

STANDARDS COMMITTEE

10 February 2014

COMPLAINTS PROCESS – REVISED ARRANGEMENTS AND GUIDANCE

REPORT OF CHIEF OPERATING OFFICER

Contact Officers: Stephen Whetnall/Chris Ashcroft Tel No: 01962 848220/848284

RECENT REFERENCES:

CAB2308 – Localism Act 2011- Code of Conduct – 11 April 2012

ST93 – Localism Act 2011 – New Code of Conduct – 9 September 2012

EXECUTIVE SUMMARY:

Following the introduction of the Localism Act 2011 and the revised Code of Conduct, full Council on 18 April 2012 agreed to a number of interim measures, including continuance of the existing Code complaints handling process, until such time as a review was undertaken. In addition, the Monitoring Officer was given certain delegated powers to handle the first stages of complaints. The use of Standards Sub-Committees has continued to be useful in handling complaints and have considered in this period;

Assessments Sub – Committee – 1 City council and 3 parish cases.

Review Sub-Committee – 1 City Council case and 1 parish case.

Determinations Sub-Committee – 2 parish cases.

The Council now has 14 months experience of operating the new Code of Conduct adopted by Council in September 2012.

It is now appropriate to consider the complaint handling arrangements. A revised guidance note is now attached for comment at Appendix 1. The alterations are not fundamental and relate more to style and updated terminology, but the overall re-formatting meant that using tracked changes to show every amendment was confusing and it was clearer to present a fresh document.

Appendix 2 is a revised complaints form which has also been updated, but based on the existing format.

**RECOMMENDATIONS:**

That the Committee recommends to Council:

- 1 The revised arrangements in Appendices 1 and 2 for the Code of Conduct complaints procedure be approved, for the purposes of S28 Localism Act 2011, subject to any amendments which the Committee considers necessary.
- 2 That the terms of reference of the Standards Committee be updated to allow future reviews to be undertaken under the following additional delegated power in respect of both the District and Parish Councils:  
  
“ to review and determine the Council’s arrangements for handling complaints under the Code of Conduct for the purposes of S28 Localism Act 2011”.

**OTHER CONSIDERATIONS:**

1. **COMMUNITY STRATEGY AND PORTFOLIO HOLDER PLANS (RELEVANCE TO):**
  - 1.1 An Efficient and Effective Council - the review of the Code forms a part of the Council’s wider Governance Review – to ensure that’s its arrangements are up-to-date and fit for purpose.
2. **RESOURCE IMPLICATIONS:**
  - 2.1 None directly – unless significant changes are made to the procedures which would affect allocation of staff time from other projects and require additional Member training.
3. **RISK MANAGEMENT ISSUES**
  - 3.1 The procedures provide external input though advice from an independent person and in parish cases, a parish representative. The use of Standards Sub-Committees retains Member involvement in any serious cases and also provides a complainant with an opportunity to have a review of any delegated decision made by the Monitoring Officer.

BACKGROUND DOCUMENTS:

None

APPENDICES:

Appendix 1 – Arrangements for Considering Complaints

Appendix 2 – Complaints Form



## Councillors Code of Conduct Arrangements for Considering Complaints Guidance Notes

### Introduction

The Code of Conduct complaints system should only be used when you wish to complain about the behaviour or actions of a Winchester City Councillor or local Parish Councillor, whilst they are performing duties as part of their public office. This system cannot be used to complain about the activities of Councillors in their private lives, nor can it be used to complain about the City Council or a Parish Council as a body.

Disagreement with the merits of a Council decision is also not a valid complaint, although in the case of the City Council, there is a general complaints form available at <http://www.winchester.gov.uk/about/complaints> if you are dissatisfied with the service you have received from a Council department or Council officer. Parish complaints of this nature should be made direct to the Clerk of the Parish Council.

The points listed below will help you decide whether or not you have a valid complaint under the Code about the ethical conduct of a City or Parish Councillor. Please speak to David Blakemore (Democratic Services Manager) using the contact details given at the end of this guidance if anything is not clear:-

- the complaint must be about conduct that occurred while the Councillor(s) complained about were in office. Conduct of an individual before they were elected, co-opted or appointed to the Council, or after they ceased to be a Councillor, cannot be considered by the Monitoring Officer or the Standards Committee.
- the complaint must be about one or more named Councillors of Winchester City Council or one of the Parish Councils that fall within the Winchester District (a map detailing these can be accessed via the following link: <http://www.winchester.gov.uk/councillors-committees/ward-map/> )
- the complaint must be that the Councillor(s) has, or may have, breached the Code of Conduct. A copy of both the City and Parish Codes of Conduct are available at <http://www.winchester.gov.uk/councillors-committees/code-conduct/>.
- the City Council also has local protocols which provide additional guidance in relation to the work of the City Council eg the Planning Protocol. These

are available at **(INSERT LINK)**. The protocols are relevant in assessing whether there has been a breach of the Code. The Protocols do not apply to the Parishes.

if the complaint relates to a possible offence in relation to disclosable pecuniary interests under S34 of the Localism Act 2011, it may have to be referred to the Police, rather than to the Monitoring Officer or Standards Committee. Prosecution is a matter for the Police and Director of Public Prosecutions.

- the complaint must be in writing and a form is available at [insert web link: attached as Appendix 2 to Report ST106] Once completed, the form can be e-mailed to the Council if more convenient. If a disability prevents you from making a complaint in writing then David Blakemore is available for assistance.

It is important to note that not every complaint that falls within the jurisdiction of the Standards Committee will be referred for investigation or other action. The City Council's Monitoring Officer (Stephen Whetnall) will take an initial view on the validity of each complaint and, as part of this process, he may consult one of the three Independent Persons appointed by the Council to provide impartial advice. More details about the role of the Independent Persons can be found through this link **(INSERT LINK)**.

### **How are complaints assessed?**

Provided your complaint is one that is appropriate to be dealt with under the Code, it will initially be assessed using the following criteria:-

1. Sufficient information has to be provided with the complaint to enable consideration to be given as to whether the complaint should be investigated or other action considered. Evidence should be provided to support the complaint. If insufficient information is provided, no further action will be taken on the complaint unless more details are forthcoming.
2. Where the complaint is about somebody who is no longer a Winchester City Councillor or Parish Councillor, but is a member of another Council, the complaint may be referred to the Monitoring Officer of that other authority.
3. Where the complaint has already been the subject of an investigation or other action under the Code of Conduct or other procedures by other regulatory authorities, consideration will be given as to whether there is any more to be gained in further action being taken.
4. Where the complaint is the subject of a current investigation, a separate investigation of the complaint will not normally be undertaken.
5. A complaint should be made as soon as possible after the events in question occurred. A complaint about conduct which took place over a year before

you complained, or you knew about it for more than six months before you complained, will not normally be considered.

6. The seriousness of the complaint will be taken into account and, if it is trivial, further action may not be taken. Other factors will be whether the expense of a full investigation is in the public interest – or whether the matter can be more appropriately dealt with by giving some general advice on how to handle particular situations.
7. Consideration will also be given as to whether the complaint appears to be malicious, politically motivated, tit-for-tat or made by a persistent complainant. In these circumstances the complaint may be insufficiently serious to warrant further action.

If it is decided not to investigate your complaint or to take other action, you will be given the reasons for this decision and will be able to ask for that decision to be reviewed.

### **How should I set out my complaint?**

It is very important that you set your complaint out fully and clearly, and provide all the information at the outset. You should also provide any documents or other material and any supporting evidence that you wish the Monitoring Officer or the Standards (Assessment) Sub-Committee to consider, as you will not be able to attend the meeting of the Sub-Committee.

We recommend that you use our complaint form as this will ensure you provide all the key information. In summary, you should be sure to tell us exactly what each person you are complaining about said or did that has caused you to complain. If you are sending considerable supporting documentation, please cross-reference it against the content of your complaint.

You should be as detailed as possible and substantiate your complaint where you can, including details of witnesses. Although you are not required to prove your complaint at this stage of proceedings, you do have to demonstrate that you have substantial and reasonable grounds for believing that the Councillor(s) complained about has breached the Code of Conduct.

### **So if the complaint is valid for further consideration – what happens next?**

The Councillor affected will be asked to give an initial response to the complaint and will be told the identity of the complainant, unless the Monitoring Officer considers there are special circumstances where the complainant's identity should not be revealed (such cases will be rare and are likely to involve the potential threat of violence or intimidation). Your name may also be placed in the public domain, including the internet. However, we will not publish your address (unless it is relevant to the complaint) telephone number, e-mail address, or signature.

The Monitoring Officer may decide to deal with a complaint himself and may consult one of the Independent Persons before giving a response. He has delegated powers

to give an initial view on whether there is a potential breach of the Code, and if there may be a potential breach, in consultation with an Independent Person, to make determinations under the assessment stage of the process. If the Monitoring Officer decides to refer the matter to a sub committee of the Standards Committee, it will be dealt with as follows:-

1. A meeting of the Standards (Assessment) Sub-Committee will be held to which the Monitoring Officer will submit a factual report and attach the representations from both the complainant and the Councillor concerned. The Sub-Committee consists of three City Councillors who also serve on the main Standards Committee and they will make the decision. However, one of the three Independent Persons will also be present as a non-voting advisor. Where the complaint is against a Parish Councillor, one of the three Parish Representatives will also be present, again as a non-voting advisor.
2. The remit of the Sub-Committee is not to determine whether any breaches of the Code of Conduct have occurred, but to decide whether the evidence submitted by the complainant is sufficient to justify referral of the case for investigation, or whether 'other action' would be a more appropriate course.
3. If the Sub-Committee decides that the complaint does not merit any further action, all parties will be informed and the complainant will have the right of appeal to a Standards (Review) Sub-Committee, which will be set up on the same basis as the Assessments Sub-Committee, but with different individuals. If the initial decision was made by the Monitoring Officer the appeal will be direct to the Standards (Review) Sub-Committee.
4. The Standards (Review) Sub-Committee may decide that an investigation of the complaint is required and instruct the Monitoring Officer accordingly. But if it reaches the same finding as at the Assessments stage that no action is necessary, then that concludes the process and there are no further stages which can be pursued.
5. Meetings of both Sub-Committees are normally held in exempt (confidential) session and neither the complainant nor the Councillor complained about (or their representatives) may be present.
6. Where the Monitoring Officer is instructed to undertake an investigation, the subsequent report will be submitted to a meeting of the Standards (Determinations) Sub-Committee for decision. The membership for this meeting may include some Councillors who considered the complaint at an earlier stage, but as they did not decide on the validity of the complaint (only whether or not it should be referred for investigation) then they are able to participate. The Investigating Officer and the Councillor concerned have the right to address the Standards (Determinations) Sub-Committee. The Sub-Committee will normally meet in public.
7. All parties will be notified in writing within ten working days of the Committee reaching its decision.

8. Unless there are particular circumstances involved, the minutes of all Sub-Committee meetings and the associated Decision Notice(s) will be available for public inspection on request. In some instances they may be available on the City Council website.
9. The City Council takes all complaints seriously and every effort will be made to conclude all the above processes as soon as possible, but occasionally other Council priorities may delay the timescale for completing this work.
10. The Monitoring Officer will make appropriate arrangements to avoid a conflict of interest in the handling of complaints by Members or officers.

### **What sanctions are available if a Member has been found to be in breach of the Code?**

The most serious sanction is a formal Censure of the Member concerned. The Committee may also ask that an apology be given or mediation or training be undertaken. It could determine that access to certain Council facilities should be withdrawn for a period or recommend that the Council should remove a Member from a committee or position of responsibility.

### **What is meant by 'other action'?**

The Committee may decide to recommend 'other action' instead of undertaking a full investigation. Other action is a deliberately broad term that may include options such as requiring the person you have complained about to apologise, or perhaps undergo training or mediation. The Committee will carefully consider the circumstances surrounding your complaint when deciding whether other action is appropriate. If the Committee decides to refer your complaint for other action, we will explain what this involves.

The Committee may also decide that it is not appropriate to incur the expense of a full investigation and not make a formal finding as to whether there has been a breach of the Code. It may, however, still give some general advice.

### **Parish cases**

If your complaint is about a parish councillor, and the Standards Committee makes recommendations about action to be taken in respect of that Councillor, the final decision as to whether or not to accept that advice, or to take other action, is a matter for the Parish Council concerned.

### **For further assistance or queries in completing the Complaints form, please contact:**

*David Blakemore (Democratic Services Manager) on 01962 848 217 (direct line) or email: [dblakemore@winchester.gov.uk](mailto:dblakemore@winchester.gov.uk)*

March 2014





**Winchester**  
City Council

## STANDARDS COMMITTEE COUNCILLORS CODE OF CONDUCT COMPLAINT FORM

### Are you using the correct form?

This is the form to use if your complaint is that a Councillor has acted in breach of the requirements of the Code of Conduct. Please refer to the Guidance Notes [Insert web link] before completing. This will help you decide whether this is the correct form to use when making your complaint and also assist you in setting out your complaint in the appropriate way.

If you are not sure whether the Standards Committee can consider your complaint or have any other queries, please speak to David Blakemore (Democratic Services Manager) on the contact details given at the end of this form.

### Your details

1. Please provide us with your name and contact details

<b>Title:</b>	
<b>First name:</b>	
<b>Last name:</b>	
<b>Address:</b>	
<b>Daytime telephone:</b>	
<b>Evening telephone:</b>	
<b>Mobile telephone:</b>	
<b>Email address:</b>	

Your address and contact details will not usually be released unless necessary or to deal with your complaint.

However, we will initially tell the following people that you have made this complaint:

- the Councillor(s) you are complaining about
- the monitoring officer of the authority
- the parish or town clerk (if applicable)

- the Standards Sub-Committee (if applicable)

We will tell them your name and give them a summary of your complaint. We will give them full details of your complaint where necessary or appropriate to be able to deal with it. If you have serious concerns about your name and a summary, or details of your complaint being released, please complete section 6 of this form.

As the complaint is considered, your name may also be placed in the public domain, including the internet. However, we will not publish your address (unless it is relevant to the complaint) telephone number, e-mail address, or signature.

2. Please tell us which complainant type best describes you:

- Member of the public
- An elected or co-opted member of an authority
- Member of Parliament
- Local authority monitoring officer
- Other council officer or authority employee
- Other (.....)

3. Please provide us with the name of the Councillor(s) you believe have breached the Code of Conduct and the name of their authority:

Title	First name	Last name	Council or authority name

4. Please explain in this section (or on separate sheets) what the Councillor has done that you believe breaches the Code of Conduct. If you are complaining about more than one Councillor you should clearly explain what each individual person has done that you believe breaches the Code of Conduct.

It is important that you provide all the information you wish to have taken into account by the Monitoring Officer or Standards Committee when they decide whether to take any action on your complaint. For example:

- You should be specific, wherever possible, about exactly what you are alleging the Councillor said or did. For instance, instead of writing that the Councillor insulted you, you should state what it was they said.
- 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.



**Only complete this next section if you are requesting that your identity is kept confidential**

5. In the interests of fairness and natural justice, we believe Councillors who are complained about have a right to know who has made the complaint. We also believe they have a right to be provided with a summary of the complaint. We are unlikely to withhold your identity or the details of your complaint unless you have good reason to believe that:
- a) there are reasonable grounds to demonstrate that you will be under threat of intimidation or at risk of physical harm if your identity is disclosed;
  - b) you are an employee who works with the Councillor and fear risking losing your job if your identity is disclosed;
  - c) you suffer from a serious health condition and there are medical risks associated with your identity being disclosed (please enclose a supporting letter from your doctor).

Please note that requests for confidentiality or requests for suppression of complaint details will not automatically be granted. The Standards Committee will consider the request alongside the substance of your complaint. We will then contact you with the decision. If your request for confidentiality is not granted, we will usually allow you the option of withdrawing your complaint.

However, it is important to understand that in certain exceptional circumstances where the matter complained about is very serious, we can proceed with an investigation or other action and disclose your name even if you have expressly asked us not to.

Please provide us with details of why you believe we should withhold your name and/or the details of your complaint:

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## **Additional Help**

- 6.** Complaints must be submitted in writing. This includes fax and electronic submissions. However, in line with the requirements of the Disability Discrimination Act 2000, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing.

We can also help if English is not your first language.

If you need any support in completing this form, please let us know as soon as possible.

**For further assistance or queries in completing this form, please contact:**

*David Blakemore (Democratic Services Manager) on 01962 848 217 (direct line) or email: [dblakemore@winchester.gov.uk](mailto:dblakemore@winchester.gov.uk)*

Equality Monitoring

The next series of questions are about you and it will help us if you are able to complete them, although you do not have to. Remember all answers are confidential.

7 **To which one of these groups do you consider you belong to? Please tick ✓ one box.**

White		Black or Black British	
British	<input type="checkbox"/>	Caribbean	<input type="checkbox"/>
Irish	<input type="checkbox"/>	African	<input type="checkbox"/>
Any other White background	<input type="checkbox"/>	Any other Black background	<input type="checkbox"/>
Mixed		Asian or Asian British	
White & Black Caribbean	<input type="checkbox"/>	Indian	<input type="checkbox"/>
White & Black African	<input type="checkbox"/>	Pakistani	<input type="checkbox"/>
White & Asian	<input type="checkbox"/>	Bangladeshi	<input type="checkbox"/>
Any other mixed background	<input type="checkbox"/>	Any other Asian background	<input type="checkbox"/>
Chinese	<input type="checkbox"/>	Gypsy or Traveller	<input type="checkbox"/>
Other ethnic group	<input type="checkbox"/>	Prefer not to say	<input type="checkbox"/>

8 **What is your gender?** Male  Female  Prefer not to say

9 **What is your nationality?** ..... Prefer not to say

10 **What is your date of birth?** Under 16  Prefer not to say   
16-19   
20-24   
25-59   
60-64   
65 and above

11 **Do you have any longstanding illness, disability or infirmity?** Yes  No  Prefer not to say

12 **Does this illness or disability limit your activities in any way?** Yes  No  Prefer not to say