

Arrangements for dealing with Standards Complaints under the Localism Act 2011

1. Background

Section 28(6) and (7) of the Localism Act 2011, provides that the Council must have in place "Arrangements" under which allegations that an elected member or co-opted member of the authority, or of a Committee or Sub-Committee of the Council, has failed to comply with the Council's Member Code of Conduct can be determined.

The arrangements require the Council to appoint at least one Independent Person, whose views must be sought before it 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 of the process, or by an elected member against whom an allegation has been made.

The "Arrangements" set out how you may make a complaint that an elected or co-opted member of the Council has failed to comply with the Council's Member Code of Conduct, and sets out how the Council will deal with allegations of a breach of the Council's Member Code of Conduct.

2. The Code of Conduct

The Council has adopted a Code of Conduct for Elected Members.

3. Making a complaint

If you wish to make a complaint, please write or email to –

"The Monitoring Officer"
Legal and Democratic Services
Walsall Metropolitan Borough Council
Civic Centre
Darwall Street
Walsall
West Midlands
WS1 1TP

or:

monitoringofficer@walsall.gov.uk

The Monitoring Officer has statutory responsibility for maintaining the register of elected members' disclosable pecuniary interests, and is responsible for administering the system for managing complaints about elected member conduct. In order to ensure that the Council has all of the relevant information required to process your complaint, please complete and send us the model complaint form, which can be downloaded from the authority's website, next to the Code of Conduct.

You will need to provide us with your name, contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of progress.

The Monitoring Officer will acknowledge receipt of your complaint within 5 working days of receiving it, and will keep you informed of the progress of your complaint.

The authority **will not** investigate anonymous complaints, unless there is a clear public interest in doing so. *The authority will not investigate a complaint where the conduct complained of took place over 6 months prior to the complaint being submitted to the authority. The authority will not investigate a complaint where the councillor was not acting in their capacity as a councillor when the alleged conduct took place. The authority will not investigate complaints against Councillors where the conduct complained of falls outside the scope of the Elected Member Code of Conduct.*

It is a requirement of the Act that any complaint or allegation that an elected member has failed to comply with the Council's Code of Conduct must be in writing.

There is a presumption that a complainant will not be allowed to claim confidentiality unless exceptional circumstances exist. If you want to request that your name and address be kept confidential, please indicate this in the space provided on the complaint form. We will not disclose your name and address to the elected member against whom you made your complaint, without prior consent if there are found to be exceptional circumstances to justify confidentiality.

4. Will your complaint be investigated?

The Monitoring Officer will review every complaint received, and after consultation with the Independent Person, will take a decision as to whether or not the complaint merits formal investigation. This decision will normally be made within 20 working days of receipt of your complaint. Where the Monitoring Officer has made this decision, he/she will inform you of this and the reasons for the same. *There is no appeal against this decision.*

In considering whether to investigate any complaint, the Monitoring Officer will also take into account whether or not it is in the public interest to carry out an investigation, including a preliminary investigation.

In reaching this decision, the Monitoring Officer will consider the following factors.

The public interest should be considered in deciding (i) whether a complaint against a councillor can and should be the subject of a preliminary investigation or referred for a formal standards investigation, or (ii) whether an investigation should continue, or (iii) whether a matter should be referred to the hearing committee for adjudication.

There is no widely accepted definition of the public interest but has been described as “something which is of serious concern and benefit to the public”. The public interest therefore relates to something which has an impact on the public and it is not merely a matter that the public find to be of interest or a matter that impacts solely on an individual (although an individual may be more directly impacted by the matter than the wider public). The public in this context does not necessarily mean the entire population of Walsall. It may refer to a distinct section of the public such as a small community or interest group.

4.1 Seriousness

The more serious the alleged breach, the more likely it is that we will investigate. Investigators should consider whether the alleged breach is so serious that an investigation is in the public interest.

When deciding the level of seriousness of the allegation, relevant considerations are: the extent to which the councillor was at responsible for or was to blame for the alleged breach; the circumstances of the complainant; and whether the alleged conduct caused harm to any person.

(a) To what extent was the councillor responsible for or to blame for the conduct complained of?

Questions of responsibility or blame are likely to be determined by the councillor's level of involvement; the extent to which the alleged breach was premeditated and/or planned; whether they have previously being investigated or been referred to the standards committee for an decision on a similar matter, or have been sanctioned for a previous breach; whether the conduct complained of is ongoing, repeated or has escalated; the councillor's length of service; and level of experience/knowledge of the councillor in relation to the issue in question.

(b) What are the relevant circumstances of any person affected by the alleged breach and has the alleged breach caused harm to any person?

Although a breach of the Code may affect the public at large, it can also cause harm to individuals or to specific groups or bodies. In considering the seriousness of a breach, the circumstances of any person affected by the breach are relevant and we will take these into consideration. The Monitoring Officer should also have regard to whether the alleged breach was motivated by any form of discrimination against a person's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity; or the councillor demonstrated hostility towards a person based on any of those characteristics. In deciding whether an investigation is required in the public interest, investigators should take into account any views expressed by the complainant, or any other person affected, about the impact that the alleged breach has had on them.

4.2 Proportionality

Investigators should consider the cost of the investigation and any adjudication, especially where it could be regarded as excessive when weighed against any likely sanction. Investigators should not decide the public interest on the basis of cost alone, but it is a relevant consideration when making an overall assessment of the public interest. In determining whether an investigation would be in the public interest, the Monitoring Officer should consider whether it would be more appropriate to exercise his powers to take action instead of, or in addition to, an investigation. These considerations will assist Investigators in identifying the public interest, but they are not exhaustive and not all are relevant in each case. In any event, consideration of the public interest is only one of a number of criteria which must be met in deciding whether to investigate

The Monitoring Officer will consult on the merits of proceeding to a formal standards investigation with the Independent Person prior to dismissing a minor/trivial complaint.

The Elected Member will be informed of the complaint made against them, and will be asked for information or an explanation about the complaint. *The Monitoring Officer will also notify the relevant Group Leader about the complaint.*

Where the Monitoring Officer requires additional information in order to reach a decision, he/she may request further information from you or the elected member.

The Monitoring Officer may seek to resolve the complaint informally at this stage, without the need for a formal investigation. Such informal resolution may involve the Elected Member accepting that his/her conduct was unacceptable and offering an apology, or other appropriate remedial action suggested by the Monitoring Officer. Where the Elected Member or Council make a reasonable offer of local resolution, but you are not willing to accept that offer, the Monitoring Officer may take this into account in deciding whether or not the complaint merits a *formal standards* investigation.

If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police and/or other regulatory agencies to investigate the matter. It is then for the Police to determine how to conduct the matter.

5. How is the investigation conducted?

The Council has adopted a procedure for the investigation of elected member conduct complaints.

If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigator, who may be another senior officer of the Council, or if appropriate an external investigator. The Investigator will decide whether he/she needs to meet or speak with you further to understand the nature of your complaint, and to determine what evidence you feel is relevant to the investigation. The conduct of the investigation will be in the total discretion of the Investigator who will determine what evidence he requires to investigate the complaint.

The Investigator will normally write to the Elected Member you have complained about by way of introduction, also setting out the terms of the investigation. He will ask the Elected Member to provide his/her explanation of events, and to identify what evidence they feel may be relevant to the investigation.

In exceptional cases, where it has been decided to keep your identity confidential, or where disclosure of details of the complaint to the elected member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the elected member, or delay notifying the Elected Member until the investigation has progressed sufficiently to avoid any prejudice to the investigation.

The Monitoring Officer, in conjunction with the Investigator will keep the issue of confidentiality under review throughout the complaints process. At the end of his/her investigation, the Investigator will produce a draft report and will send copies of that draft report, in confidence, to you and to the Elected Member concerned. This will allow you and the elected member an opportunity to identify any matter in the draft report which you disagree with, or which you consider requires further consideration. The Investigator has total discretion as to whether or not to amend his report based on any representations made.

After taking into account any comments which are made on the draft report, the Investigator will then send his/her final report to the Monitoring Officer.

6. What happens if the Investigator concludes that there is no evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer will review the Investigator's report and, if he is satisfied that the Investigator's report is sufficient, he will write to you and to the Elected Member concerned, notifying you that he is satisfied; that no further action is required; and providing you with a copy of the Investigator's final report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly or is insufficient to determine the complaint, he may ask the Investigator to reconsider his/her report. The Complainant and Elected Member will have an opportunity to comment on the draft report, and identify aspects of the report they disagree with. However, the Investigator has sole discretion as to whether or not he amends or alters his report as a result of any comments made. They will have 10 working days to provide comments to the Investigator following receipt of the Investigating Officers report. The Investigator will forward the MO a copy of the report with any amendments following his/her consideration of the parties' comments.

7. What happens if the Investigator concludes that there is evidence of a failure to comply with the Code of Conduct?

The Monitoring Officer will review the Investigator's report and will then either send the matter for local hearing before a Hearing Panel or, after consulting the Independent Person, seek local resolution. The Complainant and Elected Member will have an opportunity to comment on the draft report, and identify aspects of the report they disagree with. However, the Investigator has sole discretion as to whether or not he amends or alters his report as a result of any comments made. They will have 10 working days to provide comments to the Investigator following receipt of the Investigating Officers report. The Investigator will forward the MO a copy of the report with any amendments following his/her consideration of the parties' comments

7.1 Local Resolution

Where the Monitoring Officer considers that the matter can reasonably be resolved without the need for a hearing. He/she will consult with the Independent Person and the complainant and try to agree a fair resolution which will maintain high standards of Elected Member conduct in the future. Such resolution may include the Elected Member accepting that his/her conduct was unacceptable and offering an apology, and/or any other remedial action suggested by the Monitoring Officer. If the Elected Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee for information, but will take no further action. However, if agreement on local resolution cannot be reached the Monitoring Officer will refer the matter for a local hearing.

7.2 Local Hearing

If the Monitoring Officer considers that local resolution is not appropriate, or local resolution cannot be agreed, then the Monitoring Officer will refer the matter to a Hearing Panel, who will conduct a local hearing before deciding whether the elected member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the elected member's breach.

The Council has agreed a procedure for local hearings. Prior to the local hearing, the Monitoring Officer, or his nominee will conduct a "pre-hearing process", requiring the elected member to give his/her response to the Investigator's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing.

The Monitoring Officer in consultation with the Chair of the Hearing Panel will give directions as to the manner in which the hearing will be conducted. Where possible the pre-hearing process will be carried out in writing. However, where appropriate the Monitoring Officer or other suitable officer may hold a pre-hearing meeting between the relevant parties and their representatives, and the Chair of the Hearing Panel.

The clerk to the hearing committee will consult with the hearing panel's chair and legal adviser and send a pre-hearing process summary to everyone involved in the complaint at least two weeks prior to the hearing which will include:

- The hearing process to be followed
- A report summarising the allegation, including the investigation report and any supporting documentation submitted by the parties, as an agreed consolidated hearing bundle.
- A lists the witnesses attending to give evidence

At the local hearing, the Investigator will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the Elected Member has failed to comply with the Council Member Code of Conduct. For this purpose, the Investigator may ask you as the complainant to attend and give evidence at the Hearing Panel. The Elected Member will then have an opportunity to give his/her evidence, to call witnesses and make representations to the Hearings Panel as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

This is a formal meeting of the authority and is not a court of law. The hearing will not hear evidence under oath, but it will decide factual evidence on the balance of probabilities. The hearing panel will work at all times in a demonstrably fair, independent and politically impartial way. To ensure that members of the public, and elected members of the Council, have confidence in its procedures and findings.

The decision of the hearing panel should follow the rules of natural justice and be seen as open, unprejudiced and unbiased. All concerned should treat the hearing process with respect.

Representatives

The subject elected member may choose to be represented by counsel, a solicitor, or by any other person they wish.

The hearing panel may choose to withdraw permission to allow a representative if that representative disrupts the hearing. However, an appropriate warning will usually be enough to prevent more disruptions and should normally be given before permission is withdrawn.

Evidence

The hearing panel, through the Chair controls the procedure and evidence presented at the hearing, including the number of witnesses and the manner in which witnesses are questioned. In many cases, the hearing panel may not need to consider any evidence other than the investigation report, and any other supporting documents. However, the hearing panel may need to hear from witnesses if more evidence is needed, or if people do not agree with certain findings of fact in the report.

The hearing panel may allow witnesses to be questioned and cross-examined by the subject elected their representative, the Monitoring Officer, or the Investigator. Alternatively, the hearing panel can ask that those questions be directed through the Chair. The hearing panel members can also question witnesses directly or through the Chair.

Witnesses

Generally, the subject elected member is entitled to present their case as they see fit, which includes calling witnesses they may want and who are relevant to the matters to be heard. The subject elected member must make their own arrangements to ensure that their witnesses (and witnesses they would like to question) will attend the hearing.

The hearing panel has the right to govern its own procedures as long as it acts fairly. For this reason, the hearing panel may limit the number of witnesses if they consider the number unreasonable.

The hearing panel will normally take a decision on whether to hear any particular evidence or witness only after having heard submissions from both parties on the issue.

Witnesses of facts that are disputed would normally attend the hearing and should be prepared to be cross-examined. Witnesses as to the character of the subject member, if required, regularly present their evidence in writing and may or may not actually attend the hearing.

Witnesses, especially members of the public, often play an important part in the process and should be treated with courtesy and respect by the Hearing Panel and parties to the proceedings.

If the Hearing Panel, with the benefit of any representations from the Independent Person, concludes that the Elected Member did not fail to comply with the Code of Conduct, the complaint will be dismissed.

If the Hearing Panel concludes that the Elected Member did fail to comply with the Council Code of Conduct, the Chair will inform the Elected Member of this finding and the Hearing Panel will then consider what action, if any, it should take as a result of the elected member's breach of the Code of Conduct. The Hearing Panel will provide the Elected Member an opportunity to make representations to the Panel prior to any sanction being imposed and will consult the Independent Person. A sanction will then be imposed.

8. What action can the Hearing Panel take where a member has failed to comply with the Code of Conduct?

The Council has delegated to the Hearing Panel such of its powers to take action in respect of individual Elected Members as may be necessary to promote and maintain high standards of conduct.

Accordingly, the Hearings Panel may:

- 8.1 Publish its findings in respect of the Elected Member's conduct;
- 8.2 Report its findings to Council for information;

- 8.3 Recommend to the Elected Member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 8.4 Recommend to the Leader of the Council that the Elected Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 8.5 Instruct the Monitoring Officer to arrange training for the Elected Member;
- 8.6 Remove the Elected Member from all outside appointments to which he/she has been appointed or nominated by the authority;
- 8.7 Withdraw facilities provided to the Elected Member by the Council, such as a computer, website and/or email and Internet access; or
- 8.8 Exclude the Elected 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.

The Hearing Panel has no power to suspend or disqualify an Elected Member or to withdraw an Elected Members' basic or special responsibility allowances.

9. What happens at the end of the hearing?

At the end of the hearing, the Chair will state the decision of the Hearing Panel as to whether the Elected Member failed to comply with the Code of Conduct and announce the sanction imposed for the breach of the Code of Conduct. As soon as reasonably practicable thereafter, the Monitoring Officer, or his nominee, will prepare a formal decision notice in consultation with the Chair of the Hearing Panel, and send a copy to you, and the Elected Member.

The decision notice will be made available for public inspection and will be reported for information to the next convenient meeting of full Council.

10. Who are the Hearings Panel?

The Hearing Panel is a Sub-Committee of the Council's Standards Committee comprising Councillors. The Council has determined that it will comprise of a minimum of four members of the Standards Committee, which will reflect the Council's political balance.

The Independent Person will be required to attend all meetings of the Hearing Panel and his/her views must be taken into consideration before the Hearing Panel takes any decision on whether the Elected Member's conduct constitutes a failure to comply with the Code of Conduct, and if it does what sanction should be imposed.

11. What is an Independent Person?

The Independent Person is a person who has applied for the post following advertisement of a vacancy. They are appointed by a positive vote from a majority of all the members of Council in accordance with the Localism Act 2011.

12. Revision of these arrangements

The Council may by resolution agree to amend these arrangements, and has delegated to the Chair of the Hearings Panel the right to depart from these arrangements where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

13. Appeals

There is no right of appeal for you as complainant or for the Elected Member against a decision of the Monitoring Officer or of the Hearings Panel.

If you feel that the council has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.

General Guidance on Investigations

Conflicts of Interest

Standards Committees and Monitoring Officers are at the heart of the standards framework. They promote, educate and support elected members in following the highest standards of conduct and ensuring that those standards are fully owned locally.

Under the Code of Conduct, elected members must have regard to the advice of the Monitoring Officer when it is given as part of the Monitoring Officer's statutory duties. Monitoring Officers will advise their Council and the standards committee on the adoption and promotion of high ethical standards including their authority's code.

Monitoring Officers have four main roles in relation to the Code of Conduct:

- They provide advice to the Standards Committee;
- They advise subject members;
- They deal with cases of alleged conduct referred to them;
- They advise members about conduct issues.

An investigation could create a potential conflict-of-interest between these roles. For example, it is likely that a conflict-of-interest would arise if the Monitoring Officer were asked to investigate allegations against an elected member if the Monitoring Officer had advised them on the same issue. In such situations, the Monitoring Officer should delegate the investigation to somebody else.

Advising Standards Committees

The Monitoring Officer should act as the main adviser to the Standards Committee. However, he/she should not do so if they have an interest in the matter that would prevent them from performing the role independently.

It is vital that Standards Committees have access to appropriate advice on cases that have been referred to them for hearing. The Monitoring Officer will need to ensure that there is someone able to advise the Standards Committee.

The Monitoring Officer should not conduct an investigation and advise a Hearing Panel about the same case. The Monitoring Officer will therefore need to consider whether it is more important to investigate the matter and delegate the role advising standards committee, or to delegate investigative role.

Personal conflicts

The Monitoring Officer should avoid any personal conflict-of-interest. The Monitoring Officer must not participate if they have a direct or indirect interest in an investigation or hearing. For example, the Monitoring Officer must not participate if they have a direct financial interest, or a family member or friend is involved. If a personal conflict does exist, the Monitoring Officer should notify the Chair of the Standards Committee and take no further part in the process. The Chair of the Standards Committee, will then notify all the parties to the matter explaining:

- That the Monitoring Officer will not take part in the matter;
- The nature of the interest declared;
- Who will have conduct of the matter in the Monitoring Officers place.

Disclosure of Information

The information that the Monitoring Officer or Investigator obtains during the course of a local investigation is confidential until the investigation is completed. The Monitoring Officer and Investigator must always be aware of their obligations under the General Data Protection Regulation 2018, the Human Rights Act 1998 and other relevant legislation, when carrying out an investigation.

All parties to the investigation will be requested to maintain confidentiality. Elected Members will be reminded of their obligations under the Council's code of conduct in respect of disclosure of information that they receive in confidence. Information obtained in investigation will not be disclosed unless:

- The Monitoring Officer, Investigator, or party to the investigation, has permission to disclose the information from the person that information relates to;
- The information has already lawfully been made public;
- The information is made for the purposes of criminal proceedings in the UK;
- There is a requirement to do so by a court or similar body.

Evidence of new breaches

If in the course of the investigation evidence is uncovered of conduct by elected members that may breach of the Code of Conduct, extending beyond the scope of the investigation already referred to the Investigator, the powers of the Investigator relates only to the allegation that has already been referred to them, If this happens, the Investigator should inform the person they obtain information from that they cannot investigate the possible breach as part of the existing investigation. The Investigator should inform the Monitoring Officer and he should advise the person that they may wish to make a separate complaint in respect of this potential breach. The Monitoring Officer may choose to consolidate this new allegation of a potential breach with the existing investigation.

Deferring an investigation

An investigation should be deferred when any of the following conditions are met:

- There are ongoing criminal proceedings or a police investigation into an elected members conduct;
- The investigation cannot proceed without investigating similar alleged conduct or needs to come to conclusions of fact about events which are also the subject of some other investigation for court proceedings;
- The investigation might prejudice another investigation or court proceedings.

An investigation may also need to be deferred:

- Where there is an ongoing investigation by another regulatory body;
- There is a serious illness of a key party or witness to the investigation;

- Due to the genuine unavailability of a key party or witness.

When it is clear that there is an ongoing police, or other investigation, or related court proceedings, the Monitoring Officer should make enquiries about the nature of the police, or other investigation, or the nature of any court proceedings.

If at any time during the investigation the Monitoring Officer or the Investigator becomes aware of any circumstances that might require the investigation to be deferred, the Monitoring Officer will notify all parties to the investigation of this decision.

The decision to defer an investigation will be taken by the Monitoring Officer after consulting with the Investigator and the Independent Person. The reason for such a deferral should be set out in the investigation file with any supporting documentation attached.

In some cases, it will be possible to investigate some of the alleged conduct, where there is no overlap with another investigation or court proceedings. The Investigator should highlight those areas where investigation may be possible in the investigation plan, after consultation with the Monitoring Officer.

In some cases, it may be possible to investigate the alleged conduct in parallel with another investigation, for example, where the Local Government Ombudsman is investigating a Council's decisions and the Investigator is investigating the conduct of an individual elected member involved in the making of the decision. The Monitoring Officer will work closely with the Investigator and any other organisation, and agree the steps each party will take. The Monitoring Officer will ask the police or other relevant organisation to keep them informed of the outcome of any police or other investigation, court proceedings or other relevant matter. The Monitoring Officer will note any important dates, for example of committal hearings, in the investigation file. A deferred investigation should be kept under regular review, in the interests of natural justice.

Once the decision is taken to recommence the investigation the Monitoring Officer will notify in writing:

- The subject elected member;
- The complainant;
- The Investigator;

Model Hearing procedure for Hearing Panel

This procedure is aimed to provide a consistent approach to determining matters. The aim is to ensure that the hearing panel conducts an efficient and effective hearing subject to the rules of natural justice. This will help the panel deal with all the issues that need to be resolved in a way that is fair to all of the parties to the hearing.