

West Devon Borough Council

Standards Committee

Dealing with Standards Complaints

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'Dealing with Complaints' Procedure

Appendix A - Hearing Procedure

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1. Definitions

Term	Meaning
Code of Conduct	The West Devon Borough Council Code of Members' Conduct or the relevant Parish/Town Council Code of Conduct
Complainant	The person who has made the complaint to the Monitoring Officer about the Councillor
Council	West Devon Borough Council
Councillor	The Councillor against whom the complaint has been made
Hearing	A hearing of the Hearing Panel to decide whether the Code has been broken and what (if any) sanctions should apply
Hearing Panel	A subcommittee of the Standards Committee responsible for carrying out Hearings
Independent Person	A person appointed under the Localism Act 2011 in an advisory and consultative role in relation to Code of Conduct complaints
Investigating Officer	A person appointed by the Monitoring Officer to carry out an investigation into allegations of a breach of the Code
Investigating Officer's Report	The Final Report written by the Investigating Officer following investigation
Monitoring Officer	Includes her nominated representative or persons appointed on her behalf
Officer	An employee of the Council

Standards Committee	The Council's Standards Committee
Standards Sub-Committee	A sub-committee of three members <u>appointed by</u> <u>of</u> the Standards Committee
Within specified number of working days	These are the targets that the Council has set itself in order to deal with matters and will use all reasonable endeavours to meet these targets

Introduction

The Localism Act 2011 requires the Council to:

- Adopt a Code of Members' Conduct
- Make arrangements for dealing with complaints
- Appoint Independent Person(s)

The Code of Conduct

The Code deals with conduct expected of councillors when they are acting in an official capacity. The Code also includes provisions for registering and declaring pecuniary and other interests.

The Council has adopted a Members' Code of Conduct which can be inspected on the Council's website.

Town and Parish Councils are responsible for adopting their own Code of Conduct and copies are available from the relevant Clerk.

Arrangements for dealing with Complaints

This document sets out how the Council will deal with complaints that a Borough Councillor or West Devon Parish/Town Councillor has broken his/her authority's Code of Conduct. The complaint will be dealt with by the Monitoring Officer (and/or the Standards Committee) in consultation with the Independent Person.

The Standards Committee and its sub-committees

The Standards Committee has overall responsibility for the Code of Conduct and standards functions under the Localism Act 2011. The Standards Committee may appoint subcommittees to deal with specific matters.

Independent Person

The Council must appoint at least one **Independent Person**. The Independent Persons are not members of the Council and their

role is advisory and consultative. West Devon Borough Council has appointed three Independent Persons who are consulted on a rota basis. Similar or related complaints will normally be dealt with by the same Independent Person.

The Independent Person's views:

- **must be** sought by the Monitoring Officer/Standards (sub) Committee before a decision is made to investigate a complaint
- **may be** sought at any other stage by the:
 - Monitoring Officer
 - The Standards Committee (or Sub-committee)
 - Councillor (the subject of the Complaint)

Matters not covered by this procedure

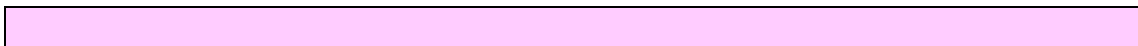
This procedure does not deal with complaints about matters that are not covered by the Members' Code of Conduct. Complaints about:

- a decision or action of the Council or one of its committees
- a service provided by the Council
- Council Officers (employees)

should be made under the Council's Corporate Complaints Procedure (please see the Council's website).

Also, the Council **cannot** deal with a complaint which relates to:

- People who are not members (i.e. councillors) of the Council
- Conduct which occurred when the Councillor was not a member of the Council
- Conduct which applies in a Councillor's private life; the Code only applies to a councillor's behaviour as a member of the Council.
- Conduct which occurred when the Councillor was acting as a member of another authority.
- Complaints that a councillor has committed an offence under the Localism Act (such as failing to declare a Disclosable Pecuniary Interest). Such complaints may be referred to the Police.



How to complain

Any complaints about the conduct of a West Devon Borough Councillor, co-opted member or a West Devon Parish or Town Councillor must be made **in writing** to:

The Monitoring Officer
West Devon Borough Council
Kilworthy Park
Devon
PL19 0BZ
Email:

cbowen@westdevon.gov.uk Catherine.Bowen@swdevon.gov.uk

Fax: 01822 813634

There is a **Code of Conduct Complaint Form** available on the Council's website and paper copies are available from the Monitoring Officer. There are Guidance Notes to help with the Complaint Form.

Help

Although complaints should be made in writing, we can make reasonable adjustments to assist anyone who has a disability that prevents him/her from making a complaint in writing. We can also help if English is not the Complainant's first language.

Receipt of complaints

Request for further information

In order to come to a decision, the Monitoring Officer (or the Standards (sub) Committee) may request additional information or clarification (at any time) from:

- the Complainant
- the Councillor
- Clerk (where the matter relates to a town or parish councillor).

NB. It is important to note that not every complaint about a breach of the Code of Conduct will be referred for investigation or local resolution. The Monitoring Officer or the Standards (sub) Committee will decide what action is appropriate, based on adopted criteria.

Assessment of Complaint

Assessment by the Monitoring Officer

The Monitoring Officer will:

- acknowledge receipt of the complaint **within 5 working** days
- write to advise the Complainant what happens next
- advise the Clerk (where relevant) that a complaint has been received against a parish/town councillor
- write to the Councillor to advise that a complaint** has been received and ask the Councillor to provide written comments on the complaint (within a specified time)
- ~~(at this assessment stage, the Councillor will be asked to restrict his/her written response to two sides of A4 and supporting documents)~~
- advise the Councillor of the Independent Person appointed and advise that s/he can consult the Independent Person
- consult the Independent Person (providing full details of the complaint, the Councillor's response and any other relevant factual information)

** The Complainant's details will only be withheld in exceptional circumstances where a request for confidentiality has been granted (see 'Confidentiality' below).

The Monitoring Officer will consider the complaint:

- on its merits and according to the facts,
- in the context of any written submissions and supporting documentation from the Councillor,
- taking into consideration any response from the Independent Person

The Monitoring Officer will make one (or more) of the following decisions:

The Monitoring Officer will make one of the following decisions:
<ul style="list-style-type: none">• To take no further action (in accordance with the Criteria set out below)
<ul style="list-style-type: none">• To make no finding as to whether there has been a breach of the Code but seek to resolve the complaint informally <u>and make any necessary recommendations</u>
<ul style="list-style-type: none">• To refer the complaint for investigation to determine whether there has been a breach of the Code
<ul style="list-style-type: none">• To refer the matter to the Police where the complaint alleges that a criminal offence may have occurred under Chapter 7 of the Localism Act
<ul style="list-style-type: none">• To refer the complaint to the Standards Committee (or subcommittee) which will have the same options as above

Within 5 working days of making the Decision, the Monitoring Officer will write and tell the Complainant, the Councillor (and Clerk where relevant) to explain what decision has been made and why in accordance with Notification of Decisions set out below.

To take no further action

The Monitoring Officer (or the Standards (sub) Committee) will take no further action if the complaint:

- falls outside of the scope of the Code of Conduct or
- falls within one or more of the **Criteria** set out below

If no further action is to be taken then the Monitoring Officer will write to the Complainant and the Councillor (and Clerk where relevant) with this decision and reasons. This will then be the end of the matter.

Criteria: no further action at assessment stage
<ul style="list-style-type: none">• The complaint does not disclose any breach of the Code
<ul style="list-style-type: none">• It has not been possible to determine whether there has been a breach of the Code and the alleged conduct does not merit

an investigation having regard to the public interest.
<ul style="list-style-type: none"> • Action has already been taken on the matter and there is no merit in pursuing the matter any further
<ul style="list-style-type: none"> • The complaint is the same or substantially the same as a complaint previously dealt with
<ul style="list-style-type: none"> • The conduct complained of happened so long ago that it is considered to be inequitable, unreasonable or otherwise not in the public interest to pursue
<ul style="list-style-type: none"> • The complaint is trivial or insubstantial or discloses such a minor or technical breach of the Code that it is not in the public interest to pursue
<ul style="list-style-type: none"> • The complaint is (or appears to be) malicious, politically motivated, tit-for-tat or otherwise submitted with an improper motive
<ul style="list-style-type: none"> • The complaint is not considered to disclose sufficiently serious potential breaches of the code to merit further consideration
<ul style="list-style-type: none"> • The complaint is covered by the Council's Persistent and Vexatious Complaints Policy
<ul style="list-style-type: none"> • The Councillor has provided a satisfactory remedy to the complaint or made reasonable endeavours to do so
<ul style="list-style-type: none"> • The complaint is about a Councillor who is no longer a councillor and there are no overriding public interest reasons to merit further consideration
<ul style="list-style-type: none"> • The complaint is an anonymous complaint

Informal Resolution

The Monitoring Officer (or the Standards (Sub) Committee) may decide to seek to resolve the complaint informally without the need for a formal investigation.

The decision to resolve the complaint informally will normally be an alternative to a referral for investigation, and the purpose will not be to determine whether or not the Councillor has broken the Code. In such cases, the Monitoring Officer will make it clear to the parties involved that no conclusion has been reached about what happened and no decision has been made as to whether or not the Councillor has breached the Code of Conduct.

If the Monitoring Officer (or the Standards (Sub) Committee) decides (taking into account the criteria below) that informal resolution is appropriate, then the complaint cannot be referred

back to the Monitoring Officer (or Standards (Sub) Committee) if the informal resolution is perceived to have failed. If further concerns are raised, they will need to be reported as a new complaint.

The following actions may be appropriate for informal resolution:

- apology
- explanation
- training
- meditation or conciliation
- referring the matter back to the parish or town council for local resolution (with any appropriate recommendations)
- referral to Political Group Leader
- any other steps (not including investigation) which appear appropriate

~~If the Councillor (or Town/Parish Council) makes a reasonable offer of local resolution, but the Complainant is not willing to accept that offer, then the Monitoring Officer will take that into account in deciding whether the complaint merits formal investigation. Contradicts the above~~

Complaints **should not** normally be referred for informal resolution when:

- An investigation is in the public interest
- An allegation challenges the Councillor’s honesty or integrity

Criteria: Informal Resolution
<ul style="list-style-type: none"> • Less serious complaints
<ul style="list-style-type: none"> • The Councillor accepts that there are grounds for the complaint and offers an apology
<ul style="list-style-type: none"> • A general breakdown in relationships: <ul style="list-style-type: none"> • (including those between members and officers) • evidenced by a pattern of allegations of minor breaches • where there is interpersonal conflict • allegations and retaliatory allegations from the same councillors particularly where this is to such an extent that it becomes difficult to conduct the business of the Council.
<ul style="list-style-type: none"> • Complaints where the public interest in conducting an

investigation does not justify the costs of an investigation
<ul style="list-style-type: none"> • Poor understanding (by Councillor or Councillor's authority) of the Code and relevant procedures
<ul style="list-style-type: none"> • Where informal resolution provides the best opportunity to resolve the issue, prevent any similar issues arising in the future and promote good governance.

To refer the complaint for investigation

Where the Monitoring Officer (or Standards (Sub) Committee) decides that a complaint merits a formal investigation, the Monitoring Officer will appoint an Investigating Officer. Complaints will normally be referred for investigation where there are potentially serious breaches of the Code and/or where it would be in the public interest.

The Investigating Officer may be:

- the Monitoring Officer
- another officer of the Council
- an officer of another Authority
- an external investigator

Investigations will be carried out in accordance with the guidance on 'How to Conduct an Investigation' produced by the former Standards for England. The Investigating Officer will:

- decide whether to conduct interviews or invite statements
- decide who to interview (by phone or in person at the Investigating Officer's discretion)
- ask for relevant supporting documentation from any of the relevant parties
- produce a draft written report for comment by the Councillor
- send a copy to the Monitoring Officer
- exercise his/her discretion whether to ask for the Independent Person's comments on the draft Report
- have regard to any comments made on the draft report and will accept those comments at his/her discretion
- submit a Final Report to the Monitoring Officer setting out (with reasons) whether s/he considers that the Councillor has broken the Code.

- whilst the investigation will be undertaken as expeditiously as reasonably practicable, it is not possible to specify a timescale within which the investigation must be concluded.

Referral to the Police or other regulatory authorities

If the complaint identifies criminal conduct under the Localism Act 2011 (or a breach of other regulations by any other person) the Monitoring Officer (or Standards (Sub) Committee) may refer the matter to the Police or other regulatory authority.

It may not be appropriate to progress the complaint through this procedure for potential breach of the Code in such circumstances, until the conclusion of the Police investigation.

Referral to the Standards Committee or its sub-committees

The Monitoring Officer may refer the complaint at any stage of the complaint process to the Standards Committee (or its sub-committee) for consideration.

Any such meeting of the Standards (or subcommittee) shall be deliberative only and shall not be open to the public. The Standards Committee will make recommendations to the Monitoring Officer. The decision as to how the matter will be progress will remain with the Monitoring Officer. Press, members of the public, the Councillor and Complainant will not be allowed to attend these meetings.

The Monitoring Officer has discretion to decide whether to refer to the Standards Committee but the following factors may be relevant:

- Seriousness of the complaint
- Conflict of interests
- Potential public interest
- Political sensitivity

The Standards Committee (or sub-committee) has the same options in relation to the complaint as above and will consult the Independent Person before making any decision.

Notification of Decisions

The Monitoring Officer's (or the Standards (Sub) Committee) decision will be set out in a **Decision Notice**. Within **five working days** of the decision being made, the Monitoring Officer will send the Decision Notice to the relevant parties, including:

- the Complainant
- the Councillor
- the Independent Person
- Parish/Town Clerk (if appropriate; the Clerk will normally have a summary of the outcome relevant)

The **Decision Notice** will:

- Summarise the complaint
- Give the decision
- Give reasons for the decision
- Say briefly what will happen next (if relevant)
- Explain that there is no right of appeal

Outcomes of an Investigation

The Investigating Officer will make one of the following findings:

- that the Code has not been broken
- that there has been a breach of the Code.

Investigating Officer decides that the Code has not been broken

The Monitoring Officer will (**within 14 working days**) of receipt of the Investigating Officer's Final Report:

- Send a copy of the Report to the Complainant and Councillor
- Advise the following of the finding of no breach:
 - Clerk - if the matter relates to a parish or town councillor
 - Independent Person
 - Standards (Sub) Committee

- Advise that all documents relating to the complaint will remain confidential.

This will normally be the end of the matter, and no further action will be taken. However, the Monitoring Officer has discretion to refer the Report to the (sub) Committee to consider whether the Investigating Officer's findings should be accepted.

Investigating Officer decides that the Code has been broken

Where the Investigating Officer finds that the Code has been broken the Monitoring Officer will (in consultation with the Independent Person):

- Facilitate a **local resolution** where appropriate, or
- Refer the matter to the Hearing Panel for a '**paper hearing**', or where Councillor accepts the Investigating Officer's Report.
- Refer the matter for a **Hearing** before the Hearing Panel

Local Resolution

After an Investigating Officer's finding of a breach, the Monitoring Officer may consider that the matter may be reasonably resolved without the need for a formal hearing. In such cases she will consult:

- the Independent Person
- the Complainant
- the Councillor

to try and agree a local resolution which satisfies both parties, and which will seek to ensure a higher standard of conduct in the future.

Such resolution may include:

- the Councillor agreeing that his/her behaviour was unacceptable
- the Councillor offering an apology
- the Councillor offering other remedial action

If the Councillor complies with the suggested resolution the Monitoring Officer will report the matter to the Standards

Committee (and Town & Parish Council where appropriate) and that will be the end of the matter.

'Paper' Hearing

The matter may be dealt with by way of a 'paper' hearing where:

- local resolution is not appropriate or possible, or
- where local resolution is not appropriate, the Councillor accepts the findings of the Investigating Officer's Report and does not wish to make any further representations (save for written representations on possible sanctions) on the Report at a formal Hearing
- there are no overriding public interest or other reasons why the matter should be referred to a formal Hearing.

Please see Appendix B.

Hearing

The Monitoring Officer will refer the matter to the Hearing Panel for a Hearing where:

- local resolution is not appropriate or possible, or
- the Complainant and/or the Councillor do not co-operate in any local resolution
- the Councillor does not wish to deal with the matter without a formal hearing
- it is in the public interest to refer the matter to a Hearing.

A hearing is a **public meeting** in which the Councillor and the Investigating Officer will be asked to make representations to the Hearing Panel before it decides:

- whether the Councillor has broken the Code of Conduct
- what action (if any) to recommend
- what sanctions (if any) to apply

Please see Appendix A for the **Hearing Procedure**.

Hearing outcomes

- That there has been no breach of the Code

- That the Code has been broken

The Hearing Panel has no power to:

- suspend members
- disqualify members
- withdraw members' allowances

Other issues relating to complaints

Confidentiality

As a matter of fairness and in the interests of natural justice, a Councillor should normally be told that a complaint has been made and by whom.

However, there may be instances when the Complainant asks for his/her identity to be withheld. Such requests will only be granted in exceptional circumstances and at the discretion of the Monitoring Officer (or the (sub) Committee). The Monitoring Officer may consult the Independent Person.

The following criteria will be taken into account when considering requests for confidentiality:

- Complainant has reasonable grounds for believing that s/he (or someone else) will be at a risk of physical harm if his/her identity is disclosed
- Complainant is an officer who works closely with the Councillor and is afraid of the consequences to his/her employment if identity is disclosed
- Complainant (or someone else) suffer from serious health condition and there are medical risks associated with his/her identity being disclosed. In such circumstances the Monitoring Officer may wish to request medical evidence.

The Complainant will be asked if s/he wishes to withdraw the complaint where:

- it is not possible to pursue the complaint without revealing the Complainant's identity (e.g. allegations of bullying), or
- the Complainant's request for confidentiality is refused.

In some circumstances the public interest in proceeding with an investigation may outweigh the Complainant's wish for confidentiality. The Monitoring Officer or Standards Committee / Sub-committee will decide where the public interest balance lies in the particular circumstances of each complaint.

Withdrawal of complaints

Requests to withdraw complaints will normally be granted but in considering such requests the Monitoring Officer (in consultation with the Independent Person as appropriate) will consider the following:

- | |
|---|
| • Does the public interest in taking some action on the complaint outweigh the Complainant's wish to withdraw it? |
| • Can the complaint be investigated without the Complainant's participation? |
| • Is there an identifiable underlying reason for the request to withdraw the complaint? |

Multiple complaints

Several complaints may be received from different complainants on the same matter and these may be considered by the Monitoring Officer at the same time. However, the Monitoring Officer will make a separate decision on each individual complaint.

Anonymous complaints

Anonymous complaints will only be referred for investigation if the complaint includes documentary or other evidence showing an exceptionally serious or significant matter.

Where a councillor ceases to be councillor

If at any time during the Complaints process the Councillor ceases to be a Councillor for whatever reason, then (unless there are overriding public interest reasons to merit continuing with the process) the complaint will not be considered any further and the matter closed.

Other issues

Public access to meetings and records

- The initial assessment and consideration of the complaint by the Monitoring Officer (and consultations with the Independent Person) will take place in private i.e. the public and press are not allowed to attend these meetings. This is because these meetings may have to consider unfounded and potentially damaging complaints against councillors which it would not be appropriate to make public.
- Initial assessment and consideration papers where the decision is 'no further action' or the matter is referred for informal resolution that do not progress past the initial assessment stage will not be disclosed to the public. (However the original complaint will be disclosed to the councillor and Independent Person – see above).
- Formal Hearings (but not Paper Hearings) will be open to the public and press unless exempt information under Schedule 12A of the Local Government Act 1972 is likely to be disclosed. The Hearing Panel may exercise its discretion to exclude the public and press from all or part of the Hearing, or exclude some or all of the supporting papers.
- Documents relating to complaints that have not been referred for investigation will be kept for 12 months.
- Other documentation will be kept in accordance with the Council's records retention policy.
- Decision Notices will be available for inspection (but not publication) for 6 years from the date that Decision has been notified to the Councillor.
- Papers relating to Committee and sub-committee meetings will be kept for 6 years from the date of the meeting. However, sections of documents relating to parts of the Hearing that were

held in private (or paper hearing papers) will not be made available for public inspection.

- Registers of Interests will be destroyed 6 months after the Councillor has ceased to be a councillor.
- Data Protection requirements will be considered and complied with and may prevent disclosure of some documents.

Conflicts of interest

The consideration of complaints must be conducted with impartiality and fairness. If any officer, member or Independent Person has any personal or professional conflict of interest in relation to a complaint s/he should have no (further) involvement in dealing with that complaint. Please see the guidelines set out below.

Members

A member of the Standards Committee who has been involved in an earlier part of the process can be a member of the Hearing Panel that determines the complaint at the end of the investigation.

Members must not discuss complaints with anyone who is not a member of the committee and discussion between Standards Committee members should only take place at meetings of the Standards Committee or its subcommittees.

Officers

An officer who has previously advised the Councillor or the Complainant should consider whether s/he should take part in the complaints process having regard to public perception and the public interest.

Officers who take part in the consideration of the complaint must not take part in the investigation of that matter.

The role of any officer who has a conflict of interest in a matter will be undertaken by another officer.

Independent Person

Where an Independent Person has a conflict, another Independent Person will be appointed to deal with that matter.

Guidelines as to when a Standards Committee Member, Independent Person or Officer should not take part in this procedure:

- If s/he is the Complainant
- If s/he is closely associated with some one who is a Complainant
- S/he is a potential witness or victim relating to a complaint
- The complaint is likely to affect the well-being or financial position of the member/officer /Independent Person (or of a family member, friend, or someone with whom s/he has a close association)
- The member/officer is directly or indirectly involved in the case in any way.
- A family member, friend or close associate of the Standards Committee member / officer / Independent Person is involved in the case.
- The member / officer / Independent Person has an interest in any matter relating to the case

Complaints about dual-hatted councillors

Councillors who belong to more than one authority may have breached more than one Code of Conduct, and it is therefore possible that the Monitoring Officer of more than one authority may receive a complaint on the same matter.

When a complaint is received about a dual-hatted councillor, the Monitoring Officer should check if a similar complaint has been received by the other authority.

Variation and Review of this procedure

This Procedure may be amended from time to time by the Monitoring Officer to take in to account any changes in law, guidance as to best practice or in the light of experience.

The Monitoring Officer will review this Procedure every two years or as otherwise necessary.

Any substantial amendments or variations will be approved by the Standards Committee.

Appeals

There is no right of appeal by the Complainant or the Councillor against the decision of:

- the Monitoring Officer
- the Standards Committee (or its subcommittees)
- the Hearing Panel

If the Complainant reasonably believes that the Council has failed to deal with his/her complaint in accordance with this Policy ~~properly~~ s/he may make a complaint to the Local Government Ombudsman.