

Procedure for Assessment and Investigation of Complaints that Councillors have breached the Worcester City Council Code of Conduct for Members

1. Introduction

This procedure is only to be used for the assessment and investigation of complaints of alleged failures by councillors to comply with the Council's Code of Conduct for Members.

The Code of Conduct only applies to the behaviour of councillors when they are acting in their capacity as councillors. The Code explains what this means in more detail.

This procedure provides an overall framework for the management of complaints under the Members' Code of Conduct; it should always be read in conjunction with the Local Government Association's Guidance which is available on the LGA website and updated periodically.

2. Making a complaint

Complaints should be made in writing to the Monitoring Officer.

If the complainant requires assistance with accessibility needs, then an oral complaint may be made; in those circumstances, the Monitoring Officer will make a written summary of the complaint and secure the complainant's agreement to its accuracy before it can be taken forward.

Anonymous complaints will not usually be progressed unless the Monitoring Officer considers that there is an overriding public interest in doing so. If a complainant wishes to keep their identity confidential from the Subject Councillor then the Monitoring Officer will consider whether it is proportionate, necessary and lawful to do so. If the Monitoring Officer does not consider that the complaint can be fairly progressed with the complainant's identity withheld then they may advise the complainant that the matter cannot be progressed any further.

As a complaint progresses, the ordinary presumption is that the complaint will be managed in private and therefore details of the complainant and Subject Councillor shall not be shared in the public domain while the matter is under consideration. All parties will be expected to co-operate in the management of the complaint in a responsible manner which does not prejudice the fair and proper administration of the process.

If the Monitoring Officer, in consultation with the Independent Person, considers that it is proportionate, necessary and lawful for all or some of the complaints process to be conducted in the public domain then they will advise all parties of this as the matter progresses.

3. Initial assessment of complaint

On receipt of a complaint, the Monitoring Officer will notify the Subject Councillor that a complaint has been received (unless the Monitoring Officer considers that it would be contrary to the public interest or would prejudice the consideration of the complaint to do so). The Monitoring Officer will also notify the Chair and the Vice Chair of the Standards Committee that a complaint has been received.

An initial assessment of the complaint shall ordinarily be made within 20 working days of receipt by the Monitoring Officer of all relevant information to enable the initial assessment to be made.

The Council has adopted initial assessment criteria to ensure a consistent approach and to avoid accusations of bias or unfair treatment. These criteria attempt to strike the balance between ensuring that complainants are confident that complaints about councillor conduct are taken seriously and dealt with appropriately, while on the other hand recognising that investigating a complaint or taking other action will cost both public money and the officers' and councillors' time. This is an important consideration where the matter is relatively minor.

The initial assessment criteria are:

1. Does the complaint contain sufficient evidence to demonstrate a potential breach of the Code?
2. Are there alternative, more appropriate, remedies that should be explored first?
3. Where the complaint is by one councillor against another, a greater allowance for robust political debate (but not personal abuse) may be given, bearing in mind the right to freedom of expression;
4. Is the complaint in the view of the authority malicious, politically motivated, or 'tit for tat'?
5. Whether an investigation would not be in the public interest or the matter, even if proven, would not be serious enough to warrant any sanction (see guidance on hearings);
6. Whether a substantially similar complaint has previously been considered and no new material evidence has been submitted;
7. Whether a substantially similar complaint has been submitted and accepted;
8. Does the complaint relate to conduct in the distant past? This would include consideration or any reason why there had been a delay in making the complaint;
9. Was the behaviour that is the subject of the complaint already dealt with? For example, through an apology at the relevant meeting;
10. Does the complaint actually relate to dissatisfaction with a local authority decision rather than the specific conduct of an individual?
11. Is it about someone who is no longer a councillor or who is seriously ill?

The initial assessment may be conducted by the Monitoring Officer who shall be required to consult with an Independent Person.

The Monitoring Officer and the Independent Person may instead decide to refer the initial assessment stage for consultation with Members at a meeting of the Standards Sub-Committee, which shall receive advice from the Monitoring Officer and Independent Person.

The outcome of an initial assessment of a complaint will be that the Monitoring Officer decides to take one of the following courses of action:

- Decision to take no action
- Decision that the Monitoring Officer shall resolve the complaint informally
- Decision to refer the complaint for investigation

4. Decision to take no action

Where the initial assessment determines that no further action should be taken in respect of the complaint, the Complainant and the Subject Councillor shall be advised of that decision in writing by the Monitoring Officer.

5. Decision to resolve complaint informally

Where the initial assessment determines that the complaint should be resolved informally, the Complainant and the Subject Councillor shall be advised of that decision in writing by the Monitoring Officer.

In deciding to resolve the complaint informally, the Monitoring Officer may pursue any of the following courses of action consistent with the LGA Guidance including:

- Provide further training and guidance to the Subject Councillor
- Mediate between the Complainant and the Subject Councillor
- Require the Subject Councillor to write a personal apology to the Complainant
- Write an advisory letter to the Subject Councillor

This will ordinarily be managed through private communications which will not be published, unless there are exceptional circumstances and it is lawful to do so.

Where informal resolution does not resolve the complaint, the Monitoring Officer may, following consultation with the Independent Person, decide to refer the complaint for investigation.

6. Decision to investigate complaint

Where the decision is made to refer the complaint for investigation, the complainant and the Subject Councillor shall be advised of that decision in writing. The Subject Councillor shall be provided with the details of an Independent Person who can provide independent and impartial guidance on the process for investigation of the complaint. The Monitoring Officer shall also advise the Chair and Vice Chair of the Standards Committee that a complaint has been referred for investigation.

Within 14 days of the decision to refer the complaint for investigation, the Monitoring Officer shall appoint an Investigating Officer to investigate the complaint. The Investigating Officer may be an officer of the Council, an officer of another local authority, or an external person. The Monitoring Officer may elect to undertake the role of Investigating Officer themselves, following consultation with the Independent Person.

7. Investigation of complaint

The Investigating Officer shall carry out an investigation. The purpose of the investigation is to establish the facts of the case and to form a view on whether there is evidence of a potential breach of the Members Code of Conduct.

The Complainant and the Subject Councillor shall cooperate fully with the Investigating Officer, including attending any meetings or interviews and providing all relevant information and documents to the Investigating Officer.

The Investigating Officer may pursue any of the following actions as part of the investigation:

- Interviewing the Complainant
- Interviewing the Subject Councillor
- Interviewing other relevant witnesses
- Requesting copies of any documents relevant to the investigation

The Investigating Officer shall produce a draft report of their findings and send a copy to the Monitoring Officer, the Complainant and the Subject Councillor. The Investigating Officer shall allow 14 days for comments on the draft report and shall take any comments into consideration when producing the final report. If during the course of the investigation, the Investigating Officer identifies evidence of other potential breaches of the Code of Conduct they shall be addressed in the investigation report accordingly.

The Investigating Officer shall endeavour to complete the investigation within 3 months of appointment. The complainant and the Subject Councillor will be kept informed if there are any reasons why this timescale needs to be extended.

The Investigating Officer shall send a copy of the final report to the Monitoring Officer. The report shall include copies of any statements or documents obtained during the course of the investigation.

8. Post investigation procedures

Where the Investigating Officer concludes that there has not been a breach of the Code of Conduct, the Monitoring Officer shall take no further action and the complainant and the Subject Councillor shall be advised of that decision in writing.

This will ordinarily be managed through private communications which will not be published, unless there are exceptional circumstances and it is lawful to do so.

Where the Investigating Officer concludes that there is evidence of a potential breach of the Code of Conduct, the Monitoring Officer shall refer the report to the Standards Sub-Committee for consideration.

9. Standards Sub-Committee

Where a Standards Sub-Committee hearing is required, the procedure for the hearing shall follow the principles of the LGA Guidance and shall always include the following:

- Adherence to public law principles, including Article 6 Human Rights Act 1998 (right to a fair hearing);
- Rights of Subject Councillor and complainant to make representations, ask questions and call witnesses;
- Rights of Subject Councillor to be accompanied by representative or friend;
- Requirement of attendance of the Investigating Officer (if separate to the Monitoring Officer) and rights to call witnesses;
- Requirement of attendance of Monitoring Officer and equal access to legal advice from the Monitoring Officer for all parties on the procedure for the hearing;
- Requirement of attendance of the Independent Person and requirement that their comments are taken before any decision is made;
- Requirement that findings of fact are made based on an assessment of available evidence on the balance of probabilities;
- Administration of the meeting as a formal local government committee.

The detailed agenda and procedure for the hearing shall be agreed by the Chair and Vice Chair and notified to all parties prior to the hearing.

The Standards Sub-Committee shall have the power to decide whether or not there has been a breach of the Code.

The Standards Sub-Committee may impose one or more of the following sanctions if they decide there has been a breach of the Code:

- The Monitoring Officer to send a formal letter to the Subject Councillor.
- The Subject Councillor to make a public apology at Full Council. In the event of an apology not being made, the Subject Councillor may be censured at a meeting of the Full Council.
- The Monitoring Officer to provide further training and guidance to the Subject Councillor.
- The Subject Councillor to write a personal apology to the Complainant.
- A recommendation to the relevant Group Leader that the Subject Councillor should not sit on a particular Committee (or sub-Committee or Working Group) for a period of time (N.B. The replacement of members of a particular Committee is a matter reserved to Full Council).

10. Outcome of the complaints process

The Monitoring Officer shall publish a decision notice that summarises the outcome of the Standards Sub-Committee hearing. The decision notice may be referred to in future reports of the Standards Committee or Monitoring Officer.

There is no right of appeal within the Council against the outcome of the complaint process.

The Local Government and Social Care Ombudsman has jurisdiction to consider complaints about the way the process was managed, but not the merits of the decision.