

## MID DEVON DISTRICT COUNCIL

### PROCEDURE FOR THE ASSESSMENT AND DETERMINATION OF ALLEGATIONS OF BREACHES OF THE MEMBERS' CODE OF CONDUCT.

#### 1. Introduction

- 1.1 It is a requirement of the Localism Act 2011 that all Councils, including local councils whether Town or Parish, must adopt a Code of Conduct which deals with the conduct expected of its elected and co-opted members when they are acting in their official capacity. The Code of Conduct is also required to include appropriate provisions relating to the registration and disclosure of pecuniary and other interests.
- 1.2 There is no national regulator since the abolition of Standards for England in 2012. However, Mid Devon District Council is responsible for administering its own Code of Conduct and the Codes for all the Town and Parish Councils in the district. This Council is required to have in place arrangements under which allegations can be investigated and decisions on allegations can be made.
- 1.3 Mid Devon District Council is required to appoint at least one Independent Person whose views may be sought by the Council, usually through the Monitoring Officer, or by subject members whether they are District or Town/Parish Members. The Council must seek the views of an Independent Person before making a decision on an allegation that has been referred for investigation. There is no right for the complainant to seek the views of the Independent Person and no such contact will be encouraged.
- 1.4 The Independent Persons do not represent and nor are they advisors to the subject member or the Council. They must remain completely impartial and objective and they cannot take sides. Their only role is to assess complaints and form a view on them.
- 1.5 The 2011 Act provides that an allegation is "*a written allegation:*
  - a) *That a member or co-opted member of the authority has failed to comply with the authority's code of conduct, or*
  - b) *That a member or co-opted member of a town/parish council for which the authority is the principal authority has failed to comply with the town/parish council's code of conduct"*
- 1.6 This document sets out the procedure for submitting a complaint alleging that the Code of Conduct has been breached and the procedures that will be followed in dealing with such complaints. It also sets out the criteria for assessing a complaint and when a request may be made for the decision taken on a complaint to be reviewed.
- 1.7 All allegations will be dealt with objectively, fairly and consistently. We will also have regard to what is in the public interest and our fiduciary duty to the tax payers.
- 1.8 Within this procedure references to the "Monitoring Officer" include his or her duly appointed representative(s).

- 1.9 In this procedure the term 'subject member' means the member against whom the allegation has been made.
- 1.10 The Standards Committee will convene from time to time to review the handling of complaints, reviews and decisions made with a view to identifying trends or any improvements in this procedure and the application of it.

## **2.0 Submitting a complaint**

2.1 All complaints must be submitted in writing (this includes emails). We will assist you if you have a disability that prevents you from making or makes it difficult for you to submit your complaint in writing. We can also help if English is not your first language.

2.2 Complainants are encouraged to use our complaints form which we can send out as a hard copy or which is available in electronic format from our website via:<https://www.middevon.gov.uk/your-council/councillors-democracy/councillors/code-of-conduct-and-complaints-about-councillors/>

If a verbal complaint is made, we will ask that the complaint is confirmed in writing. If you make a verbal complaint and simply decline to confirm the complaint in writing for reasons which we do not consider to be justifiable, we will take no further action on the complaint.

2.4 Anonymous complaints will be rejected. This does not include complaints where the complainant requests confidentiality and which is dealt with further in section 6 below and on the complaint form.

2.5 Some complaints against a member will represent a complaint against the Council but will fall outside the scope of this procedure. If that happens the complaint will be forwarded to the relevant officer(s) in the Council and the complainant will be advised of the action taken.

2.6 To submit complaints electronically please use the on-line form and email [monitoringofficer@middevon.gov.uk](mailto:monitoringofficer@middevon.gov.uk)

All other submissions must be sent or delivered to

*The Monitoring Officer, Mid Devon District Council, Phoenix House, Phoenix Lane, Tiverton EX16 6PP*

## **3.0 Processing and determination of complaints**

3.1 When a complaint is received which is within the scope of this procedure we will aim to acknowledge receipt within 5 working days.

3.2 The Monitoring Officer will carry out an initial assessment of whether the alleged behaviour falls within the Code of Conduct and, therefore, this procedure. This will normally take place within 10 working days. If the allegation is about a matter which falls outside of the Code of Conduct or is considered to be within one of the criteria set out below, the complaint will not usually progress beyond this initial assessment stage.

- If the complaint is the same or substantially the same as a complaint previously dealt with

- If the period since the alleged behaviour is so significant that it is considered unreasonable or otherwise not in the public interest to pursue
- If the complaint is trivial
- If the complaint discloses such a minor or technical breach of the Code that it is not in the public interest to pursue
- If the complaint is or appears to be malicious, politically motivated, tit-for-tat or otherwise submitted with an improper motive and the complaint is not considered to disclose sufficiently serious potential breaches of the Code to merit further consideration
- If the complaint is covered by the Council's persistent and vexatious complaints policy and is not considered to disclose sufficiently serious potential breaches of the Code to merit further consideration
- If the member against whom the allegation has been made has remedied or made reasonable endeavours to remedy the matter and the complaint does not disclose sufficiently serious potential breaches of the Code to merit further consideration
- If the complaint is about a person who is no longer a member of the relevant council and there are no overriding public interest reasons to merit further consideration.

- 3.3 At this stage, if the complaint is not to progress further, the Monitoring Officer will notify the complainant in writing of the fact and with the reasons. He will also write to the subject member with details of the complaint, the decision made and the reasons for the decision. Where the subject member is a member of Town/Parish Council, the Monitoring Officer will also provide the same information to the Clerk to that Council. The name of the complainant will be disclosed to the subject member and, where appropriate, the Clerk to the member's council unless confidentiality has been requested and the Monitoring Officer considers the request to be justified. When confidentiality has been granted, that will be confirmed to the subject member and where appropriate the Town/Parish Clerk, along with the reasons for granting it but not so far as to enable the complainant to be identified.
- 3.4 Notwithstanding paragraph 3.2, the Council will in appropriate circumstances pass to the Police or Director of Public Prosecutions any allegations it receives which disclose behaviour that may constitute a criminal offence, whether under the ethical standards provisions of the Localism Act or otherwise.
- 3.5 For those complaints which are to be taken beyond the initial assessment process, the following steps will be followed: The Monitoring Officer and the subject member may seek the views of the nominated Independent Person at any time during this process. If considered necessary by the Monitoring Officer following a discussion with the Chair of the Standards Committee, he may convene a panel of members of the Standards Committee to assist him with the consideration and determination of the complaint. He may do this at any time during the process.

Step	Action
1.	The Monitoring Officer will write to the subject member with details of the complaint, including the details of the complainant unless any confidentiality request has been agreed, and also the name and contact details of the Independent Person who has been nominated for the complaint and who the subject member may contact to seek their views. If the Monitoring Officer considers it appropriate the Clerk to the subject member's local council will be notified of the complaint. When confidentiality has been granted that will be confirmed to the subject member and, where appropriate, the Clerk to their local council along with the reasons for granting it but not so as to enable the complainant to be identified. At this stage the subject member will be given the opportunity to provide the Monitoring Officer with a written response to the complaint; a reasonable time limit will be applied.
2.	The subject member will provide their written comments, with supporting documentation if relevant or notify the Monitoring Officer that they do not wish to make comment.
3.	The Monitoring Officer will consider the complaint again in the context of any written submissions and supporting documentation provided by the subject member.
4.	<p>The Monitoring officer will determine the complaint in accordance with the Assessment Criteria set out in the Annex to this procedure. The options the Monitoring Officer have are:</p> <ul style="list-style-type: none"> <li>i) To make no finding as to whether there has been a breach of the Code and take no further action;</li> <li>ii) To make no finding as to whether there has been a breach of the Code but determine that some action other than an investigation is appropriate;</li> <li>iii) To find no breach of the Code;</li> <li>iv) To find a breach of the Code without an investigation but impose no sanction;</li> <li>v) To find a breach of the Code without an investigation and impose a sanction;</li> <li>vi) To require the complaint to be investigated to determine whether there has been a breach of the Code and the seriousness of the breach;</li> <li>vii) To conclude that the circumstances of the complaint indicate that an offence under Chapter 7 of Part 1 of the Localism Act 2011 may have been committed and that the complaint ought to be investigated by the police where appropriate, to determine whether a prosecution should be brought.</li> </ul>

5.	The outcome of the determination of the complaint will be notified in writing to the complainant, the subject member and, where appropriate, the Clerk to the subject member's local council within 5 working days.
6.	<p>The complainant and the subject member will ordinarily be given 15 working days from the date of notification of the decision to make a written request to the Monitoring Officer that the decision is reviewed. In either case the person requesting the review must provide reasons to support the request for review and provide any supporting documentation that is relevant but which was not previously provided. The following limitations on review requests apply:</p> <ul style="list-style-type: none"> <li>(i) The <b>complainant</b> may only request a review where the finding is either of paragraphs (i) and (iii) in step 4 above</li> <li>(ii) The <b>subject member</b> may only request a review where the finding is either of paragraphs (iv) and (v) in step 4 above</li> </ul>
7.	Following a written request for review being received within the time limit, the Monitoring Officer will acknowledge the review request within 5 working days and notify the other interested parties of the review request and details as appropriate. At this stage the complainant or subject member as appropriate will be given an opportunity to provide the Monitoring Officer with a written response to the review request. A time limit for providing a written response will be imposed.
8.	The complainant or subject member as appropriate will provide their written comments, with supporting documentation if relevant or notify the Monitoring officer that they do not wish to provide any written response.
9.	The Monitoring Officer will consider the complaint again in the context of any written submissions and supporting documentation provided by the subject member at step 2 as well as the review request and any written response to it.
10.	The Monitoring Officer will determine the review in accordance with the Assessment Criteria set out in the annex to this document. The options the Monitoring Officer has are set out in step 4.
11.	The outcome of the determination of the review will be notified in writing to the complainant, the subject member, and where appropriate, the clerk to the town/parish council within 5 working days.

3.6 Steps 1-4 in the table in paragraph 3.5 will normally be concluded within 30 days of receipt of the complaint. If it is not possible to do this within this time, the complainant, subject member and, where appropriate, the Clerk to the subject member's local council will be contacted and advised of the delay and when the steps will be completed.

#### **4.0 What happens following assessment of complaints?**

4.1 Any action or investigation will be implemented. If other action is determined as appropriate and either party decline to comply, that will be reported to the Monitoring Officer who may decide to treat the facts as a complaint for determination through the process set out in paragraph 3.5 above.

4.2 If potential criminal offences are identified and the complaint referred for investigation with a view to prosecution, the appropriate procedures of the Police or Council will be followed so as to protect the integrity of the investigation.

4.3 A report setting out all the complaints received and what action was taken regarding them will be forwarded to the Standards Committee on a six monthly basis for consideration and comment.

4.4 Any investigations and hearings following investigation are outside of the scope of this procedure and will be subject to separate procedural rules.

#### **5.0 General rules concerning assessments - public access to meetings and information**

5.1 The assessment of complaints will be conducted in private session and information relating thereto will be considered exempt under the appropriate paragraphs of Schedule 12A of the Local Government Act 1972, subject to the application of the public interest test, as appropriate.

5.2 Data protection requirements will be complied with and may prevent the public disclosure of information relating to complaints.

5.3 On completion of the assessment a summary will be published in the form of a decision notice. Once this has been sent to the subject member and the complainant, the decision notice will be available for public inspection at the Council's offices for 6 years from the date of the assessment and a copy will be placed on the Council's website.

#### **6.0 Complainant Confidentiality**

6.1 The subject member will in normal circumstances, be told from the outset who has complained about them. If a complainant asks for their identity to be withheld their request will be considered by the Monitoring Officer prior to the member being notified that a complaint has been made.

6.2 Each request for confidentiality will be considered on its merits and in determining such a request the following will be considered:

- i) Whether the complainant reasonably believes that they, or those connected to them, will be at risk of harm if their identity is disclosed;

- ii) That the complainant is reasonably concerned about the consequences to their employment, or of those connected to them, if their identity is disclosed;
- iii) That the complainant, or somebody closely connected to them suffers from a medical condition and there is evidence of medical risks associated with their identity being disclosed or confirmation from an appropriate medical professional that this is the case; and
- iv) The public interest; in some cases the public interest in proceeding with the complaint may outweigh the complainant's wish to have their identity withheld.

6.3 If it is not considered appropriate to grant a request for confidentiality the complainant will be offered the opportunity to withdraw the complaint rather than proceed with it, but this is subject to paragraph 7.

## **7.0 Withdrawal of complaints**

7.1 Requests to withdraw complaints will normally be granted, but in considering such a request from the complainant the Monitoring Officer will consider the following factors:

- i) Whether the public interest in taking action on the complaint outweighs the complainant's desire to withdraw it;
- ii) Whether the complaint is such that action can or should be taken on it without the complainant's participation; and
- iii) Where there appears to be an identifiable underlying reason for the request to withdraw the complaint, such as whether there is information to suggest that the complainant may have been pressured into withdrawing the complaint

7.2 Even if a request to withdraw a complaint is granted, the Monitoring Officer may still refer the circumstances for assessment and investigation under the appropriate procedures, if those circumstances merit such action in the opinion of the Monitoring Officer, such as if they disclose potentially significant probity issues, possible criminal offences or safeguarding issues.

## **8.0 Conflicts of Interest**

8.1 If any officer has any personal or professional conflict of interest in relation to a complaint, they must have no involvement or no further involvement in dealing with that complaint other than such reasonable steps as are necessary to ensure that the complaint is dealt with by someone other than them. Any conflicts identified during the course of a matter will be managed appropriately by the Monitoring Officer.

8.2 An officer who has previously advised a subject member or has given advice to the complainant about the issues giving rise to a complaint must seek advice from their line manager as to whether they can properly be involved in the conduct of a related complaint. Public perception and the public interest will be considered.

8.3 If any Independent Person has any personal or professional conflict of interest in relation to a complaint, they must have no involvement or no further involvement in dealing with that complaint other than such reasonable steps as are necessary to ensure that the complaint is dealt with by someone other than them. Where this occurs another Independent Person will be appointed and the appropriate person(s) notified.

## **9.0 Records Retention**

9.1 Mid Devon District Council will store all records of complaints in electronic format in a secure environment on a computer network. Records will be stored in accordance with the Council's records management policy and procedures. We may also choose to store hard copies of some or all documents and information.

## **Annex to the Code of Conduct Complaint Assessment and Determination Procedure.**

### **Assessment Criteria**

#### **1.0 Introduction**

- 1.1 All complaints and reviews will be considered on their merits and according to the facts.
- 1.2 The Monitoring Officer will determine when it is appropriate for him to seek the view of the Independent Person.
- 1.3 The assessment criteria, which are subject to an annual review by the Standards Committee, will be used as guidance in the consideration and determination of complaints, but the Monitoring Officer or other decision maker, which will be a panel of Members of the Standards Committee when it is not the Monitoring Officer, are entitled to depart from these criteria when they consider it appropriate to do so.
- 1.4 Due to the wide variety of complaints received by the Council avoiding the perception of inconsistency, even in assessing complaints, is not an easy task. For example two complaints may be about the same aspect of the Code but differ considerably in terms of the facts, how serious they are and there may be huge differences in the relevance and amount of details regarding the complaint. For these reasons the assessment criteria can only be a guide.

#### **2.0 The Assessment Criteria**

##### **2.1 Overriding Criteria**

These three tests will be applied during the initial assessment of a complaint:

- Is the complaint about one or more named members of a relevant authority?
- Was the subject member in office at the time of the alleged conduct?
- If proven, would the complaint disclose a breach of the Code of Conduct?

##### **2.1 No finding of where there is a breach of the Code**

If on the facts it is not possible to determine whether there has been or may have been a breach of the Code and the alleged conduct does not merit an investigation, having regard to the public interest, this is the appropriate finding to make.

##### **2.2 No finding of where there is a breach of the Code but action other than investigation is appropriate**

If on the facts it is not possible to determine whether there has been or may have been a breach of the Code, that the alleged conduct does not merit an investigation, having regard to the public interest, but the allegation and any response from the subject member discloses an underlying issue that action such as mediation or training on the Code or council procedures might assist with, this is the appropriate finding to make. A decision to recommend other action is covered by paragraph 2.6 below.

### 2.3 **Finding of no breach of the Code**

If the facts available demonstrate on the balance of probabilities that there has been no breach of the Code, this is the appropriate finding to make. If there is no breach of the Code a sanction cannot be imposed but other action such as mediation or training might be considered

### 2.4 **Finding of a breach of the Code without an investigation**

A finding that the Code of Conduct has been breached without the need for an investigation will usually be appropriate in the following circumstances:

- It can clearly be shown that from the information that has been provided by the subject member and the complainant that a breach of the Code has occurred
- The subject member has admitted to the breach of the Code, whether or not they have offered to remedy the breach
- It can be shown that an investigation is unlikely to be able to establish any further independent relevant evidence regarding the complaint, or that the cost of obtaining any further evidence would not be justified having regard to the public interest and that on the evidence supplied a breach of the Code can be shown.

A breach of the Code without investigation can only be found if the complaint satisfies the first three initial tests and that it can be clearly shown, on the balance of probabilities that a breach of the Code of Conduct has occurred.

### 2.5 **No further action**

If a breach of the Code is found but it is trivial, a technical breach or otherwise of limited effect, it may be appropriate to take no further action.

### 2.6 **Referral for other action**

A complaint may be referred for other action in the circumstances listed below. Other action may be appropriate whether a breach is found or not. However, in general, other action may be used where the complaint discloses a more general rather than a specific problem concerning the member's conduct. Referring a matter for other action effectively closes the door on a review of the decision as the matter cannot subsequently be referred for investigation if the complainant is dissatisfied with the outcome of the other action. As such, other action should be exercised only where appropriate. If necessary, the assessment of a complaint can be deferred while further information is obtained and other action is being considered. In addition, the subject member and the complainant can be contacted to see if they will accept other action as a way of resolving the complaint, such as by way of an apology.

The following should be considered in determining whether it is appropriate to refer a complaint for other action:

- Does taking further action provide an opportunity to resolve the issue and to prevent any similar issues arising in the future and promote good governance?
- Does the complaint present a potentially less serious breach of the Code that would require the matter to be referred for investigation and is any benefit to be gained from referring the matter for investigation?
- Is the subject member a member of an authority which appears to have a poor understanding of the Code and relevant procedures?
- Is the council of which the subject member is a member suffering from a widespread breakdown in internal relationships and trust where a course of action other than an investigation of a complaint may be more appropriate and beneficial to the Council?

## 2.7 Referral for Investigation

A complaint should usually be referred for investigation in the following circumstances:

- The complaint has passed all three of the initial tests
- The subject member had denied the allegations but the information presented indicates that there may be a breach of the Code
- On the information provided the potential breach of the Code of Conduct is sufficiently serious that an investigation should be undertaken to either discount or substantiate the complaint and to determine what sanction, if any, is appropriate

## 2.8 Potential offences under the Localism Act 2011

If it is considered that the allegation concerned may disclose an offence under the Localism Act, it should be referred to the Police and other appropriate person(s) for further consideration as to whether there should be an investigation with a view to prosecution. No prosecution can be brought without the consent of the Director of Public Prosecutions

If it transpires that no offence was committed, whether following trial or otherwise, the complaint ought to be reintroduced to this procedure for determination of any breach of the code and any appropriate sanction.