

Solihull Metropolitan Borough Council

Code of Conduct for Councillors

Complaint Procedure

Appendix 3

Background

Under Section 28 of the Localism Act 2011, Solihull Metropolitan Borough Council (the Council) must have in place “arrangements” under which allegations that an elected or co-opted councillor of the Council or of a town or parish council within the Council’s area (herein after referred to as the ‘subject member’) has failed to comply with the Council’s Code of Conduct can be considered and decisions made on such allegations.

These arrangements provide for the Council to appoint at least one Independent Person whose views must be sought by the Council before it takes a decision on an allegation that it has decided to investigate, and whose views can be sought by the Council at any other stage, or by the subject member against whom an allegation has been made.

The Council has adopted a Code of Conduct for councillors (the Code), which is published on the Council’s website and is available for inspection on request from the Council’s office.

Each town and parish council is also required to adopt a code of conduct which should be available on their website.

Filter Stage

1. The Monitoring Officer receives a complaint, acknowledges it within 5 working days where possible and seeks additional information/supporting evidence if required. The Monitoring Officer shall determine whether it is a valid complaint and therefore one that can be considered in line with this process. In determining whether it is a valid complaint the Monitoring Officer shall consider such things as; does the code of conduct apply; was the member acting as a councillor at the time.
2. The Monitoring Officer may delegate the decision to a Deputy Monitoring Officer or external adviser. Circumstances where this would be done include (but are not limited to) where the Monitoring Officer has a conflict of interest – for example as the complainant, a key witness or where the Monitoring Officer has already advised on matters which are the subject of the complaint; or where the matter is politically sensitive or needs specialist advice.
3. Anonymous complaints will not be accepted unless the Monitoring Officer concludes that there is a compelling public interest why a serious allegation made anonymously may be taken forward.
4. Where the allegation concerns matters which may amount to a criminal offence or a breach of other regulations the Monitoring Officer will consult with the Police or other regulatory body on whether the matter should be referred to them.
5. The Monitoring Officer will also notify the subject member of the complaint within three working days unless there are compelling reasons not to, together with a copy of the complaint (or relevant extracts) and a summary of the process to be followed, and invite them to submit any relevant comments. The subject member will be given 10 working days to respond from the date of the notification. In parish council cases the Monitoring Officer may also notify the clerk and may ask for relevant factual information. However,

the Monitoring Officer, in consultation with an Independent Person, may withhold the complainant's identity if they can be satisfied that there are reasonable grounds for granting confidentiality, for example a belief that the complainant or any witness to the complaint may be at risk of physical harm or intimidation, or that their employment may be jeopardised if their identity is disclosed.

6. At the end of the 10 working days from notifying the subject member (regardless of whether any comments have been received from the subject member) the Monitoring Officer will decide one of the following outcomes:
 - a. to take no further action;
 - b. to seek to resolve the matter informally; or
 - c. to refer the matter for investigation.
7. A complaint will only normally be referred for investigation if the following criteria are met:
 - it is serious enough, if proven, to justify the costs of an investigation or
 - it is part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the Council and there is no other avenue left to deal with it and the conduct complained of occurred within six months of the date the complaint was received unless there is a valid reason why there had been a delay in making the complaint
8. Complaints will not normally be referred for investigation where they fall within one or more of the following categories:
 - the Monitoring Officer believes it to be malicious, relatively minor, or tit-for-tat
 - the Monitoring Officer believes it would not be in the public interest as the matter, even if proven, would not warrant a sanction
 - the same, or substantially similar, complaint has already been the subject of an investigation or inquiry and there is nothing further to be gained
 - the complaint concerns acts carried out in the subject member's private life, when they are not carrying out the work of the authority or have not misused their position as a councillor
 - it appears that the complaint is about dissatisfaction with a Council decision
 - the complaint does not contain sufficient information to demonstrate a potential breach of the Code
 - Where informal resolution has been achieved
 - Where it is about someone who is no longer a councillor or who is seriously ill.
9. A decision will usually be made by the Monitoring Officer (in consultation with the Independent Person) within 14 working days of receipt of the complaint. The Monitoring Officer will notify the parties if there will be a delay
10. All parties (and the clerk for parish cases) will be notified of the Monitoring Officer's decision and there is no internal right of appeal against that decision.

Informal resolution

11. Where the Monitoring Officer has decided to seek to resolve the matter informally, they may do one or more of the following:

- ask the subject member to submit an apology in writing to the complainant;
 - convene a meeting between the subject member and the complainant in order to try to resolve the issue informally;
 - notify the subject member's group leader (where they are a member of a political group) and suggest that they may wish to take some internal group action;
 - suggest that the subject member undergo relevant training;
 - other such action that the Monitoring Officer deems appropriate.
12. The Monitoring Officer will decide on a timeframe within which the informal resolution must be completed to an acceptable standard.
13. If either the subject member or complainant refuses to engage with the informal resolution proposed by the Monitoring Officer, or the Monitoring Officer deems the action taken by the subject member insufficient or the informal resolution does not take place in a timely way the Monitoring Officer will decide, in consultation with an Independent Person, whether the case should be closed, whether an investigation is necessary or whether some other action should be taken.
14. The Monitoring Officer will notify the complainant (and clerk in parish cases) of the outcome of the informal resolution.

Referral for investigation

15. Purpose – to conduct a full and thorough investigation, gathering all the relevant information available at the time, ensuring the investigation remains fair and objective at all times. The investigation should be in proportion to the nature of the alleged misconduct. The investigation will conclude with the investigating officer's opinion as to whether there has been a breach of the code of conduct.
16. Where the Monitoring Officer believes the complaint warrants investigation and/or suitable informal resolution has not been forthcoming then the matter may be referred for investigation. In these circumstances the complaint will be investigated by a suitably qualified and experienced investigator appointed by the Monitoring Officer.
17. Prior to commencing the investigation, the Monitoring Officer and investigating officer shall agree the scope, parameters and timescale of the investigation including the schedule of persons to be interviewed. If at any time during the conduct of the investigation it becomes apparent that the original scope of the investigation should be reviewed then the investigating officer or Monitoring Officer shall so review the scope and parameters, this would include the need to interview additional witnesses.
18. The subject member will be informed in writing of the matters to be investigated. The subject member should also be provided with a copy of this procedure and reminded of their right to be accompanied by a friend, and to consult an Independent Person.
19. The investigation will include discussions with the subject member and may include taking statements from any relevant witnesses and collecting any further documentary evidence.
20. In exceptional circumstances, such as where there is fear of reprisal, statements gathered from relevant witnesses may be given anonymously. In such cases the investigating officer must seek to gather additional evidence to substantiate the allegations or not.
21. The investigating officer will decide whether they need to meet or speak to the complainant to fully understand the complaint. The investigating officer will ensure that prior to conducting any interview, the individual shall be provided with material to enable a fair and

proportionate investigation to take place. As part of an interview the subject member may be asked to provide their explanation of events and identify what documents the investigating officer may wish to consider and details of witnesses they may wish to interview. In exceptional cases, the investigating officer may delay notifying the subject member until the investigation has progressed sufficiently.

22. At any time while the investigation is underway the Monitoring Officer, the subject member or the complainant may ask for an informal resolution. The Monitoring Officer will consult with the relevant Independent Person whether to agree with the request.
23. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, they may ask the investigating officer to reconsider their report. Before finalising the investigation report, the Monitoring Officer will seek the views of an Independent Person.
24. At the end of the investigation, the investigating officer will send copies of the draft report, in confidence, to the complainant and to the subject member and extracts to any relevant witness, to give them an opportunity to identify any matter which they disagree with or which they believe requires more consideration. Having received and taken account of any comments on the draft report, the investigating officer will send their final report to the Monitoring Officer.
25. There may be exceptional circumstances when the Monitoring Officer decides that a case should be closed before a draft or final report has been produced due to a significant change in circumstances. This may include, for example that the subject member is seriously ill or is no longer a councillor or other action has led to the matter being resolved. In such cases the Monitoring Officer should consult the Independent Person before deciding that the file be closed. A record of the complaint will be kept on file in the event that the subject member returns to office in the future and a subsequent complaint is lodged against them.

Report Stage

26. The Monitoring Officer shall consider the report received following the conclusion of the investigation including the investigating officer's opinion as to whether a breach of the Code of Conduct has occurred. The Monitoring Officer will then take one of the following actions:
 - a) If the investigating officer concludes that there is no evidence of a failure to comply with the Code of Conduct:
 - I. If the Monitoring Officer (in consultation with the Independent Person) is satisfied with the investigation and findings, the Monitoring Officer will send a copy of the final report to the complainant, the subject member and the Parish Clerk (if appropriate) and notify them that no further formal action is required but may highlight any comments or recommendations that may be contained in the report.
 - b) If the investigating officer concludes that there is evidence of a failure to comply with the Code of Conduct:
 - I. The Monitoring Officer will review the investigating officer's report and if the Monitoring Officer believes the matter is sufficiently serious and, after consulting the Independent Person, believes a hearing panel would be in the public interest then the matter will be sent for a hearing. Any hearing will be conducted in accordance with the Hearing Procedure set out at Appendix A below; or
 - II. If after consulting the Independent Person the Monitoring Officer doesn't

believe a hearing would be in the public interest or if agreed an informal resolution has been achieved, then the Monitoring Officer can decide no further formal action is required but may highlight any comments or recommendations that may be contained in the report.

27. The outcome of all investigations will be reported to the next meeting of the Governance Committee and to the relevant parish council (if appropriate).

Informal Resolution

28. The Monitoring Officer may consider that the matter can be resolved without the need for a hearing. If so, 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 subject member accepting that their conduct was unacceptable/inappropriate and offering an apology, and/or other informal resolution by the Council or the relevant parish council (if appropriate).
29. If the subject member complies with the suggested resolution to the satisfaction of the Monitoring Officer and Independent Person, the Monitoring Officer will report the matter to the Governance Committee and the relevant parish council (if appropriate) for information, but will take no further action.
30. Where the subject member disagrees with the recommendations in the Investigators report or fails to agree to an informal resolution, the Monitoring Officer will refer the matter for hearing before a Hearing Panel comprised of any three members of the Governance Committee and advise the complainant of the proposed hearing.

Hearing Stage

31. Any Hearing will be carried out in accordance with the Hearing Procedure at appendix A hereto.
32. The Hearing Panel will be comprised of any three members of the Governance Committee to sit as and when required. Where possible the Hearing Panel will include representation from at least two of the political groups represented on the Council. The selection of members to form a Panel to deal with a particular matter or matters shall be made by the Monitoring Officer.
33. The Terms of Reference of the Hearing Panel are:
- To consider complaints about members in relation to the Code of Conduct and determine whether or not there has been a failure to comply with the Code of Conduct. Where there has been a failure to comply with the Code of Conduct the Hearing Panel may impose sanctions with the agreement of the member concerned or make recommendations to Council on the imposition of sanctions.*
34. The Hearing Panel will meet within three months of receipt of the investigating officer's report.
35. The Hearing Panel will consider the investigation report, take account of the views of any Independent Person consulted in relation to the matter, hear representations from the subject member concerned and the Monitoring Officer. Other people may be heard at the discretion of the Chairman.

36. If the Hearing Panel find there is no failure to comply with the Code of Conduct the matter will end there.
37. If the Hearing Panel finds that there is a failure to comply with the Code of Conduct it will recommend what action if any should be taken, this may or may not include the imposition of sanctions on the subject member concerned.
38. As soon as reasonably practicable, the Monitoring Officer will prepare a formal decision notice, in consultation with the Panel Chairman, and send a copy to the complainant, the subject member and the Parish Clerk (if appropriate). The decision notice will be made available for public inspection on the Council's website.

Appeals

39. There is no right of appeal for the complainant or for the subject member against a decision of the Monitoring Officer or of the Hearing Panel. If any party feels that the authority has failed to deal with a complaint properly, they may make a complaint to the Local Government Ombudsman.

SOLIHULL METROPOLITAN BOROUGH COUNCIL

CODE OF CONDUCT FOR COUNCILLORS

Hearings Procedure

1. The pre-hearing process

- 1.1. The purpose of the pre-hearing process is to allow matters at the hearing to be dealt with fairly and economically. It should alert parties to possible areas of difficulty and, if possible, allow them to be resolved before the hearing. The pre-hearing process will be used to:
- Identify whether the subject member disagrees with any of the findings of fact in the investigation report, including reasons for any disagreements
 - Identify whether those disagreements are likely to be relevant to any matter the hearing needs to decide
 - Identify whether evidence about those disagreements will need to be heard during the hearing
 - Identify if the subject member wants to be represented at the hearing by a solicitor, barrister or any other person
 - Identify if the subject member or the investigating officer wants to call relevant witnesses to give evidence to the Hearing Panel
 - Identify if the subject member believes any part of the hearing should be held in private
 - Identify if the subject member believes any part of the investigation report or other documents should be withheld from the public prior to the hearing, on the grounds that they contain 'exempt' material.
- 1.2. The pre-hearing process will be dealt with by the Monitoring Officer and carried out in writing. However, occasionally a meeting between the Monitoring Officer, the relevant parties and their representatives may be necessary.
- 1.3. The Monitoring Officer will also ask the relevant parties to provide outlines or statements of the evidence their witnesses intend to give. This will allow the Hearing Panel to decide how many witnesses may reasonably be needed and to identify the issues they will be dealing with at the hearing.
- 1.4. Parties will not be permitted to raise new disagreements over factual matters in the investigation report at the hearing except in exceptional circumstances, such as new evidence becoming available that the parties could not have produced before.
- 1.5. No third party will be allowed to address the Panel unless they are a complainant or are formally representing either the complainant or the subject member.

2. Formalities

- 2.1. The Chairman of the Hearing Panel will introduce the members of the Panel, the officers supporting them, and the subject member whose actions led to the investigation.

- 2.2. The Chairman will explain the reason for the meeting and outline the procedure to be followed. The Chairman may choose to vary this procedure in any particular instance where s/he is of the opinion that such a variation is necessary in the interests of fairness.
- 2.3. The subject member may (at their own expense) be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the Panel, another person.
- 2.4. The Panel 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 Panel should be shared with the subject member and the investigator if they are present.
- 2.5. The Chairman will explain that the hearing will normally be held in public unless the Panel exercises its discretion to exclude the public from all or part of the hearing in accordance with the Local Government Act 1972.
- 2.6. The Chairman will then confirm that all those involved understand the procedure to be followed and ask if there are any preliminary procedural issues which anyone wishes to raise before the Hearing begins.
- 2.7. If any procedural issues are raised, the Panel will hear representations on them, before determining them.
- 2.8. If the subject member is not present at the start of the meeting, the Hearing Panel will consider any reasons given by them for his/her non-attendance. If the Panel is satisfied that there is good reason for their non-attendance, it may adjourn to another date, or proceed if it has been requested to do so by the subject member.
- 2.9. If the Hearing Panel is not satisfied that there is good reason for the subject member's non-attendance, or if the subject member failed to give any reason for his/her non-attendance, the Panel can decide:
 - i. whether to consider the matter and make a determination in the absence of the subject member, or
 - ii. agree to adjourn the Hearing to another date.

3. The Hearing

- 3.1. The Hearing Panel will identify any areas of disagreement between the Investigator and the subject member on the Investigation report's facts or conclusions.
- 3.2. The Investigator will be invited to make representations in support of his/her report and about the written pre-Hearing submission of the Councillor.
- 3.3. The subject member will then be invited to make representations in support of the fact(s) concerned and whether the evidence gives rise to a breach or breaches of the Code of Conduct. The Panel and the Independent Person has the discretion to question any of the parties at any point, as it sees fit
- 3.4. The views of the Independent Person will be sought by the hearings panel and made public before the hearings panel retires to reach its decision
- 3.5. The Panel will retire to consider what it has heard The Panel may ask the legal advisor to advise them when required.
- 3.6. The Chairman will then announce to all present at the Hearing the Panel's decision as

to whether or not the subject member has failed to comply with the Code of Conduct, whilst setting out the facts upon which the conclusions have been reached.

- 3.7. If the Panel decides that the subject member has not failed to follow the Code of Conduct, the Panel will then consider whether it should make any recommendations to the Council.

4. Sanction

- 4.1. If the Panel decides that the subject member has failed to comply with the Code of Conduct, it will consider any verbal or written representations from the Investigator, the Monitoring Officer, the Independent Person and the subject member as to:
- a. whether or not the Panel should impose a sanction and/or recommend to Council that a sanction be imposed; and
 - b. what form of sanction(s) is/are appropriate.
 - c. Any mitigation the subject member wishes the Panel to take into account
 - d. Any aggravating factors which may be taken into account
- 4.2. The sanctions available are set out in section 5 of this procedure.
- 4.3. The Panel will consider in private, accompanied only by its clerk [and legal advisor if required] , whether or not to impose/recommend the imposition of a sanction on the subject member and, if so, what form.
- 4.4. The Panel will also consider whether or not it should make any recommendations with a view to promoting high standards of conduct among members of the relevant authority.
- 4.5. If the Hearing Panel recommends that sanctions should be imposed on the subject member concerned those sanctions may be immediately implemented if accepted by the subject member.
- 4.6. Where the subject member does not accept the proposed sanctions the Hearing Panel will make recommendations to Council.
- 4.7. For the avoidance of doubt Solihull Council does not have the legal power to impose a sanction on a Parish Councillor but may make recommendations to the Parish Council.

5. Possible Sanctions

- 5.1. The Council has delegated to the Hearings Panel 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 Hearings Panel may –
- a) Censure or reprimand the subject member;
 - b) Ask the member to make a formal apology
 - c) Publish its findings in respect of the subject member's conduct;
 - d) Report its findings to Council, or to the Parish Council, for information;
 - e) Recommend to the subject member's Political Group Leader (or in the case of ungrouped members, recommend to Council or to Committees) that he/she be removed from any or all Scrutiny Boards, Committees or Sub-Committees of the

- Council for up to six months;
- f) Recommend to the Leader of the Council that the subject member be removed from the Executive, or removed from particular Portfolio responsibilities;
- g) Recommend to the Council that the subject member be replaced as Leader of the Council;
- h) Instruct the Monitoring Officer to or in the case of a Parish Council to recommend that the Parish Council, arrange training for the subject member;
- i) Remove or in the case of a Parish Council to recommend to the Parish Council, that the subject member be removed from all outside appointments to which he/she has been appointed or nominated by the authority or by the parish council;
- j) Withdraw or in the case of a parish council to recommend to the parish council, that it withdraws facilities provided to the subject member by the council, such as a computer, website and/or email and Internet access; or
- k) Exclude or in the case of a parish council to recommend that the parish council exclude the subject member from the council's offices or other premises, with the exception of meeting rooms as necessary for attending council, committee and sub-committee meetings.

5.2. The Hearing Panel has no power to suspend or disqualify the subject member or to withdraw the member's basic or special responsibility allowances. However, a special responsibility allowance would be removed if following a recommendation from a Hearing Panel the subject member was removed from a position that attracted such an allowance.

6. Considering the sanction

6.1. When deciding on a sanction, the Hearing Panel should ensure that it is reasonable and proportionate to the subject member's behaviour. Before deciding what sanction to issue, the Panel should consider the following questions, along with any other relevant circumstances:

- What was the subject member's intention?
- Did the subject member get advice from officers before the incident?
- Was that advice acted on or ignored in good faith?
- Has there been a breach of trust?
- Has there been financial impropriety, for example improper expense claims or procedural irregularities?
- What was the result of failing to follow the Code of Conduct?
- What were the potential results of the failure to follow the Code of Conduct?
- How serious was the incident?
- Does the subject member accept they were at fault?
- Did the subject member apologise to the relevant people?
- Has the subject member previously been warned or reprimanded for similar misconduct?
- Has the subject member failed to follow the Code of Conduct before?
- Is the subject member likely to do the same thing again?
- How will the sanction be carried out? For example, who will provide the training or mediation?
- Are there any resource or funding implications? For example, if a subject member has repeatedly or blatantly misused the authority's information technology resources, the Hearing Panel may consider withdrawing those resources from the subject member.

- 6.2. Sanctions involving restricting access to an authority's premises or equipment should not unnecessarily restrict the subject member's ability to carry out their responsibilities as an elected representative or co-opted member.
- 6.3. Examples, but not an exhaustive list of mitigating factors are:
- The subject member's previous record of good service.
 - Substantiated evidence that the subject member's actions have been affected by ill-health.
 - Recognition that there has been a failure to follow the Code of Conduct; co-operation in rectifying the effects of that failure; an apology to affected persons where that is appropriate, self-reporting of the breach by the subject member.
 - The subject member had acted in good faith based on advice
 - Compliance with the Code since the events giving rise to the determination
 - Some actions, which may have involved a breach of the Code, may nevertheless have had some beneficial effect for the public.
- 6.4. Examples, but not an exhaustive list, of aggravating factors are:
- Continuing to deny the facts despite clear contrary evidence.
 - Failing to cooperate with the investigation
 - Seeking unfairly to blame other people
 - Failing to heed appropriate advice or warnings or previous findings of a failure to follow the provisions of the Code of Conduct.
 - Persisting with a pattern of behaviour which involves repeatedly failing to abide by the provisions of the Code.

7. Issue of decision

- 7.1. In announcing its decision in public at the conclusion of the hearing the Panel will also provide a short written decision.
- 7.2. The Panel will issue a full written decision including reasons within two weeks of the hearing.

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