

Member Code of Conduct Complaint Handling Arrangements

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I. CONTEXT

- 1.1. West Oxfordshire District Council is required to have in place “arrangements” under which allegations that a member or co-opted member of the council or of a town or parish council within the district has failed to comply with their authority’s Code of Conduct can be made and investigated, and decisions made on such allegations.
- 1.2. This document sets out the arrangements adopted by the Council.
- 1.3. The arrangements must also provide for the Council to appoint at least one Independent Person, whose views must be sought before the Council takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the Council at any other stage. An Independent Person may also be consulted by a member or a co-opted member of the district council or of a town or parish council in the district who is the subject of a complaint.

2. THE CODE OF CONDUCT

- 2.1. The District Council has adopted a Code of Conduct for members, which is attached as [Annex A](#) to these arrangements and which is also available from the Council’s website at www.westoxon.gov.uk/conduct and from its offices at Woodgreen, Witney.
- 2.2. *Each town and parish council in the District is also required to adopt a Code of Conduct. If you wish to inspect a town or parish council’s Code of Conduct, you may visit any website operated by that council and/or contact the town or parish clerk (see www.westoxon.gov.uk/parishes).*
- 2.3. A list of the relevant Town and Parish Councils is set out in [Annex B](#) to this document.

3. MAKING A COMPLAINT

- 3.1. If you wish to make a complaint, please write to –
The Monitoring Officer
West Oxfordshire District Council
Council Offices
Woodgreen
Witney
Oxon
OX28 1NB

or email democratic.services@westoxon.gov.uk, marking your email for the attention of the Monitoring Officer.
- 3.2. The Monitoring Officer is a senior officer of the authority who has responsibility for administering the system in respect of complaints of member misconduct, and for maintaining the register of members’ interests.
- 3.3. To ensure that we have all the information which we need to be able to consider the complaint, please complete and send us the Code of Conduct Complaint Form, which can be downloaded from the District Council’s website at www.westoxon.gov.uk/conduct, and is available on request from reception at the offices at Woodgreen, Witney.
- 3.4. A complaint must provide substantiated information and should outline an indication of the form of resolution the Complainant is seeking.
- 3.5. Please provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form. The Council will not normally consider anonymous complaints, unless there is a clear public interest in doing so.

- 3.6. The Monitoring Officer will acknowledge receipt of complaints within five working days of receiving it, and will keep the complainant informed of the progress of their complaint.

4. WILL A COMPLAINT BE INVESTIGATED?

- 4.1. The Monitoring Officer will review every complaint received and, after consultation with an Independent Person(s), take a decision as to whether it merits formal investigation. This decision will normally be taken within 28 days of receipt of the complaint. The Monitoring Officer will inform the complainant of the decision and the reasons for that decision.
- 4.2. If the Monitoring Officer requires additional information in order to come to a decision, the complainant may be asked for such information. The Monitoring Officer will usually advise the member of the complaint, and will also decide whether to request information or comment from them. In exceptional cases, where it is appropriate to keep the complainant's identity confidential or disclosure of details of the complaint to the member might prejudice consideration of the complaint or any investigation, the Monitoring Officer can delete the complainants name and address from the papers given to the member, or delay notifying the member until matters have progressed sufficiently.
- 4.3. *Where a complaint relates to a Town or Parish Councillor, the Monitoring Officer may also inform the Town or Parish Council of the complaint and seek the views of the Town or Parish Council before deciding whether the complaint merits formal investigation.*
- 4.4. The Monitoring Officer will exercise their discretion in relation to the decision as to whether a complaint should be investigated, with regard to the assessment criteria set out below, the time and expense involved in an investigation, the potential sanctions and the views of the Independent Person. Where possible the Monitoring Officer will seek a resolution to the complaint without a referral for investigation.
- 4.5. In particular, a complaint is unlikely to be referred for investigation if in the opinion of the Monitoring Officer it is or appears to be trivial, vexatious, politically motivated, irrelevant to the code of conduct, or substantially the same as a previously considered complaint, or a complaint currently under consideration.

Initial assessment criteria for code of conduct complaints	
Timeliness	If the events subject to the complaint took place more than 6 months prior to the complaint being submitted then they will not normally be investigated other than in exceptional circumstances e.g. where the conduct relates to a pattern of behaviour which has recently been repeated.
Adequate information	There needs to be sufficient and clear information provided in the complaint form to enable the subject member to respond and for the Monitoring Officer to decide whether or not the complaint should be referred for an investigation.
Official capacity	For the code of conduct to be engaged the member must have been acting in their official capacity rather than in a private capacity when the conduct in question took place. Complaints will only be referred for an investigation where it is considered very likely that the member was acting in an official capacity when the conduct took place.
Seriousness	The conduct in question needs to be considered to be sufficiently serious for the complaint to be referred for an investigation. If the complaint is considered to be trivial,

	<p>malicious, vexatious, or tit-for-tat it will not normally be investigated.</p> <p>Complaints that are considered to be politically motivated or relate to the “rough and tumble” of political debate will not normally be investigated. There is an accepted concept of politicians needing to have a “thicker skin” and more tolerance to comment and criticism than members of the public would be expected to have.</p> <p><u>Disrespect</u></p> <p>Councillors also have a qualified right to freedom of speech and a wide degree of tolerance is accorded to political expression. This enhanced protection applies to all levels of politics, including local government, and is not limited to expressions of political views but extends to all matters of public administration including comments about the performance of public duties by others. However, gratuitous personal comments do not fall within the definition of political expression.</p> <p>Allegations of disrespect will be considered against the following test:</p> <p>A. Were the comments objectively disrespectful/offensive?</p> <p>B. Was it political expression so therefore entitled to higher level of protection? Or simply abuse?</p> <p>C. If the member was entitled to enhanced protection does the public interest mean that a finding of breach is nevertheless a proportionate and necessary response?</p> <p><u>Bullying</u></p> <p>Allegations of bullying will be considered against the “Williamson test”:</p> <p>A. Did the subject member’s conduct involve offensive, intimidating, malicious or insulting behaviour?</p> <p>B. If it was, was an abuse or misuse of power involved in that behaviour?</p> <p>C. Was the complainant left feeling vulnerable, upset, undermined, humiliated, denigrated or threatened?</p> <p>D. Was it reasonable for the complainant to have perceived the subject member’s behaviour as bullying?</p>
<p>Availability and strength of evidence</p>	<p>For complaints to be investigated effectively there needs to be evidence available which can be weighed up and tested. Consideration will be given to the availability of first-hand and documentary evidence. Complaints based on hearsay evidence are less likely to be referred for an investigation.</p>
<p>Public interest</p>	<p>Consideration will be given as to whether the public interest would be served by referring the complaint for</p>

	<p>an investigation, or by other action (e.g. informal resolution).</p> <p>The public interest would not normally be served where the member has died, resigned from office or is seriously ill.</p> <p>If the complaint is subject to an investigation by the police or another regulatory body, it is unlikely to be referred for investigation unless it is evident that the public interest would be served by further action being taken.</p>
Multiple complaints	<p>If multiple complaints are received in relation to the same conduct, the Monitoring Officer will consider the complaints at the same time where possible.</p> <p>If an investigation is deemed appropriate, there will be a single investigation. The Monitoring Officer will decide which complaint will go forward for investigation, with the other complainants being treated as potential witnesses in that investigation.</p> <p>If a complaint is received which is substantially similar to a complaint that has already been considered, it will not be referred for an investigation unless substantial new evidence is provided which is considered likely to change the outcome of the complaint.</p>

- 4.6. In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may, for example, involve the member accepting that their conduct was unacceptable and offering an apology, or other remedial action by the authority, or some form of mediation. Where the member or the authority makes a reasonable offer of local resolution, but the complainant is not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.
- 4.7. If a complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer or any other officer will refer the complaint to the Police or other regulatory agency. If the complainant considers there has been criminal conduct then they may go directly to the Police or other regulatory agency.

5. HOW IS ANY INVESTIGATION CONDUCTED?

- 5.1. If the Monitoring Officer decides that a complaint merits formal investigation, they will appoint an Investigating Officer, who may be an officer of the Council or another council, or an external investigator. The Investigating Officer will decide whether they need to meet or speak to the complainant. If so, this will be 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 whether the Investigating Officer needs to interview anyone.
- 5.2. The Investigating Officer will usually write to the member against whom a complaint has been made and ask for their explanation of events, and as part of the process of deciding what documents they need to see and who they need to interview.
- 5.3. At the end of their 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 member concerned, to give both an opportunity to identify any matter in that draft report with which they disagree or feel requires more consideration.

- 5.4. Having received and taken account of any comments which the complainant and member may make 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 and, if they are satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to the complainant and to the member concerned [*and to the Town or Parish Council, where a complaint relates to a Town or Parish Councillor*], notifying that they are satisfied that no further action is required, and give both a copy of the Investigating Officer's final report.
- 6.2. If the Monitoring Officer is not satisfied with the investigation/report, they may ask the Investigating Officer to reconsider the report. In considering the report, the Monitoring Officer may consult with an Independent Person(s) if they consider it appropriate to do so.

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 local hearing before the Standards Sub-Committee or, after consulting an Independent Person(s), seek local resolution.
- 7.2. Again, the Monitoring Officer will have the option of asking the Investigating Officer to reconsider the report, and of consulting with an Independent Person(s).

Local Resolution

- 7.3. 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 an Independent Person(s) and with the complainant and seek to agree a fair resolution of the complaint which also helps to ensure higher standards of conduct for the future. Such resolution may include the member accepting that their conduct was unacceptable and offering an apology, and/or other remedial action by the authority. If the member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Sub-Committee [*and, where relevant, the Town or Parish Council*] for information, but will take no further action.

Local Hearing

- 7.4. If the Monitoring Officer considers that local resolution is not appropriate (which may be because the complainant is not satisfied by the proposed resolution) or the member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigating Officer's report to the Standards Sub-Committee which will conduct a local hearing before deciding whether the member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the member.
- 7.5. The Monitoring Officer will conduct a "pre-hearing process" requiring the member to give their 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. At the hearing, the Investigating Officer will present their report, call such witnesses as they consider necessary and make representations to substantiate their conclusion that

the member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask the complainant to attend and give evidence to the Standards Sub-Committee. The member will then have an opportunity to give their evidence, to call witnesses and to make representations to the Sub-Committee as to why they consider that they did not fail to comply with the Code of Conduct.

- 7.6. The Sub-Committee, with the benefit of any advice from an Independent Person(s), may conclude that the member did not fail to comply with the Code of Conduct, and to dismiss the complaint.
- 7.7. If the Sub-Committee concludes that the member did fail to comply with the Code of Conduct, the Chair will inform the member of this finding and the Sub-Committee will then consider what action, if any, it should take as a result of the member's failure to comply with the Code of Conduct. In doing this, the Sub-Committee will give the member an opportunity to make representations and will consult an Independent Person(s).
- 7.8. Any detailed procedures for conducting hearings will be as approved by the Sub-Committee.

8. WHAT ACTION CAN THE STANDARDS SUB-COMMITTEE TAKE WHERE A MEMBER HAS FAILED TO COMPLY WITH THE CODE OF CONDUCT?

- 8.1. The Council has delegated to the Sub-Committee such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly, the Sub-Committee may –
 - Censure or reprimand the member;
 - Publish its findings in respect of the member's conduct;
 - Report its findings to Council or to the Town or Parish Council for information;
 - Recommend to the member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that they be removed from any or all Committees or Sub-Committees of the Council;
 - Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
 - Recommend to Council that the member be replaced as Executive Leader;
 - Instruct the Monitoring Officer to arrange training for the member, *or recommend that to the Town or Parish Council.*
- 8.2. The Sub-Committee has no power to suspend or disqualify the member or to withdraw or suspend allowances or restrict access to or the use of Council facilities.

9. WHAT HAPPENS AT THE END OF THE HEARING?

- 9.1. At the end of the hearing, the Chair will state the decisions of the Sub-Committee as to whether the member failed to comply with the Code of Conduct and as to any actions which the Sub-Committee has decided on.
- 9.2. As soon as reasonably practicable after the hearing, the Monitoring Officer will prepare a formal decision notice in consultation with the Chairman of the Sub-Committee, and send a copy to the complainant, to the member (*and to the Town or Parish Council if appropriate*), make that decision notice available for public inspection and, if so directed, report the decision to the next convenient meeting of the Council.
- 9.3. There is no right of appeal for the complainant, or for the member, against a decision of the Monitoring Officer or of the Sub-Committee.
- 9.4. If a complainant feels the authority has failed to deal with a complaint properly, they may make a complaint to the Council and, ultimately, to the Local

10. WHAT IS THE STANDARDS SUB-COMMITTEE?

- 10.1. The Standards Sub-Committee is a Sub-Committee of the Council's Audit and Governance Committee. It is comprised of five members of the Audit and Governance Committee drawn from at least two different political groups.
- 10.2. The Independent Person acting as a consultee for the complaint is invited to attend the meeting of the Sub-Committee and their views are sought and taken into consideration before decisions are made on whether a member's conduct constitutes a failure to comply with the Code of Conduct, and as to any action to be taken following a finding of failure to comply with the Code of Conduct. The Independent Persons do not, however, have voting rights on the Sub-Committee - their role is an advisory one.

11. WHO ARE THE INDEPENDENT PERSONS?

- 11.1. The Independent Persons are persons who have applied for the post following advertisement of a vacancy for the post, and are appointed by a positive vote from a majority of all the members of Council. The Council has determined that there will be no more than five Independent Persons appointed.
- 11.2. A person cannot be "independent" if they–
 - are, or have been within the past five years, a member, co-opted member or officer of the authority;
 - are, or have been within the past five years, a member, co-opted member or officer of a parish council within the authority's area, or;
 - are a relative, or close friend, of such a person
- 11.3. For this purpose, "relative" means –
 - Spouse or civil partner;
 - Someone who lives with the other person as husband and wife or as if they were civil partners;
 - Grandparent of the other person;
 - A lineal descendent of a grandparent of the other person;
 - A parent, sibling or child of a person as above
 - A spouse or civil partner of a person as above; or
 - Someone who lives with a person as above, as husband and wife or as if they were civil partners

12. REVISION OF THESE ARRANGEMENTS

- 12.1. The Standards Sub-Committee may by resolution agree to amend these arrangements.
- 12.2. The Sub-Committee, on the advice of the Monitoring Officer, may depart from these arrangements where it is necessary to do so in order to secure the effective and fair consideration of any matter.