



| | |
|--|---|
| Title: | Constitution of the Council (Part 4L: Standards Committee Complaints Procedures) |
| Owner: | Angela Wakefield |
| Date of version: | 28th June 2021 |
| Review due: | May 2022 |
| Approved by Monitoring Officer: | Angela Wakefield |
| Date of Equality Impact Assessment: | 29th October 2013 |

Adopted by Full Council on 28th June 2021

STANDARDS COMMITTEE COMPLAINTS PROCEDURES

1 INTRODUCTION

- 1.1 These procedures set out how a complainant (“Complainant”) may make a complaint (“Complaint”) that an elected Councillor or co-opted member of this Council, or of a parish or town council within its area, (“Councillor”) has failed to comply with their council’s Code of Conduct for Councillors (“Code”).
- 1.2 The procedures also set out how the Council will deal with a Complaint.

2 THE CODES OF CONDUCT

- 2.1 The Council has adopted a Code of Conduct for Councillors, which is available on the Council’s website and on request from Democratic Services (see contact details below).
- 2.2 Each parish or town council is also required to adopt a Code of Conduct for Councillors. The parish or town councils’ Codes are available:
 - 2.2.1 on any website operated by the respective parish or town council;
 - 2.2.2 on the Borough Council’s website (if we have been given a copy); or
 - 2.2.3 on request from the respective parish or town clerk (“Clerk”).

3 MAKING A COMPLAINT

- 3.1 In order to ensure that we have all the information which we need to be able to process a complaint, Complaints must be submitted on the Standard Complaint Form, which can be downloaded from the Council’s website and is available on request from Democratic Services (see contact details below).
- 3.2 Complaints must be sent to the Monitoring Officer (see contact details below).
- 3.3 If a Complaint is received other than on the Standard Complaint Form, we will not consider it but we will send the Complainant a copy of the form for completion. If

anyone needs assistance completing the form, they can contact Democratic Services (see contact details below).

- 3.4 Complainants should give us their name and a contact address or email address, so that we can acknowledge receipt of the Complaint and keep them informed of its progress. If a Complainant wants to keep their name and address confidential, they should indicate this on the Standard Complaint Form. In this case we would not disclose their name and address to the Councillor without the Complainant's prior consent. However, the Council does not normally investigate anonymous Complaints or complaints where the Complainant wishes to remain confidential, unless there is a clear public interest in doing so.
- 3.5 Within 5 working days of receiving a Complaint, the Monitoring Officer will usually:
 - 3.5.1 acknowledge receipt to the Complainant;
 - 3.5.2 send a copy of the Complaint to the Councillor, unless the Monitoring Officer considers that this may prejudice any investigation;
 - 3.5.3 send a copy of the Complaint to the Clerk (if appropriate).
- 3.6 The Monitoring Officer will also notify the Complainant and the Councillor that they have the right to seek the views of the Independent Person (see paragraph 11 below). The Independent Person's contact details can be obtained from Democratic Services (see contact details below).
- 3.7 The Monitoring Officer will keep the Complainant, the Councillor and the Clerk (if appropriate) informed of the progress of the Complaint, unless the Monitoring Officer considers that this may prejudice any investigation.

4 WILL THE COMPLAINT BE INVESTIGATED?

- 4.1 Where possible and appropriate, the Monitoring Officer will 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 other remedial action by the Council or the respective parish or town council.
- 4.2 The Monitoring Officer will review every Complaint received and, after consultation with the Independent Person, take a decision as to whether it merits formal investigation. They will have regard to, but are not bound to follow, the guidelines set out in Appendix 1. This decision will normally be taken within 15 working days of receipt of the Complaint. When the Monitoring Officer has taken a decision, they

will inform the Complainant, the Councillor and the Clerk (if appropriate) of their decision and the reasons for that decision.

- 4.3 Where the Monitoring Officer requires additional information in order to come to a decision, they may ask the Complainant, the Councillor or the Clerk (if appropriate) for such information. Where a Complaint relates to a parish or town councillor, the Monitoring Officer may also seek the views of the respective parish or town council before deciding whether the Complaint merits formal investigation.
- 4.4 If the Complaint alleges criminal conduct or breach of a regulation by any person, the Monitoring Officer has the power to call in the Police and/or other regulatory agencies. In such cases it may be necessary to postpone consideration of the Complaint until the Police or other action has been concluded.
- 4.5 If the Monitoring Officer decides not to investigate a Complaint, they will nevertheless report this to the next ordinary meeting of the Standards Committee and the relevant parish or town council (if appropriate) for information.

5 HOW IS AN INVESTIGATION CONDUCTED?

- 5.1 If the Monitoring Officer decides that a Complaint merits formal investigation, they will, where appropriate after consultation with the Independent Person, appoint an Investigating Officer who may be another senior officer of the Council, an officer of another Council or an appropriately experienced external investigator.
- 5.2 The Investigating Officer will decide whether they need to meet or speak to the Complainant to understand the nature of the Complaint and so that the Complainant can explain their understanding of events and suggest what documents the Investigating Officer needs to see, and who they need to interview.
- 5.3 The Investigating Officer would normally write to the Councillor and ask them to provide their explanation of events, and to identify what documents the Investigating Officer needs to see and who they need to interview. In exceptional cases, the Investigating Officer may delay notifying the Councillor until the investigation has progressed sufficiently.
- 5.4 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 Councillor, to give them both an opportunity to identify any matter in that draft report which they disagree with or which they believe requires more consideration.
- 5.5 Having received and taken account of any comments on the draft report, the Investigating Officer will send their final report to the Monitoring Officer.

6 WHAT HAPPENS IF THE INVESTIGATING OFFICER CONCLUDES THAT THERE IS NO EVIDENCE OF A FAILURE TO COMPLY WITH THE CODE OF CONDUCT?

- 6.1 The Monitoring Officer will review the Investigating Officer's report. If they are satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will send a copy of the Investigating Officer's final report to the Complainant, the Councillor, the Independent Person and the clerk of the parish or town council (if appropriate) and notify them that they are satisfied that no further action is required. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he may ask the Investigating Officer to reconsider their report.
- 6.2 The outcome of such investigations will be reported to the next ordinary meeting of the Standards Committee and the relevant parish or town council (if appropriate) for information.

7 WHAT HAPPENS IF THE INVESTIGATING OFFICER CONCLUDES THAT THERE IS EVIDENCE OF A FAILURE TO COMPLY WITH THE CODE OF CONDUCT?

- 7.1 The Monitoring Officer will review the Investigating Officer's report and will then either send the matter for a hearing by the Standards Committee or, after consulting the Independent Person, seek Summary Resolution (see below).

SUMMARY RESOLUTION

- 7.2 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 the 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 a resolution may include the Councillor accepting that their conduct was unacceptable and offering an apology, and/or other remedial action by the Council or the relevant parish or town council (if appropriate).
- 7.3 If the Councillor complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee and the relevant parish or town council (if appropriate) for information, but will take no further action.

REFERRAL FOR HEARING

- 7.4 If the Monitoring Officer considers that Summary Resolution is not appropriate, or the Councillor does not comply with any suggested resolution, then the Monitoring Officer will refer the Investigating Officer’s report to the Standards Committee for a hearing to decide whether or not the Councillor has failed to comply with the respective Code of Conduct and, if so, whether to take any action in respect of the Councillor.

HEARING PROCEDURE

- 7.5 The Monitoring Officer will conduct a “pre-hearing process”, requiring the Councillor to give their written 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.
- 7.6 The Chairman of the Standards Committee may issue directions as to the manner in which the hearing will be conducted.
- 7.7 The procedure for hearings is set out in Appendix 2: Hearing Procedure.
- 7.8 The Investigating Officer may ask the Complainant to attend the hearing to give evidence. The Complainant does not otherwise have the right to speak at the hearing but they may usually attend as a member of the public.

8 WHAT ACTION CAN THE STANDARDS COMMITTEE TAKE WHERE A COUNCILLOR HAS FAILED TO COMPLY WITH THE CODE OF CONDUCT?

- 8.1 The Council has delegated to the Standards Committee such of its powers to take action in respect of individual councillors as may be necessary to promote and maintain high standards of conduct.
- 8.2 The sanctions available to the Standards Committee are set out in Appendix 2: Hearing Procedure.

9 WHAT HAPPENS AFTER A HEARING?

- 9.1 As soon as reasonably practicable, the Monitoring Officer will prepare a formal decision notice, in consultation with the Chairman, and send a copy to the

Complainant, the Councillor and the clerk of the parish or town council (if appropriate). They will also make that decision notice available for public inspection on the Council's website for at least 12 months after the hearing.

10 WHO ARE THE STANDARDS COMMITTEE?

- 10.1 The Standards Committee is a committee of the Borough Council. It is appointed by the Council and comprises:
- 10.1.1 5 Councillors of whom no more than 1 may be a member of the Cabinet and which must not include the Leader of the Council and which shall reflect the political make-up of the council;
 - 10.1.2 2 Independent Members (non-voting) who are not Councillors or officers of the Council or of any parish or town council within East Staffordshire;
 - 10.1.3 2 Parish Council Representatives (non-voting) who shall be serving members of a parish or town council within East Staffordshire.

11 WHO IS THE INDEPENDENT PERSON?

- 11.1 The Independent Person is a person who has been appointed by a majority of all the Councillors on the Borough Council.
- 11.2 A person cannot be the Independent Person if they:
- 11.2.1 are, or have been within the past 5 years, a Councillor, co-opted member or officer of the Borough Council;
 - 11.2.2 are or have been within the past 5 years, a Councillor, co-opted member or officer of a parish or town council within the Council's area, or
 - 11.2.3 are a relative, or close friend, of a person within paragraph 11.2.1 or 11.2.2 above. For this purpose, "relative" means:
 - 11.2.3.1 a spouse or civil partner;
 - 11.2.3.2 someone living with the other person as husband and wife or as if they were civil partners;
 - 11.2.3.3 a grandparent of the other person;
 - 11.2.3.4 a lineal descendent of a grandparent of the other person;

- 11.2.3.5 a parent, sibling or child of a person within paragraphs 11.2.3.1 or 11.2.3.2;
 - 11.2.3.6 A spouse or civil partner of a person within paragraphs 11.2.3.3, 11.2.3.4 or 11.2.3.5; or
 - 11.2.3.7 Someone living with a person within paragraphs 11.2.3.3, 11.2.3.4 or 11.2.3.5 as husband and wife or as if they were civil partners.
- 11.3 The Independent Person is invited to attend all meetings of the Standards Committee. Their views are sought and taken into consideration:
- 11.3.1 before the Monitoring Officer decides whether to investigate a Complaint;
 - 11.3.2 before the Monitoring Officer decides whether to refer an investigated Complaint for hearing or for Summary Resolution;
 - 11.3.3 before the Committee takes any decision on whether the Councillor's conduct constitutes a failure to comply with the respective Code of Conduct; and
 - 11.3.4 as to any action to be taken following a finding of failure to comply with the respective Code of Conduct.
- 11.4 The Independent Person can also be consulted by either the Complainant or the Subject Member.

12 APPEALS

- 12.1 There is no right of appeal for the Complainant or for the Councillor against a decision of the Monitoring Officer or of the Standards Committee.
- 12.2 If someone feels that the Council has failed to deal with a Complaint properly, they may make a complaint through the Council's ordinary complaints process. This process would not re-consider the original complaint but would consider the way in which that complaint had been handled.

13 REVISION OF THESE ARRANGEMENTS

- 13.1 The Standards Committee may amend these arrangements, and has delegated to the Chairman of the Committee the right to 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.

14 CONTACT DETAILS

14.1 The Council's Monitoring Officer is:

Angela Wakefield
East Staffordshire Borough Council
The Maltsters
Wetmore Road
Burton upon Trent
Staffordshire
DE14 1LS
Tel: (01283) 508512
Email: monitoring.officer@eaststaffsbc.gov.uk

14.2 The Democratic Services Team can be contacted at:

Democratic Services
East Staffordshire Borough Council
The Maltsters
Wetmore Road
Burton upon Trent
Staffordshire
DE14 1LS
Tel: (01283) 508306
Email: andrea.davies@eaststaffsbc.gov.uk

ASSESSMENT GUIDELINES

THE MONITORING OFFICER WILL HAVE REGARD TO THESE GUIDELINES WHEN DECIDING WHETHER OR NOT A COMPLAINT SHOULD BE INVESTIGATED BUT THEY ARE NOT BOUND TO FOLLOW THEM.

1 CIRCUMSTANCES WHERE THE MONITORING OFFICER MAY DECIDE TO ARRANGE A FORMAL INVESTIGATION

- 1.1 Where the allegation discloses a potential breach of the Code that the Monitoring Officer considers sufficiently serious to justify the time and cost of an investigation.

2 CIRCUMSTANCES WHERE THE MONITORING OFFICER MAY DECIDE THAT A COMPLAINT SHOULD NOT BE FORMALLY INVESTIGATED

- 2.1 Where it is possible and appropriate to resolve the Complaint informally, without the need for a formal investigation.
- 2.2 Where the Complaint is about someone who is no longer a Councillor.
- 2.3 Where the Complaint does not disclose a potential breach of the Code.
- 2.4 Where the information provided by the Complainant is insufficient to enable the Monitoring Officer to make a decision as to whether the Complaint should be referred for investigation or other action. In this case, the Complainant will be advised that it is possible to resubmit the Complaint with further information.
- 2.5 Where a substantially similar allegation has previously been made by the Complainant, or the Complaint has been the subject of an investigation by another regulatory organisation. In this case, the Monitoring Officer will only refer the Complaint for investigation or other action if they consider that there is a compelling reason to do so.
- 2.6 Where the Complaint is about something that happened more than 6 months ago, or where the lapse of time means there would be little benefit or point in taking action now. It is acknowledged, however, that where a delay has arisen as a result of criminal or other legal proceedings, or there are other good reasons for the

delay, it may still be appropriate to refer the Complaint for investigation or other action.

- 2.7 Where the Complaint is anonymous or where the Complainant wishes to remain confidential unless the Monitoring Officer considers that there is a compelling reason to do so.
- 2.8 Where the Complaint discloses a potential breach of the Code of Conduct, but the Monitoring Officer considers that the Complaint is not serious enough to warrant further action.
- 2.9 Where the Complaint appears to be malicious, politically motivated or tit-for-tat, unless a serious matter is raised in the Complaint.

HEARING PROCEDURE

1 BACKGROUND

- 1.1 This document sets out the procedure which the Standards Committee will follow in hearing and determining allegations that a Councillor or co-opted member of the Council, or of a parish or town council within East Staffordshire, has breached the respective council's Code of Conduct for Councillors.
- 1.2 The purpose of the hearing is to decide whether or not a Councillor has failed to follow the respective Code and, if so, to decide whether or not any sanction should be imposed and what form any sanction should take.
- 1.3 The purpose of this document is to provide an efficient and effective hearing process that will help the Committee to deal with all the issues that need to be resolved in a way that is appropriate and fair to the Complainant and the Councillor. It will thereby promote public confidence in the Council's ability to deal fairly and properly with alleged breaches of the Codes of Conduct.
- 1.4 The procedure has been prepared with regard to relevant legislation, including the Localism Act 2011.
- 1.5 If there is any inconsistency between this procedure and the requirements of legislation the latter will prevail. Any matter not covered in this procedure will be determined by the Committee with regard to the relevant legislation.

2 INTERPRETATION

- 2.1 "Code" means the Code of Conduct for Councillors/Members of the respective Council.
- 2.2 "Councillor" means the councillor who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise. It also includes the Councillor's nominated representative (if any).
- 2.3 "Independent Person" means the Independent Person appointed by the Council for this purpose (see paragraph 11 of the Complaint Procedures).

- 2.4 “Investigating Officer” means the person appointed by the Monitoring Officer to carry out the investigation. It also includes the Investigating Officer’s nominated representative (if any).
- 2.5 “Legal Adviser” means the officer responsible for providing legal advice to the Committee. This may be the Monitoring Officer, another legally qualified officer of the Council, or someone appointed for this purpose from outside the Council.

3 REPRESENTATION

- 3.1 The Councillor and/or the Investigating Officer may be represented or accompanied during the meeting by a solicitor, a barrister or, with the permission of the Committee, another person.

4 LEGAL ADVICE

- 4.1 The Committee may take legal advice, in private if necessary, from its Legal Adviser at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Committee should be shared with the Councillor and the Investigating Officer if they are present.

5 INTRODUCTIONS

- 5.1 The Chairman will formally introduce all the members of the Standards Committee and everyone else involved in the hearing.

6 PRELIMINARY MATTERS

- 6.1 The Legal Adviser will explain how the Committee is going to run the hearing and how witnesses will be dealt with (if any).
- 6.2 The Legal Adviser will also seek to resolve any preliminary issues before the hearing starts. If these cannot be agreed, the Committee shall decide them.

7 THE INVESTIGATING OFFICER'S CASE

- 7.1 The Investigating Officer will briefly describe the essence of the Complaint by reference to their report (including exactly what was alleged to have been said or done) and point out any significant disagreement as to the facts. The Investigating Officer may only introduce new matters with the agreement of the Committee.
- 7.2 With the Committee's permission, the Investigating Officer may then call such witnesses as are necessary to substantiate their conclusion that the Councillor has failed to comply with the respective Code.
- 7.3 The procedure for each witness shall be:
- 7.3.1 The Investigating Officer shall ask them questions;
 - 7.3.2 The Councillor may ask them questions;
 - 7.3.3 The Committee may ask them questions;
 - 7.3.4 The Investigating Officer may ask them further questions to clarify matters raised by the Councillor and/or the Committee during their questioning.
- 7.4 The Committee may ask the Investigating Officer questions.

8 THE COUNCILLOR'S CASE

- 8.1 The Councillor will then have the opportunity to state their case by reference to their written response to the Investigating Officer's report. The Councillor may only introduce new matters with the agreement of the Committee.
- 8.2 With the Committee's permission, the Councillor may then call such witnesses as are necessary to substantiate their case.
- 8.3 The procedure for each witness shall be:
- 8.3.1 The Councillor shall ask them questions;
 - 8.3.2 The Investigating Officer may ask them questions;
 - 8.3.3 The Committee may ask them questions;
 - 8.3.4 The Councillor may ask them further questions to clarify matters raised by the Investigating Officer and/or the Committee during their questioning.
- 8.4 The Committee may ask the Councillor questions.

9 SUMMING UP THE CASES

- 9.1 The Investigating Officer will then sum up their case.
- 9.2 The Councillor will then sum up their case.

10 THE INDEPENDENT PERSON'S VIEW ABOUT BREACH OF THE CODE

- 10.1 The Committee must take advice (orally or in writing) from the Independent Person before making a decision about whether or not the Councillor has breached the respective Code.

11 DECISION?

- 11.1 The Committee will then decide whether or not they believe that the Councillor has failed to follow the respective Code.
- 11.2 The decision of the Committee will be announced in public and short reasons for the decision given.

12 IF THE COUNCILLOR HAS NOT FAILED TO FOLLOW THE CODE

- 12.1 If the Committee decides that the Councillor has not failed to follow the Code, the Committee may then consider whether to make any recommendations to the respective Council with a view to promoting high standards of conduct among councillors.

13 IF THE COUNCILLOR HAS FAILED TO FOLLOW THE CODE

- 13.1 If the Committee decides that the Councillor has failed to follow the Code, the Investigating Officer will be asked to make any representations about:
 - 13.1.1 whether the Committee should apply a sanction; and, if so,
 - 13.1.2 what form any sanction should take.

- 13.2 The Councillor will then be asked to make any representations about these matters.
- 13.3 The Committee may question the Investigating Officer and the Councillor to make sure that they have the information they need in order to make an informed decision.
- 13.4 The Committee must take advice (orally or in writing) from the Independent Person before making a decision about any sanction.
- 13.5 The Committee may impose one or more of the following sanctions:
 - 13.5.1 Publish its findings in respect of the Councillor's conduct;
 - 13.5.2 Report its findings to the Council or to the respective parish or town council (if appropriate) for information;
 - 13.5.3 Recommend to the Councillor's political group leader (or in the case of councillors who are not part of a political group, recommend to the respective Council or Committees) that they be removed from any or all Committees or Sub-Committees of the respective Council;
 - 13.5.4 Recommend to the Leader of the Council that the Councillor be removed from the Cabinet, or removed from particular portfolio responsibilities;
 - 13.5.5 Recommend to the Council that the Leader of the Council should be removed as Leader;
 - 13.5.6 Instruct the Monitoring Officer, or recommend the respective parish or town council (if appropriate), to arrange training for the Councillor &/or other councillors;
 - 13.5.7 Remove, or recommend to the respective parish or town council that the Councillor be removed, from all outside appointments to which they have been appointed or nominated by the Council or by the respective parish or town council;
 - 13.5.8 Withdraw, or recommend to the respective parish or town council that it withdraws, facilities provided to the Councillor by the relevant Council, such as a computer, website and/or email and internet access; or
 - 13.5.9 Exclude, or recommend to the respective parish or town council that it excludes, the Councillor from the relevant Council's offices or other premises, with the exception of meeting rooms which are necessary for attending Council, Committee and Sub-Committee meetings.
- 13.6 The Council has no power to suspend or disqualify the Councillor nor to withdraw councillors' ordinary or special responsibility allowances.

- 13.7 The Sub-Committee may impose a sanction to begin immediately or within a period of six months after the imposition of the sanction.

THE ROLE OF THE INDEPENDENT PERSON

Under the provisions of the Localism Act 2011 the Council has appointed both an Independent Person (IP) and a Reserve Independent Person to assist the Council in promoting and maintaining high standards of conduct amongst its Councillors and Town/Parish Councillors.

In practical terms this means that the IP must make themselves available for consultation by people who may wish to complain that there has been a breach of the Code of Conduct. Likewise they are available for consultation by any person or Council that is the subject of a standards complaint.

When a complaint against a Councillor or Parish Council is raised the Monitoring Officer will consult with the IP as to whether this is a matter that warrants a full investigation or can perhaps be dealt with by local resolution. In the event that the complaint is capable of early resolution the IP, together with the Monitoring Officer, may be able to assist in resolving the issue without the expense of an investigation. At all times however the IP has to maintain an independent role and cannot act in a manner that suggests they are representing or advocating the views of any particular party.

If the complaint is complex or sufficiently serious then the Monitoring Officer will appoint an investigator. The person appointed may be another senior officer of the Council, an officer of another Council, or an appropriately experienced external investigator. As part of their investigation they will interview all parties and everyone would be given a full opportunity to explain their position. Whilst this is taking place it would not be appropriate for the IP to discuss the details of the complaint with either party although procedural advice could still be given if required.

Following the investigation, and depending on the outcome, it may be necessary to hold a Hearing before the Standards Committee. The IP would attend and be consulted by the Council, through the Monitoring Officer, and the Standards

Committee before it makes a decision on the allegation and/or if it seeks to impose any sort of sanction.