



## **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 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 for 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 protocol for the role are available on the Council's website.
- 1.5 Warwick District Council has appointed two Independent Persons. When a formal complaint is received, the Monitoring Officer will seek views from at least one Independent Person appointed by the 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. A Parish/Town Council's Code of Conduct can be requested from the appropriate 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 online. This can then be sent via email to the [monitoringofficer@warwickdc.gov.uk](mailto:monitoringofficer@warwickdc.gov.uk). Alternatively, call 01926 456114 or write to:
- Monitoring Officer  
Warwick District Council  
Town Hall  
Parade  
Royal Leamington Spa  
CV32 4AT
- 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 (although not their contact details or address) 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 complainant's 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 complainant's name 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. That through this process until the conclusion of Stage 1, where the Monitoring Officer will advise all interested parties, there is an expectation of confidentiality on the handling of the complaint, this is to ensure respect for both the process and parties involved. Any breach of that confidentiality will be taken into consideration in the handling of the complaint.
- 3.6 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 section of the Code of Conduct that has allegedly been breached. The Monitoring Officer will acknowledge receipt of the complaint within *five* working days and will keep the complainant informed of the progress of the complaint. A broad timeline for the consideration of complaints is Appended to this process.
- 3.7 The Monitoring Officer normally expects, unless there are exceptional circumstances, a complaint to be made within 3 months of the alleged 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.
- 3.8 It should be noted that if a complainant seeks to withdraw the complaint, or the Councillor is no longer or ceases to be a Councillor, at any stage, the Monitoring Officer reserves the right to continue with the determination of a complaint if they consider that it is in the public interest to do so.

- 3.9 Timelines for this process are appended to this are appended as guidance on the time each case could take to resolve. Throughout the process all parties will be updated by the Monitoring Officer or their Deputy on progress of each case.
- 3.10 It should also be noted that the Monitoring Officer has authority, in consultation with the Chair of the Standards Committee and/or the Independent Person for the Council (as appropriate), the right to depart from the arrangements for dealing with complaints about Councillors where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

#### **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 the Independent Person(s) 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 same way, in the case of the Parish or Town Council, a 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.
- 4.4a Where the complaint is by a member of the same political Group as the Councillor they seek to complain about (including conduct in a political group meeting or roles within a political party) it is expected in the first instance that the Party will consider this.
- 4.5 If in the cases explained at 4.3.and 4.4 above, 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 be asked to 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 section(s) of the Code of Conduct that may have been breached; and
  - 4.8.2 Provide an opportunity for the Councillor to comment on the complaint.
  - 4.8.3 Provide the details of one of the Council's Independent Person(s) in order that the member may consult them as detailed in the Council's IP Protocol.
- 4.9 In deciding whether the complaint merits full investigation, the Monitoring Officer will apply certain 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:
- 4.9.1 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.
  - 4.9.2 Sufficient information – The complainant must specifically identify the part(s) of the Code which they feel have not been complied with, clearly explain why this is the case and provide sufficient information to warrant an investigation. If they do not, the Monitoring Officer will take no further action unless additional information is provided by the complainant.
  - 4.9.3 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).
  - 4.9.4 Repeated complaints – If the complaint is the same or substantially the same as one previously dealt with (unless it is a re-occurrence), the Monitoring Officer will normally decide not to investigate.
  - 4.9.5 Timing – If there is a more than three months between the incident complained of and the submission of the complaint, the matter will not normally be investigated.
  - 4.9.6 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.
  - 4.9.7 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.
  - 4.9.8 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.
- 4.10 These criteria are for general guidance and will be applied in the light of particular circumstances of each case.

- 4.11 In all, the Monitoring Officer will seek to resolve the complaint informally, without the need for a formal investigation.
- 4.12 Such informal resolution may involve the Councillor: accepting that their conduct was unacceptable and offering an apology; or mediation between the parties through one of the Independent Persons; or any other remedial action that is considered appropriate.
- 4.13 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, or may attempt a further alternative informal resolution. The Monitoring Officer does not have to consult with the complainant on an informal resolution where the conduct of the member did not directly affect the complainant.
- 4.14 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.
- 4.15 Once the initial assessment is complete, the Monitoring Officer will write to the relevant parties to inform them of the decision and give reasons for it, along with guidance on the appropriate confidentiality of the complaint, after discussing this with the Independent Person.

## **5. Actions Available to the Monitoring Officer after Stage 1**

- 5.1. The complaint could be rejected with reasons as outlined above in paragraph 4.9 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.
  - 5.2.2 The Monitoring Officer can attempt to resolve the complaint informally by getting the Councillor: accepting that their conduct was unacceptable and offering an apology; or mediation between the parties through one of the Independent Persons; or any other remedial action that is considered appropriate. 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, or may attempt a further alternative informal resolution. The Monitoring Officer does not have to consult with the complainant on an informal resolution where the conduct of the member did not directly affect the complainant.
  - 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 with this from the Monitoring Officer.
- 6.5 The Investigating Officer will write to the Councillor against whom the 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 they need to see and whom they need to interview. In exceptional cases, where it is appropriate to keep the complainant's identity confidential (or where disclosure of details of the complaint to the Councillor might prejudice the investigation), the Monitoring Officer can delete the complainant's 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, which can be any of the options as follow in this section). 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 will 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 At the conclusion of this stage the Monitoring Officer will provide guidance on the appropriate confidentiality of the complaint, after discussing this with the Independent Person.

#### 7.5 Local Resolution

- 7.5.1 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.
- 7.5.2 Such resolution may include the Councillor: accepting that their conduct was unacceptable and offering an apology; or mediation between the parties *by* an independent third party; or any other remedial action that is considered appropriate. 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.
- 7.5.3 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 further action (i.e. a Hearing), or may attempt a further alternative informal resolution.

#### 7.6. Hearing

- 7.6.1 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 act 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, Sub-Committees or 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 (or recommend that the Parish/Town Council) to 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 a Councillor's 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

## Document Control

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Ownership of Document	Monitoring Officer

**Code of Conduct complaint time lines**

- 1** Complaint made
- 2** Acknowledge within 5 working days (note clarification is occasionally required with the complainants and this may delay steps)
- 3** Inform Councillor within 5 Working days
- 4** 5 Working days for Councillor provide their view & MO to identify any public information
- 5** Pass complaint and information to IP
- 6** up to 10 Working days for IP to consider and review
- 7** up to 10 Working Days for MO to formalise a view and agree with IP

**7.1 Informal Resolution Route**

- 7.1.1 IP and MO agree on possible informal resolution 10 working days
- 7.1.2 Seek informal resolution from Councillor 5 to 10 working days for response
- 7.1.3 Pass informal resolution to complainant for consideration up to 10 working days for response
- 7.2 (Steps 1 to 3 above may repeated but no more than twice)
- 7.3 Timescale for completing the informal resolution agreed (depending on requirement for statement at a Council, Committee meeting when that is scheduled for but no more than one month) all parties notified and case closed 10 working days (subject to any statement and/or mediation)

**7.4 Investigation**

- 7.4.1 Inform all parties of investigation
- 7.4.2 Identify and appoint an investigator (As well as agree necessary budget) 10 to 20 working days
- 7.4.3 Investigator to set and Agree investigation plan with MO (5 working days)
- 7.4.4 Inform parties of investigator (within 5 working days of appointment)
- 7.4.5 Investigation 1 month minimum upwards (depending on Plan, updates to all parties every other week by MO)
- 7.4.6 Complainants and Councillor to consider & comment on draft report up to 10 working days (depending on detail of investigation)
- 7.4.7 Review of comments on draft report by Investigator up to 10 working days
- 7.4.8 Final report passed to all relevant parties for their acknowledgment and agreement within 5 working days
- 7.4.9 Final report to MO and IP for consideration up to 10 working days
- 7.4.10 View of MO and IP agreed and notified to all parties
- 7.4.11 Then progress to hearing (see 8) informal resolution (see 7a) or Close

**8 Hearing**

There is a separate adopted procedure for this which is not proposed to change but expectation is hold the hearing and reach a decision within 2 Months.