

Complaint against a Councillor



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Guidance and process relating to how to make a complaint about the behaviour of a Somerset County Councillor



1. The complaints regime

This guidance and the complaints process relates to complaints made against county councillors and co-opted members of the Council's committees. The complaints process and related matters are overseen by the Council's Standards Committee.

The Independent Person (IP) referred to in this document is an individual who is not a councillor and who the County Council has appointed to assist the Monitoring Officer in dealing with such complaints.

2. Complaints that can be considered under this process

The guidance below will help you decide whether your complaint is something that can be considered under this process. If you remain unsure having read this guidance please contact the Monitoring Officer for further guidance.

Your complaint must be:

- (a) About conduct that occurred while the councillor(s) was in office.
- (b) That the councillor(s) has, or may have, breached the Council's Code of Conduct
- (c) About a breach of the Code when the councillor was acting or appearing to act in their official capacity as a county councillor. What a councillor does in their private life is not a matter about which a complaint can be considered under the Code.
- (d) In writing and on the form provided for the purpose.

If a complaint is older than 6 months at the time of receipt by the MO it will only be considered in exceptional circumstances and if the MO considers that it is in the public interest to investigate the matter.

3. What happens when you submit your complaint?

On receipt of a complaint, the MO will:

- (a) acknowledge the complaint within 10 working days
- (b) then consider whether the complaint falls within the scope of the process, at what level and whether there is some evidence that there may have been a material breach of the Code

Wherever possible, the MO will seek to resolve complaints informally.

4. Level 1: Decision on the treatment of your complaint

Complaints about procedural matters, unhappiness with decisions, those which are not Code related, or may be technical very minor breaches will be determined by MO with no or very limited further inquiry and the complainant advised within 20 working days or as soon as possible thereafter

The decisions which could be reached by the MO following consultation with the Independent Person (IP) are:

- (a) The complaint is not Code of Conduct related – no further action
- (b) Insufficient evidence to determine whether there has been or may have been a breach
- (c) of the Code of Conduct and investigation is not merited. Possible outcomes – no further action or guidance / training given to subject member.
- (d) No breach of the Code of Conduct - no further action or limited action agreed with the subject member. Possible outcome – guidance / training given to subject member.
- (e) Evidence of a potential technical or minor breach of the Code of Conduct but insufficient justification under the public interest test to investigate further – no further action or limited action agreed with the subject member, eg an apology given to the complainant or guidance provided.

(f) Potential complaint with substance requiring further assessment at Level 2.

The MO will inform the subject member about the complaint and will inform the subject member and the complainant about the decision.

If the MO receives numerous complaints about a member all of which could be classed as minor or technical then the MO can decide to treat the accumulation as a Level 2 Complaint.

5. Level 2: Initial assessment of the complaint

If a complaint is considered to be beyond Level 1 and therefore potentially a complaint with substance, the subject member will be given a full copy of the complaint and invited to make written representations. These should be received by the MO usually within 20 working days of the member receiving the notification but additional time can be allowed for this stage by the MO.

MO may invite the complainant and other witnesses to provide additional information by way of written invitations to inform an initial assessment.

Following completion of the initial 'desktop' assessment of the evidence by the MO, the MO will consult the IP and the Chairman of the Standards Committee on the conclusion of the assessment and actions proposed.

The MO will then contact the complainant and the subject member to confirm whether the complaint relates to a breach of the Code of Conduct and what action is proposed, if any.

The decisions which could be reached by the MO are

- (a) No breach of the Code of Conduct - no further action or limited action agreed with the subject member. Possible outcomes – advice/ guidance / training given to subject member.
- (b) Potential breach of the Code of Conduct identified but insufficient evidence to justify further investigation under the public interest test - no further action or limited action agreed (e.g. advice / guidance / training given to subject member),
- (c) Potential breach of the Code of Conduct and considered to be potentially serious enough to refer for investigation at level 3,
- (d) Sufficient evidence of a potential breach of the Code of Conduct to seek the agreement of the subject member to conclusions /actions without further investigation. If subject member does not agree then MO decision to refer to level 3.

6. Level 3 - Investigation

Further investigation will only be undertaken in exceptional circumstances where the complaint is very serious in respect of a potential breach of the Code and where it is considered to be in the public interest to investigate to establish the extent of the potential breach.

Prior to implementing Level 3 the MO will seek the views and advice of the Council's Governance Board on the actions proposed in relation to the complaint.

The MO will seek legal opinion and advice as necessary to clarify any aspect of the complaint or written evidence obtained. It is expected that this advice will normally be sourced internally within the Council and only in exceptional circumstances will external investigation and advice be sought.

At the end of the investigation, the MO will issue a draft outcomes report and invite comments which must be received within 10 working days. The draft report will be issued to the complainant, members of the Standards Committee, the subject member, and the IP.

Outcome 1 - If the outcomes report reveals no failure to comply with the Code of Conduct or that a minor/technical breach may have occurred or identifies actions that involve giving advice / guidance / training to the subject member as opposed to any sanction as being the appropriate response, then the MO, after consulting with the IP will close the matter and issue his final report to the complainant and the subject member.



Outcome 2 - If the investigation indicates that there may be evidence of a significant breach of the Code then the MO in consultation with the IP will seek a local resolution of the complaint including actions providing all parties agree (acting reasonably). The parties will have 20 working days to respond to the proposal for a local resolution. Local resolution may be achieved via a restorative justice meeting between the complainant and the subject member, held with a trained mediator as necessary, to agree outcomes and actions.

Under Outcome 2, in the unlikely case that a local resolution is not appropriate or not agreed by the parties then the outcome of the investigation will be referred on to the Hearings Panel stage for determination.

7. Hearing Panel Stage

Prior to a hearing, there will be a 'case management' meeting involving the Chairman of the Standards Committee, the subject member, the Monitoring Officer, the County Solicitor and a co-opted member of the Standards Committee to consider options for the procedure to be followed. Following this meeting, the Chairman in consultation with the Monitoring Officer has delegated authority to confirm the scope and content of the hearing panel process. The delegated authority to include agreeing the format of the hearing including whether with the agreement of the subject member there should be a full public hearing with witnesses etc or whether it could be dealt with by way of written representations. All parties will be informed of the Chairman's decision.

The hearing panel in whatever format is agreed will include the 5 elected members of the Standards Committee as voting members and the decision makers, a non-voting co-opted member as an adviser on process, the IP as a consultee on the decisions reached by then panel and the MO and Deputy MO as advisers to the panel.

If it is decided that a full public hearing is held it will be held in public subject to the rules on exempt information and will be conducted on a relatively informal basis. However both parties will be able to make representations and call a limited number of witnesses to be agreed in advance with the Chairman. At the end of the Hearing, the Panel, after consulting with the IP, will decide whether, on the balance of probabilities there has been a failure to comply with the Code of Conduct and what 'sanction' or 'sanctions' should be imposed.

At the conclusion of the evidence and following any confidential members' discussion to reach a draft decision, the Panel members will meet in exempt session with the MO, County Solicitor (in order to have access to legal advice), the co-opted member to advise on process and with the IP present, to formally agree their decision prior to the decision and outcomes being confirmed to the subject member and published.

8. How should I set out my complaint?

Your complaint should be set out fully and clearly and provide all of the information at the outset including any supporting documents.

We recommend that you use the complaint form provided and cross reference any supporting information to the complaint. Although you are not required to prove your complaint at this stage of proceedings, you do have to demonstrate that you have reasonable grounds for believing that the councillor(s) complained about has breached the Code of Conduct.

Examples of the sort of information that you should provide are set out below:

- (a) You should be specific, wherever possible, about exactly what you are alleging that the councillor said or did. For instance, instead of writing that the councillor insulted you, you should state what it was that they said.
- (b) You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.
- (c) You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.

- (d) You should provide any relevant background information or other relevant documentary
- (e) evidence to support your allegation(s).



9. I am the complainant but I don't want my identity revealed

If you ask for your identity to be withheld from the councillor(s) you are complaining about, this request will be considered by the MO at the initial assessment stage.

In the interests of fairness and natural justice, the councillor(s) you complained about should usually be told who has complained about them and receive details of the complaint.

However, in exceptional circumstances, the Monitoring Officer may withhold your identity if on request from you, or otherwise, they are satisfied that you have reasonable grounds for believing that you or any witness relevant to the complaint may be threatened, victimised or harassed or your employment may be jeopardised if your or their identity is disclosed or if there are medical risks associated with their or your identity being disclosed. If your request for confidentiality is not granted by the Monitoring Officer, you will be given the option of withdrawing your complaint.

The Monitoring Officer will balance the public interest in taking action on a complaint with a request to have the identity of a complainant withheld. Therefore, it is important to understand that in very exceptional circumstances where the matter complained about is very serious, the Council may proceed with an investigation or other action and disclose your name even if you have expressly asked us not to. We will contact you where this situation arises to discuss the matter first.

10. Remedies

The only sanctions available to the Hearings Panel of the Standards Committee are as follows:

- (a) Reporting its findings to the Council for information;
- (b) Recommending to the councillor's Group Leader that he/she is removed from any or all Committees or Sub-Committees of the Council;
- (c) Recommending to the Leader of the Council that the councillor is removed from the Council's Cabinet or removed from particular Cabinet responsibilities;
- (d) Instructing the Monitoring Officer to arrange training for the councillor;
- (e) Removing the councillor from all outside body appointments to which he/she has been appointed or nominated by the Council;
- (f) Withdrawing facilities provided to the councillor by the Council, such as a computer, website and / or email access;
- (g) Excluding 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.

11. Submitting a complaint

Fully complete the complaints form provided (or ensure your letter of complaint addresses, in full, all of the issues covered in the complaint form).

Submit the written complaint by post or email to the address set out here, as soon as possible after the date of the alleged breach.