misconduct.
- 3.3. In the interests of fairness and natural justice, Councillors who are complained about have a right to know who has made the complaint and have a right to be provided with a copy (or by exception a summary) of the complaint. It is unlikely that the identity of the complainant or the details of a complaint will be withheld unless there is good reason to believe that if the complainants identity is disclosed:-
- 3.3.1 the complainant has reasonable grounds to believe they will be at risk of physical harm or;
- 3.3.2 the complainant is an officer working closely with the Councillor in question and they fear the employment consequences or,
- 3.3.3 it would create medical risks associated with a serious health condition.
- 3.4. Requests to keep the complainants name and address confidential will not automatically be granted. However, if the complainant has made such a request they will be contacted and advised of the decision,.
- 3.5. The Complaint Form should be completed and sent to the Monitoring Officer with any supporting evidence in writing. In completing the form, it should identify the particular provision(s) of the Code of Conduct that has allegedly been breached. The Monitoring Officer will acknowledge receipt of the complaint, within three working days and will keep the complainant informed of the progress of the complaint.
- 3.6 The Monitoring Officer normally expect, unless there are exceptional circumstances, a complaint to be made within 3 months of the potential breach of the Code of Conduct occurring. Where a complaint is received outside this time limit the Monitoring Officer will consult with the Independent Person(s) as to whether the complaint should progress.
- 3.7 It should be noted that if a complainant seeks to withdraw the complaint, or the Councillor ceases to be a Councillor, at any stage, the Monitoring Officer reserves the right to continue with the determination of a complaint if he considers that it is in the public interest to do so.

4. Stage 1: Initial Assessment of the Complaint

- 4.1. The Monitoring Officer will review the complaint and decide if it warrants a full investigation. This is done against a set of relevant questions and in consultation with the Independent Person (s).

- 4.2 Where they require additional information in order to come to a decision, they may seek such information.
- 4.3 In the case of a complaint by an employee of the Council about a Councillor of the Council they work for, the Monitoring Officer will normally, before taking any further steps, expect there to have been a meeting between the Chief Executive, the Councillor and their Group Leader to discuss the complaint to try and resolve it informally. In the case of the Parish or Town Council the meeting could be between the relevant parties along with the Clerk to the Council and the Mayor/Chairman.
- 4.4 In the case of a complaint by a Councillor about a fellow Councillor of that same Council the Monitoring Officer will, before taking any further steps, expect there to have been a meeting between the Councillors and, if appropriate/applicable, their relevant Group Leader(s) to discuss the complaint to try and resolve it informally.
- 4.5 If in the cases, explained at 4.3 and 4.4, a meeting has not taken place the Monitoring Officer will expect an explanation as to why this has not occurred. If a meeting has taken place, it will not exclude the Monitoring Officer also trying this approach as a local resolution before considering a complaint.
- 4.6 Where a complaint relates to a Parish/Town Councillor, The Monitoring Officer will also inform the Parish/Town Council Clerk of the complaint. If requested, the Parish/Town Council will provide any relevant documents or information to the Monitoring Officer to assist them with the initial assessment. The Monitoring Officer may also seek to involve officers of the Parish/Town Council in a process of local resolution before deciding whether the complaint merits full investigation.
- 4.7 The Monitoring Officer will inform the Councillor, and for a District Council their Group Leader, of the substance of the complaint, unless they think it is not appropriate to do so, for example if by doing so any investigation would be affected, or there might be a risk that evidence could be destroyed.
- 4.8 Where the Monitoring Officer informs the Councillor of the substance of the complaint they will also:
- 4.8.1. Tell the Councillor the paragraphs of the Code of Conduct that may have been breached
 - 4.8.2 Provide an opportunity for the Councillor to comment on the complaint.
- 4.9 The Monitoring Officer will always seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the Councillor accepting that their conduct was unacceptable and offering an apology, mediation between the parties through one of the Independent Persons, or any other remedial action that is considered appropriate.
- 4.10 Where the Councillor concerned, or the Council, makes a reasonable offer of local resolution, but the complainant is not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

- 4.11. In deciding whether the complaint merits full investigation the Monitoring Officer will apply criteria, which are designed to promote confidence that complaints will be taken seriously and dealt with properly. They also reflect the fact that any decision to investigate a complaint will cost public money and both officer and Councillor time. The criteria are designed to balance the need to promote confidence in local governance with the need to ensure that public resources are applied appropriately. The criteria are as follows:-
- 4.11.1 Public interest – The Monitoring Officer must be satisfied that an investigation would be in the public interest, taking into account the time and cost involved. If the Monitoring Officer is not satisfied, they will decide not to investigate:
 - 4.11.2 Sufficient information – The complainant must specifically identify the part(s) of the Code which they feels have not been complied with, clearly explain why this is the case and provide sufficient information to warrant an investigation. If not the Monitoring Officer will take no further action unless additional information is provided by the complainant.
 - 4.11.3 Previous action – If there has already been an investigation or some other action under the Code of Conduct or by another regulatory body in relation to the complaint, the Monitoring Officer will not normally decide to investigate, although they may do so in certain circumstances (for example, if a criminal charge was dropped).
 - 4.11.4 Repeated complaints –If the complaint is the same or substantially the same as one previously dealt with, the Monitoring Officer will normally decide not to investigate.
 - 4.11.5 Timing – If there is a significant delay between the incident complained of and the submission of the complaint, the matter will not normally be investigated.
 - 4.11.6 Trivial matters – If the Monitoring Officer takes the view that the matter is not sufficiently serious to warrant further action, no further action will be taken, unless there are compelling reasons to do so.
 - 4.11.7 Ulterior motive - If it appears to the Monitoring Officer that the complaint is motivated by malice or retaliation, no further action will be taken unless it involves a serious allegation.
 - 4.11.8 Special circumstances – There may be circumstances where the Monitoring Officer takes the view that an investigation should occur even though the application of these criteria would suggest otherwise. For example, if a very serious allegation was made after a long delay, it may be appropriate to investigate notwithstanding the delay.
- These criteria are for general guidance and will be applied in the light of particular circumstances of each case.
- 4.11.9 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 their conduct was unacceptable and offering an apology, or agreeing to other remedial action suggested by the authority. Where the Councillor or the authority makes a reasonable offer of local resolution, but the complainant is willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

- 4.11.10 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 Police and other regulatory agencies.
- 4.11.11 Once the initial assessment is complete, the Monitoring Officer will write to the relevant parties to inform them of their decision and give reasons for it.

5. Actions Available to the Monitoring Officer after Stage1

- 5.1. The complaint could be rejected with reasons as outlined above in paragraph 4.11 and its sub-sections.
- 5.2 The complaint could be judged to have merit. Once this decision has been made there are three further options available to the Monitoring Officer.
 - 5.2.1 If there appears to be criminal misconduct, the Monitoring Officer will refer the case to the Police.
 - 5.5.2 The Monitoring Officer can attempt to resolve the complaint informally by getting the Councillor to acknowledge that their conduct was unacceptable and apologise, or engage in other remedial actions on behalf of the authority. Where the Councillor concerned, or the Council, makes a reasonable offer of local resolution, but the complainant is not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.
 - 5.2.3 The Monitoring Officer can appoint an Investigating Officer to fully investigate the complaint.

6. Stage 2: Full Investigation

- 6.1 If the Monitoring Officer decides that a complaint merits a full investigation, they will appoint a suitably qualified Investigating Officer, who may be another senior officer of the authority, an officer of another authority or an external investigator.
- 6.2 Prior to appointing an Investigating Officer, the Monitoring Officer will require any such person to be able to demonstrate that they have the requisite skills, knowledge and experience to undertake the investigation to the required standards. In the case of a firm providing investigative services, the firm will be required to give assurance that the Investigating Officer will receive adequate levels and frequency of supervision.
- 6.3 Once instructed the Investigating Officer will be required to devise a suitable and robust investigation plan and a timetable for the investigation process. The investigation plan and timetable must be shared with and approved by the Monitoring Officer. The timetable will be shared with the complainant and the Councillor, save for exceptional circumstances. The Investigating Officer will advise the Monitoring Officer, the complainant and the Councillor if there are any changes to the timetable and the reasons for any delay.
- 6.4 The Investigating Officer will normally meet or speak to the complainant to understand the nature of the complaint and so that they can explain their understanding of events and suggest what documents the Investigating Officer needs to see, and whom the Investigating Officer needs to interview. If the Investigating Officer either cannot arrange to meet with the complainant or considers it is not necessary to meet with them, they will seek agreement to this from the Monitoring Officer.

- 6.5 The Investigating Officer will write to the Councillors against who complaint was made and provide them with a copy of the complaint and ask the Councillor to provide their explanation of events, and to identify what documents he needs to see and whom he needs to interview. In exceptional cases, where it is appropriate to keep the complainants identity confidential or disclosure of details of the complaint to the Councillor might prejudice the investigation, the Monitoring Officer can delete the complainants name and address from the papers given to the Councillor, or delay notifying the Councillor until the investigation has progressed sufficiently.
- 6.6 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 the complainant and to the Councillor concerned, to give both an opportunity to identify any matter in that draft report which they disagree with or which they consider requires more consideration.
- 6.7 Having received and taken account of any comments which they may make on the draft report, the Investigating Officer will send their final report to the Monitoring Officer. This will include supporting evidence taking into account such matters as its degree of relevance and its sensitivity, and advise the Monitoring Officer accordingly
- 6.8 The Monitoring Officer will review the Investigating Officer's report after consulting with the Independent Person.
- 6.9 If the Monitoring Officer is not satisfied with the investigation, they may ask the Investigating Officer to reconsider their report. The Investigating Officer will review the report and feedback from the Monitoring Officer prior to sending the final revised report for approval.

7. Actions Available to the Monitoring Officer after Stage 2

- 7.1. When the Monitoring Officer is satisfied with the Investigating Officer's report, they will write to the complainant and to the Councillor concerned notifying them of their decision. They will also write to the Parish/Town Council Clerk, (where the complaint relates to a Parish/Town Councillor), and in the case of a District Councillor their Group Leader with a copy of the decision.
- 7.2 If the Monitoring Officer concludes that there is no evidence of a failure to comply with the Code of Conduct, they will inform the relevant parties that no further action is required, and give both a copy of the Investigating Officer's final report.
- 7.3 If the Monitoring Officer concludes that there is evidence of a failure to comply with the Code of Conduct, they will then either refer the matter for hearing before a panel of Councillors drawn from the Audit and Standards Committee or, after consulting an Independent Person, seek local resolution and inform relevant parties accordingly.
- 7.4 Local Resolution
- 7.4.1 The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, they will consult with an Independent Person and with the complainant and seek to agree what they 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 their conduct was unacceptable and offering an apology, and/or other remedial action. If the Councillor complies with the suggested resolution, the Monitoring Officer will report the matter to the Audit and Standards Committee [and the Parish/Town Council] for information, but will take no further action.

Where the Councillor concerned, or the Council, makes a reasonable offer of local resolution, but the complainant is not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

7.5. Hearing

7.5.1 If the Monitoring Officer considers that local resolution is not appropriate, or the Councillor concerned is not prepared to undertake any proposed remedial action then the Monitoring Officer will refer the matter for hearing, the procedure for which is accessible on the Council's website. Under these procedures the Panel will conduct a 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.

8. What action can the Panel take where a Councillor has failed to Comply with the Code of Conduct?

The sanctions that can be applied when a councillor has breached their code of conduct are limited by law.

- 8.1 The Council has delegated to the Panel such powers as are permitted by law to take action in respect of individual Councillors as may be necessary to promote and maintain high standards of conduct. Accordingly, the Panel may:
- 8.1.1 Censure or reprimand the Councillor;
 - 8.1.2 Publish its findings in respect of the Councillor's conduct;
 - 8.1.3 Report its findings to the Council [or to the Parish/Town Council] for information;
 - 8.1.4 Recommend to the Councillor's Group Leader (or in the case of un-grouped Councillors, recommend to the Council or to Committees) that they be removed from any or all Committees or Sub-Committees working parties of the Council (See 8.2 below);
 - 8.1.5 Recommend to the Leader of the Council that the Councillor be removed from The Cabinet, or removed from particular Portfolio responsibilities(See 8.2 below);
 - 8.1.6 Recommend to Council that the Councillor be replaced as the Leader(See 8.2 below);
 - 8.1.7 Instruct the Monitoring Officer to [or recommend that the Parish/Town Council] arrange training for the Councillor;
 - 8.1.8 Recommend to Council or the Council Leader [or recommend to the Parish/Town Council] that the Councillor be removed from all outside appointments to which they have been appointed or nominated by the authority [or by the Parish/Town Council];
 - 8.1.9 Withdraw [or recommend to the Parish/Town Council that it withdraws] facilities provided to the Councillor by the Council, such as a computer, website and/or email and internet access; or
 - 8.1.10 Exclude [or recommend that the Parish/Town Council exclude] the Councillor from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Cabinet, Committee and Sub-Committee meetings.
- 8.2 The Panel, or the Council, has no power to suspend or disqualify the Councillor or to withdraw Councillors' basic or special responsibility allowances.

9 Appeals

- 9.1 There is no right of appeal against a decision of the Monitoring Officer, the Audit and Standards Committee or Hearing Panel.
- 9.2 Although, the complainant or the subject of the complaint may refer the Monitoring Officer's decision to the Local Government and Social Care Ombudsman if there is seen to be some fault in the way that they have considered the complaint and there is sufficient injustice to warrant their involvement.

Document Control

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