

Guidance and Process
Relating to

How to make a

Complaint

about the behaviour of a
local authority Councillor
in West Somerset

July 2012

CODE OF CONDUCT FOR COUNCILLORS: INFORMATION AND GUIDANCE FOR POTENTIAL COMPLAINANTS

The new complaints regime

The law and arrangements for dealing with complaints against elected or co-opted councillors was changed as from 1st July 2012. Whilst the responsibility for considering written complaints against elected or co-opted councillors of West Somerset Council (the Council) and the town and parish councils within our administrative area for breach of the Code of Conduct for councillors still sits with the Council, the rules have changed and there is no longer one statutory code that applies to all councils. In addition the regulatory body, Standards for England, has been abolished and the focus now is on local solutions to local problems. The sanctions available to the Council have also been constrained and are set out later in this note.

The complaints process and related matters are overseen by the Standards Advisory Committee of West Somerset Council. This Committee comprises of three councillors appointed by West Somerset Council, three town/parish council representatives and three independent members to help maintain and promote high ethical standards.

Is this a complaint that can be dealt with?

The points listed below will help you decide whether this is something that can be dealt with by the Council. You should speak to the Monitoring Officer if you are not clear if the Council can consider your complaint.

Your 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 authority, or after they have resigned or otherwise ceased to be a councillor, cannot be considered by the Council.
- Be about one or more named councillors of the authorities listed on the attached Schedule A.
- Be that the councillor(s) has, or may have, breached the relevant Council's Code of Conduct.
- Relate to when the councillor was acting in their "official capacity". What a councillor does in their private life is not a matter for the Code of Conduct
- **Be made in writing.** If a disability prevents you from making your complaint in writing then please let us know and we will provide you with appropriate assistance.

Further detail is set out in Schedule B.

Complaints about dissatisfaction with a decision or action of the authority or one of its committees, a service provided by the authority

or the authority's procedures or decision making do not fall within the jurisdiction of this process. Complaints about the actions of people employed by the authority also do not fall within the jurisdiction of this process.

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 that you wish to be considered. If a complaint does not contain sufficient information it may not be dealt with.

We recommend that you use our complaint form or provide a covering note summarising what you are complaining about, especially if your complaint includes a lot of supporting documentation. In the summary you should tell us exactly what each person you are complaining about said or did that has caused you to complain. If you are sending supporting documentation please cross-reference it against the summary of your complaint.

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

What happens once you submit your complaint?

When you submit your complaint we will write to you to let you know we have received it, usually within 10 working days. We will also notify the councillor to whom the complaint relates with a copy of the complaint and invite them to make representations – see section on revealing my identity. These must be received by the Monitoring Officer within 10 working days of receiving the notification. The Monitoring Officer may also contact the clerk of the Town or Parish Council, where appropriate.

The Monitoring Officer, in consultation with the Standards Advisory Committee, will then decide whether a complaint falls within the jurisdiction of this process and what further action, if any, is appropriate.

The Monitoring Officer will then contact you to advise you on the outcome of these deliberations. You and such other persons as the Monitoring Officer thinks appropriate may be required to provide additional information in order that they can complete their assessment. The councillor will be similarly informed. This will all happen as soon as is practicable and normally within two calendar months of the date we receive your complaint or additional information (where requested). If, in exceptional circumstances, the timescales go beyond this, all relevant parties will be kept informed of what is happening

If the outcome is that a formal investigation is required to establish the facts then the Monitoring Officer or someone acting on their behalf will undertake this.

Not every complaint received will be formally investigated or referred for some action. As a starting point, the preference will be to resolve complaints without the need for a formal investigation. The factors to be taken into account in reaching a decision are:-

- Whether a substantially similar allegation has previously been made by you, or the complaint has been the subject of an investigation by another regulatory authority;
- Whether the complaint is about something that happened so long ago that those involved are unlikely to remember it clearly enough to provide credible evidence, or where the lapse of time means there would be little benefit or point in taking action now;
- Whether the allegation is anonymous;
- Whether the allegation discloses a potential breach of the Code of Conduct, but the complaint is not serious enough to merit any action and:-
 - (i) the resources needed to investigate and determine the complaint are wholly disproportionate to the allegations;
 - (ii) whether, in all the circumstances, there is no overriding public benefit in carrying out an investigation;
- Whether the complaint appears to be malicious, vexatious, politically motivated or tit-for-tat;
- Whether the complaint suggests that there is a wider problem throughout the authority;
- Whether it is apparent that the councillor complained about is relatively inexperienced, or has admitted making an error and the matter would not warrant a more serious sanction;
- Whether a simple apology, training or conciliation would be the appropriate response;
- Whether a reasonable offer of local resolution is offered by the councillor the subject matter of the complaint but is rejected by you.

There is no right of appeal against the decisions of the Monitoring Officer in consultation with the Standards Advisory Committee and the Independent Person or the Council. If you are unhappy with the process followed then you can complain to the Local Government Ombudsman or challenge how a decision was reached through the Courts by way of Judicial Review.

The procedure the Council has adopted is designed to be proportionate, timely and fair to both sides. Its overriding objective is to seek to provide pragmatic local solutions to local problems wherever possible.

What happens if the complaint is to be formally investigated?

The complaint will be investigated by the Monitoring Officer or investigators appointed by the Monitoring Officer. The Monitoring Officer will let all those involved know that this is the case and the process that will be followed.

At the end of an investigation, the Monitoring Officer will issue a draft report and invite comments which must be received within 10 working days. The Monitoring Officer will send a copy of the final investigation report to you, the Standards Advisory Committee, the councillor complained about, the Independent Person and the Clerk to the Town/Parish Council (where relevant).

If the investigation reveals no failure to comply with the code then the Monitoring Officer, after consulting with the Independent Person and the Standards Advisory Committee is authorised to close the matter and issue his report to the complainant and the councillor complained about.

If the investigation reveals a failure to comply with the code then the Monitoring Officer in consultation with the Independent Person and the Standards Advisory Committee is authorised to seek a local resolution of the complaint providing all parties agree. If a local resolution is not appropriate or not agreed by the parties then the outcome of the investigation will be reported to the Standards Advisory Committee for a local hearing.

This hearing will be held in public and although will be conducted on a relatively informal basis, both parties will be able to make representations and call witnesses. At the end of the Hearing the Committee, after consulting with the Independent Person will decide whether, on the balance of probabilities there has been a failure to comply with the Code of Conduct and what "sanction" or "sanctions" should be imposed and make a recommendation to the Council reflecting their findings.

The range of available sanctions is set out in Schedule C below.

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

If you ask for your identity to be withheld, this request will be considered by the Monitoring Officer in consultation with the Standards Advisory Committee at the initial assessment stage.

As a matter of fairness and natural justice, the councillor you complained about should usually be told who has complained about them and receive details of the complaint. However, in exceptional circumstances, the Monitoring Officer in consultation with the Standards Advisory Committee may withhold your identity if on request from you, or otherwise, they are satisfied that you have reasonable grounds for believing that you or any witness relevant to the complaint may be at risk of physical harm, or employment may be jeopardised if your or their identity is disclosed, or where there are medical risks (supported by medical evidence) associated with the your identity being disclosed.

If the Monitoring Officer decides to refuse your request for confidentiality you will be offered the option to withdraw the complaint, rather than proceed with your identity being disclosed. An assessment will be made to balance whether the public interest in taking action on a complaint will outweigh your wish to have your identity withheld.

What you should do if you wish to submit a written complaint

- Get a copy of the code of conduct for the relevant council to see whether the behaviour you wish to complain about is covered by their code.
- Talk to / raise the matter with the Council's Monitoring Officer for general advice before submitting a formal complaint.
- Fully complete the attached complaints form (or ensure your letter of complaint addresses, in full, all of the issues covered in the complaint form).
- Submit the written complaint by post, e-mail or fax to the address set out below, as soon as possible after the date of the alleged breach.

Address for submission of a written complaint

Bruce Lang
Monitoring Officer
West Somerset Council
West Somerset House
Killick Way
Williton
Taunton
Somerset TA4 4QA

Tel: 01984 635200
Fax: 01984 633022
Email: bdlang@westsomerset.gov.uk

Schedule A

List of Authorities subject to West Somerset Council's Jurisdiction

West Somerset Council
Bicknoller Parish Council
Brompton Ralph Parish Council
Brompton Regis Parish Council
Brushford Parish Council
Carhampton Parish Council
Clatworthy Parish Council
Crowcombe Parish Council
Cutcombe Parish Council
Dulverton Town Council
Dunster Parish Council
Exford Parish Council
Exmoor Parish Council
Exton Parish Council
Holford Parish Council
Huish Champflower Parish Council
Kilve Parish Council
Luccombe Parish Council
Luxborough Parish Council
Minehead Town Council
Monksilver Parish Council
Nettlecombe Parish Council
Old Cleeve Parish Council
Porlock Parish Council
Sampford Brett Parish Council
Selworthy and Minehead Without Parish Council
Stogumber Parish Council
Stogursey Parish Council
Timberscombe Parish Council
Upton Parish Council
Watchet Town Council
West Quantoxhead Parish Council
Williton Parish Council
Winsford Parish Council
Withycombe Parish Council
Withypool and Hawkridge Parish Council
Wootton Courtenay Parish Council

Schedule B

Behaviour covered by the Code of Conduct

You can complain about a councillor breaking any part of their authority's Code of Conduct. As each authority can adopt their own code there is no longer a standards code of conduct that applies to all local authorities. This means you need to have seen the code of conduct relating to the councillor about whom you wish to complain and that the behaviour you wish to complain about is covered by the code. The Council cannot consider any complaints that fall outside of the relevant code of conduct.

The code that relates to members of West Somerset Council covers the following areas:-

- unlawfully discriminating against someone
- failing to treat people with respect
- bullying any person
- intimidating any person involved in any investigation or proceedings about someone's misconduct
- doing something to prevent those who work for the authority from being unbiased
- revealing information that was given to them in confidence, or stopping someone getting information they are entitled to by law
- damaging the reputation of their office or authority, where the conduct is linked to their public role and not in their private capacity
- using their position improperly, to their own or someone else's advantage or disadvantage
- misusing their authority's resources
- allowing their authority's resources to be misused for the activities of a registered political party
- failing to register financial or other interests
- failing to reveal a personal interest at a meeting
- taking part in the discussion or making a decision where they have a "disclosable pecuniary interest" or an interest that is so significant that it is likely to affect their judgement (known as a 'prejudicial interest')
- improperly influencing a decision about a matter in which they have a "disclosable pecuniary interest" or prejudicial interest

- Failing to register any gifts or hospitality (including its source) that they have received in their role as a member worth over £25.

Any breaches in relation to requirements around “disclosable pecuniary interests” are matters for the Police as a criminal offence may have been committed. We suggest you speak to the Council’s Monitoring Officer first who should be able to advise you whether or not it is a matter for the Police.

Although we have encouraged the Town & Parish Councils to adopt similar provisions they are not required to do so. Accordingly their code may look quite different so you do need to see a copy. The Clerk to the relevant Town or Parish Council should be able to provide you with a copy.

Schedule C

Sanctions available to the Council

The change on the law introduced by the Localism Act 2011 means that the Council no longer has the power to suspend a member from acting as a councillor for up to 6 months. **The only sanctions now available to the Council are as set out below.** In relation to the Town & Parish Councils in our area we can only recommend a particular sanction to them but we do not have the power to enforce compliance.

- Report its findings to Council or Town/Parish Council for information;
- Recommending to the member’s Group Leader that he/she be removed from any or all Committees or Sub-Committees of the Council (other than the relevant Area Committee) ;
- Recommending to the Leader of the Council that the member be removed from the District Cabinet, or removed from particular Portfolio responsibilities;
- Instructing the Monitoring Officer to arrange training for the member;
- Removing from all outside appointments to which he/she has been appointed or nominated by the authority;
- Withdrawing facilities provided to the member by the Council, such as a computer, website and/or email and Internet access;
- Restricting contact to named officers or requiring contact be through named officers; or
- Excluding the member from the Council’s offices or other premises, with the exception of meeting rooms as necessary for attending Council, Cabinet, Committee and Sub-Committee meetings.