

Arrangements for dealing with Allegations of Misconduct by Councillors under the Localism Act 2011

1. Context

- 1.1. It is expected that elected members of Woking Borough Council (the Council) uphold the highest standards of public office. However, in the event that there is a complaint, it is important that this is handled effectively to ensure public confidence is maintained.
- 1.2. These arrangements describe how the public can make a complaint that a Member of the Council has failed to comply with the Council's Member Code of Conduct, and sets out how the Council will deal with allegations of a failure to comply with the Code of Conduct.
- 1.3. Under Sections 28(6) and (7) of the Localism Act 2011, the Council must have "arrangements" under which allegations that a Member, or co-opted Member, has failed to comply with the Council's Code of Conduct can be investigated, and decisions made on such allegations. Such arrangements must provide for the Council to appoint at least one Independent Person, whose views must be sought by the Council before it takes a decision on an allegation which it has decided shall be investigated. The Independent Person's views can also be sought by the Council at any other stage, or by a Member against whom an allegation has been made.
- 1.4. The terms capitalised in these arrangements are as defined within the text or at paragraph 2, Interpretation, below.

2. Interpretation

- 2.1. 'Code of Conduct' means the code of conduct for councillors and co-opted members adopted by the Council.
- 2.2. 'Complainant' means a person who has submitted a complaint in accordance with these Arrangements alleging that a Subject Member has breached the Code of Conduct.
- 2.3. 'Subject Member' means an elected or co-opted member of the Council against whom a complaint has been made alleging a breach of the Code of Conduct.
- 2.4. 'Independent Person' means a person or persons appointed by the Council under section 28(7) of the Localism Act 2011 who has the functions set out in section 28(7) of the Localism Act 2011.
- 2.5. 'Independent Member' means a co-opted person who is not a Councillor or Officer of the Council who sits on the Standards Hearing Sub Committee in an advisory capacity but who is not entitled to vote.
- 2.6. 'Informal Resolution' means the procedure described in these Arrangements at paragraph 7.

- 2.7. 'Investigating Officer' means the person appointed by the Monitoring Officer to undertake a formal investigation of a complaint alleging a breach of the Code of Conduct by a Subject Member. The Investigating Officer may be another senior officer of the Council, an officer of another authority or an external investigator.
- 2.8. 'Monitoring Officer' means a statutory officer appointed by the Council under the Local Government and Housing Act 1989 ss 5 and 5A who has a role in the assessment of complaints and the promotion and maintenance of high standards of conduct within local authorities and his or her deputy or representative.
- 2.9. The Standards Hearing Sub-Committee is a sub-committee of the Council's Standards and Audit Committee. The Independent Person is invited to attend all meetings of the Standards Hearings Sub-Committee and his/her views are sought and taken into consideration before it takes any decision on whether the Subject Member'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.

3. The Code of Conduct

- 3.1. The Council has adopted a Code of Conduct for Members. This is available for inspection on the Council's website (www.woking.gov.uk) and on request from the Council's Monitoring Officer.

4. Making a Complaint

- 4.1. All complaints must be made in writing and should be on the official complaint form. Completion of the complaint form will enable the Council to process the complaint efficiently and transparently. A copy of the complaint form can be found at Appendix 1. The complaint form can be posted or e-mailed to the Council's Monitoring Officer whose contact details are:

Joanne McIntosh
The Monitoring Officer,
Woking Borough Council,
Civic Offices,
Gloucester Square,
Woking,
Surrey,
GU21 6YL

Joanne.mcintosh@woking.gov.uk

- 4.2. Complainants who find difficulty in making their complaint in writing (e.g. because of a disability) will be offered assistance. A request for assistance should be made in the first instance by contacting the Monitoring Officer.

5. Anonymous Complaints

- 5.1. Anonymous complaints will not normally be investigated, and will only be accepted in exceptional circumstances where the Monitoring Officer (in consultation with the Independent Person) concludes that the balance of the public interest lies in doing so, and the fairness of the procedure is maintained.
- 5.2. As a matter of fairness and natural justice and in order to preserve the probative value of any evidence given, the Subject Member will usually be told who has complained about them and receive details of the complaint. However, in exceptional circumstances, the Monitoring Officer may withhold the identity of a Complainant or witness where the Monitoring Officer is satisfied that the Complainant has reasonable grounds for believing that they, or any witness relevant to the complaint, may be at risk of serious 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.
- 5.3. If the Monitoring Officer decides to refuse the Complainant's request for confidentiality, he or she will offer the Complainant the option to withdraw their complaint. The Complainant will be notified of the Monitoring Officer's decision with reasons given by the Monitoring Officer.
- 5.4. There is no right of appeal against the Monitoring Officer's decision to refuse the Complainant's request for confidentiality.
- 5.5. If the Complainant's request for confidentiality is upheld, the Monitoring Officer will inform the Complainant that confidentiality may not be able to be maintained dependent upon how matters progress. If confidentiality cannot be maintained the Complainant will be informed and will have the option to withdraw the complaint.

6. Receipt of a Complaint

- 6.1. The Monitoring Officer will acknowledge receipt of a complaint within five working days of receiving it, and will keep the Complainant informed of the progress of their complaint.
- 6.2. The Monitoring Officer will, within five working days of receipt, normally advise the Subject Member that a complaint has been received (together with the name and address of the complainant and brief details of the complaint). The Member shall not make any representations to the Monitoring Officer at this stage of the process.
- 6.3. The Monitoring Officer will, within the same timescale, normally advise the Leader of the Council, the Member's Group Leader and the Chief Executive of the receipt of the complaint (together with the name and address of the complainant and brief details of the complaint). The Leader of the Council, the Member's Group Leader and Chief Executive shall not make any representations to the Monitoring Officer at any stage of the process.

- 6.4. The Monitoring Officer may decide not to advise the Subject Member, Leader of the Council, Member's Group Leader or Chief Executive of the receipt of the complaint if this might prejudice a subsequent investigation. The Monitoring Officer shall have the discretion to notify other persons of the receipt of the complaint as he/she considers appropriate. The Monitoring Officer shall inform the Complainant and Subject Member should he/she exercise discretion.

7. Assessment of Complaint

- 7.1. The Monitoring Officer will assess every complaint received and, after consultation with the Independent Person, make a decision as to the most appropriate action to be taken in relations to the complaint. This decision will normally be taken within ten working days acknowledgement of receipt of the complaint. Details of how the Monitoring Officer will assess the complaint can be found at Appendix 2.

- 7.2. The following decisions can be taken by the Monitoring Officer in consultation with the Independent Person:

- a) No further action;
- b) Attempt Informal Resolution;
- c) Recommend formal investigation;
- d) Referral to the Police or other regulatory agency if the complaint identifies criminal conduct or breach of other regulation.

- 7.3. Where the Monitoring Officer has taken a decision, he/she will inform the Complainant, the Independent Person, the Chairman of the Standards and Audit Committee, all Group Leaders, the Chief Executive and the Subject Member, of his/her decision and the reasons for that decision. The Monitoring Officer shall have the discretion to notify other persons of his/her decision (and the reasons for that decision) as he/she considers appropriate. Where the Monitoring Officer requires additional information in order to come to a decision, he/she may come back to you for such information, and may request information from the Subject Member.

8. Informal Resolution

- 8.1. In appropriate cases, the Monitoring Officer may seek to resolve the complaint without the need for a formal investigation by way of Informal Resolution, which may be appropriate for example:

- a) Where it is apparent that the Subject Member is relatively inexperienced as a Member or has admitted making an error, was not actuated by any malicious intent, and the matter would not warrant a more serious sanction;
- b) Where training or conciliation would be a more appropriate response.

- 8.2. Types of Informal Resolution might include:
- a) An explanation by the Subject Member of the circumstances surrounding the complaint;
 - b) An apology from the Subject Member;
 - c) An agreement from the Subject Member to attend relevant training or to take part in a mentoring process;
 - d) Offering to engage in a process of mediation or conciliation between the Subject Member and the Complainant; or
 - e) Any other action capable of resolving the complaint.
- 8.3. The Monitoring officer may seek the Complainant's views to ascertain what form of informal resolution they would find acceptable, particularly if the form of resolution they have specified in their complaint is not possible.
- 8.4. Where the Monitoring Officer seeks to resolve the complaint informally he or she will provide the Subject Member with recommendation together with a reasonable timescale within which to attempt to resolve the complaint (usually this will be 20 working days following a decision to seek informal resolution) or to engage in a process of informal resolution organised by the Monitoring Officer.
- 8.5. Before deciding upon a course of action, the Subject Member may seek guidance from the Leader of their political group, the Independent Person, and/or the Monitoring Officer.
- 8.6. At the end of the 20 working day period the Monitoring Officer will, in consultation with the Independent Person, seek to establish whether the Subject Member has resolved the complaint to the Complainant's satisfaction.
- 8.7. Where it has been possible to agree a form of resolution between the Subject Member and the Complainant, there will be no further action taken in respect of the complaint and the Monitoring Officer will notify both the Complainant and the Subject Member of this decision.
- 8.8. Where it has not been possible to agree a form of resolution between the Subject Member and the Complainant, the Monitoring Officer will decide if the complaint merits formal investigation.
- 8.9. Where the Subject Member makes a reasonable offer of informal resolution, but it is rejected by the Complainant, the Monitoring Officer will take account of this in his or her decision but may impose the Informal Resolution.

- 8.10. Where informal resolution is proposed, the Monitoring Officer may direct that the Subject Member and Complainant maintain confidentiality as to the matters discussed, and parties involved.

9. Formal Investigation

- 9.1. If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer.
- 9.2. The Investigating Officer will decide whether he/she needs to 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 who the Investigating Officer needs to interview.
- 9.3. The Investigating Officer will normally write to the Subject Member and provide him/her with a copy of your complaint, and ask the Subject Member to provide his/her explanation of events, and to identify what documents he needs to see and who 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 Subject Member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the Subject Member, or delay notifying the Subject Member until the investigation has progressed sufficiently.
- 9.4. At the end of the 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 Subject Member concerned, to give both an opportunity to identify any factual matter in the draft report which is disputed or requires further investigation. A copy of the draft report will also be sent to the Monitoring Officer.
- 9.5. Having received and taken account of any comments that may be made on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer.
- 9.6. The Monitoring Officer will, within 10 working days of the receipt of the Investigating Officer's report, review the report and undertake the steps outlined in paragraphs 9.7 and 9.8 below.
- 9.7. The Monitoring Officer will, in consultation with the Independent Person, determine whether:
- a) The report is complete, or (where incomplete) should be referred back to the Investigating Officer or a newly appointed Investigating Officer; or,
 - b) No further action is required, because the report finds no breach of the code of conduct; or
 - c) The matter may be reasonably resolved by way of Informal Resolution; or,
 - d) The matter should proceed to the Standards Hearing Sub-Committee.

- 9.8. A copy of the final report shall be sent to the Complainant, Subject Member, the Leader, Members Group Leader, Chairman of the Standards and Audit Committee and the Chief Executive.

10. Standards Hearing Sub-Committee/Local Hearing

- 10.1. If the Monitoring Officer considers that Informal Resolution is not appropriate, or the Complainant is not reasonably satisfied by the proposed resolution, or the Subject Member concerned is not prepared to undertake any proposed remedial action, the Monitoring Officer will report the Investigating Officer's report to the Standards Hearing Sub-Committee which will conduct a local hearing before deciding whether the Subject Member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Member.
- 10.2. The Standards Hearing Sub-Committee, with the benefit of any advice from the Independent Person, may conclude that the Member did not fail to comply with the Code of Conduct, and so dismiss the complaint. If the Standards Hearing Sub-Committee concludes that the Subject Member did fail to comply with the Code of Conduct, the Chairman will inform the Subject Member of this finding and the Standards Hearing Sub-Committee will then consider what action, if any, it should take as a result of the Subject Member's failure to comply with the Code of Conduct. In doing this, the Standards Hearing Sub-Committee will give the Subject Member an opportunity to make representations to it and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter. Separate guidance this procedure can be found at Appendix 3.

11. Sanctions

- 10.1 The Standards and Audit Committee has delegated to the Standards Hearings Sub-Committee power to take action in respect of individual Members who have breached the Code of Conduct. Accordingly the Standards Hearings Sub-Committee may –
- a) Publish its findings in respect of the Member's conduct. This might comprise issuing a press release and/or inserting a public notice in the local newspaper(s);
 - b) Report its findings to Council for information;
 - c) Censure or reprimand the Member;
 - d) Recommend to the Member's Group Leader (or in the case of un-grouped Members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council for such period as the Sub-Committee considers appropriate;
 - e) Recommend to the Leader of the Council that the Member be removed from the Executive, or removed from particular Portfolio responsibilities for such period as the Sub-Committee considers appropriate;

- f) Instruct the Monitoring Officer to arrange training for the Member;
- g) Recommend to the Council that the Member be removed from all outside appointments to which he/she has been appointed or nominated by the Council for such period as the Sub-Committee considers appropriate;
- h) Withdraw facilities provided to the Member by the Council, such as a computer, website and/or email and Internet access for such period as the Sub-Committee considers appropriate; or
- i) Exclude the Member from the Council's offices or other premises, with the exception of meeting rooms as are necessary for attending Council, Committee and Sub-Committee meetings for such period as the Sub-Committee considers appropriate.

11.2. The Standards Hearings Sub-Committee has no power to suspend or disqualify the Member or to withdraw Members' allowances.

12. Notification of Decision

12.1. At the end of the hearing, the Chairman will state the decision of the Standards Hearing Sub-Committee as to whether the Subject Member failed to comply with the Code of Conduct and as to any actions which it resolves to take.

12.2. As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chairman of the Standards Hearings Sub-Committee, and send a copy to the Complainant and to the Subject Member. The decision notice shall include reasons for the decision. The Monitoring Officer will also make the decision notice available for public inspection and report the decision to the next convenient meeting of the Standards and Audit Committee.

13. Appeals

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

13.2. If you feel that the Council has failed to deal with your complaint properly, you may make a complaint to the Local Government and Social Care Ombudsman.

13. Discontinuance of Complaints by Monitoring Officer

13.1 The Monitoring Officer may discontinue a complaint or terminate an investigation if they consider it appropriate to do so, having regard to whether the balance of the public interest lies in continuing to action the complaint, where the Subject Member:

- (a) ceases to be a Member of the Council,

(b) has a long term or serious illness and is unable to participate in the procedure, or

(c) dies.

13.2 Where a complaint is discontinued, the Monitoring Officer will write to the Complainant and the Subject Member setting out the reasons for their decision.

14. Confidentiality

14.1 Unless otherwise permitted under these arrangements or required by legislation, a complaint (and all associated information and documents) that a Member has breached the Code of Conduct shall remain confidential until such time that the Monitoring Officer or Standards Hearing Sub-Committee consider it appropriate (if at all) to disclose the complaint (and all associated information and documents).

14.2 Unless, otherwise determined, the findings of the Standards Hearing Sub-Committee shall be made public in accordance with the guidance set at Appendix 3.

15 Timescales

15.1 The investigation shall be carried out promptly, with the expectation that all investigations, resolution and hearings of the Sub-Committee will be completed within a maximum period of four months. All those involved in the complaint should do their utmost to ensure that this can happen.

15.2 Key dates in relation to the administration of the arrangements are set out in the body of the arrangements, and shall act as targets to facilitate the swift administration of the arrangements but which, if missed, will not invalidate the procedure comprised herein.

15.3 The Complainant and the Subject Member will be informed should there be a delay in completing any stage of the process.

16 Complaint Support

16.1 Assistance and support shall be provided to the Complainant and Subject Member throughout this process by the Deputy Monitoring Officer or Head of Human Resources as appropriate.

17 Annual Report

17.1 The Monitoring Officer shall submit an annual report to the Standards and Audit Committee. The report should include appropriate details of all complaints received (including those where no breach was found).