

ARRANGEMENTS FOR DEALING WITH STANDARDS ALLEGATIONS UNDER THE LOCALISM ACT 2011

1 Context

- 1.01** These “Arrangements” set out how you may make a complaint that an elected or co-opted Member of this Council or of Quedgeley Town Council has failed to comply with the relevant Council’s adopted Code of Conduct and sets out how the Council will deal with allegations of a failure to comply with the Council’s adopted Code of Conduct.
- 1.02** Under Section 28(6) and (7) of the Localism Act 2011, the Council must have in place “arrangements” under which allegations that a Member or co-opted Member of the Council or of Quedgeley Town Council, or of a Committee or Sub-Committee of the Council, has failed to comply with the relevant authority’s adopted Code of Conduct can be investigated and decisions made on such allegations.
- 1.03** Such arrangements must provide for the Council to appoint at least one Independent Person, whose views must be sought by the Council before making 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, or by a Member or a Member or co-opted Member of Quedgeley Town Council against whom an allegation has been made.

2 The Code of Conduct

- 2.01** The Council has adopted a Code of Conduct for Members, which is set out in Part 5 of this Constitution and is available for inspection on the Council’s website and on request by contacting democratic.services@gloucester.gov.uk or 01452 396203.
- 2.02** Quedgeley Town Council is also required to adopt a Code of Conduct. If you wish to inspect Quedgeley Town Council’s Code of Conduct, you should refer to the Town Council’s website or request the town clerk to allow you to inspect the Town Council’s Code of Conduct.

3 Making a complaint

- 3.01** If you wish to make a please complete the Complaint form that is available on the Council’s website or can be requested from Democratic Services (democratic.services@gloucester.gov.uk or 01452 396203).

- 3.02** The Complaint form should then be sent either in hard copy or by email to –

The Monitoring Officer
Gloucester City Council
PO Box 2017
Pershore
WR10 9BJ

Or –

democratic.services@gloucester.gov.uk

- 3.03** The Monitoring Officer is a senior officer of the Council who has statutory responsibility for maintaining the register of Members’ interests and is responsible for administering the system in respect of complaints in respect of Member misconduct.

3.04 The complaint form will require you to provide the Council with your name and a contact postal address or email address, so that the Council is able to acknowledge receipt of your complaint and keep you informed of its progress. If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form, in which case the Council will not disclose your name and address to the Member against whom you make the complaint, without your prior consent. PLEASE NOTE that the Council does not normally investigate anonymous complaints unless there is a clear public interest in doing so.

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

4 Will the complaint be investigated?

4.01 The Monitoring Officer will review every complaint received and, after consultation with the Independent Person, take a decision as to whether it merits formal investigation. This decision will normally be taken within ten (10) working days of the date of acknowledgement of the complaint. When the Monitoring Officer has taken a decision, they will inform you of their decision and the reasons for that decision.

4.02 Where the Monitoring Officer requires additional information in order to come to a decision, they may come back to you for such information, and may request information from the Member against whom your complaint is directed. Where your complaint relates to a Quedgeley Town Councillor, the Monitoring Officer may also inform the Clerk to the Town Council of your complaint and seek the views of the Clerk to the Parish Council before deciding whether the complaint merits formal investigation.

4.03 Where appropriate the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the Member accepting that their conduct was not in accordance with the Council's adopted code of conduct and offering an apology, or other remedial action taken by the Council. Where the Member or the Council make a reasonable offer of local resolution, but you are not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

4.04 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 other regulatory agencies. In some cases, at their discretion, the Monitoring Officer may refer the complaint to the Audit and Governance Committee to decide whether or not it should be investigated or other action taken.

5 How is the investigation conducted?

5.01 The Council has adopted a procedure for the investigation of misconduct complaints, which is attached as Appendix One to these arrangements.

5.02 If the Monitoring Officer decides that a complaint merits formal investigation, they will appoint an Investigating Officer, who may be another senior officer of the Council, an officer of another council or an external investigator who in the opinion of the Monitoring Officer is of suitable experience and standing. The Investigating Officer will decide whether they need to meet or speak to you to understand the nature of your

complaint and so that you can explain your understanding of events and suggest what documents the Investigating Officer needs to see, and who the Investigating Officer may wish to interview.

The Investigating Officer would normally write to the Member against whom you have made a complaint and provide them with a copy of the complaint. The Investigating Officer will also ask the Member to provide their explanation of events and identify what documents the Investigating Officer needs to see and who the Investigating Officer needs to interview.

- 5.03** In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the Member might prejudice the investigation, the Monitoring Officer can remove your name and address from the papers given to the Member, or delay notifying the Member until the investigation has progressed to a stage where notifying the Member of your name and address is appropriate.
- 5.04** At the end of their investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to you and to the Member concerned, to give you both an opportunity to identify any factual matter in that draft report with which you disagree or which either you or the Member considers requires more consideration.
- 5.05** Having received and taken account of any comments which are made on the draft report, the Investigating Officer will send their final report to the Monitoring Officer.

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

- 6.01** The Monitoring Officer will review the Investigating Officer's report and, if they are satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the Member concerned and, if relevant, to the Clerk of Quedgeley Town Council, where the complaint relates to a Quedgeley Town Councillor, notifying you that they are satisfied that no further action is required, and providing a copy of the Investigating Officer's final report to both you and the Member. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, they may ask the Investigating Officer to reconsider their report.

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

- 7.01** The Monitoring Officer will review the Investigating Officer's report and will then **either** send the matter for Hearing before the Hearings Panel or, after consulting the Independent Person, seek Local Resolution.

(a) Local Resolution

- (a)(i) The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, they will consult with the Independent Person and with you (as complainant) and seek to agree what you consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the Member accepting that their conduct breached the Council's adopted code of conduct and offering an apology, and/or other remedial action by the Council.

- (a)(ii) The Monitoring Officer's decision shall be set out in a formal decision notice. A copy of the formal decision shall be sent to the complainant, to the Member and, if appropriate, to the Town Council. The formal decision notice will be made available for public inspection on the Council's website.
- (a)(iii) If the Member complies with the suggested resolution as set out in the formal decision notice no further action will be taken.
- (b) Hearing
 - (b)(i) If the Monitoring Officer considers that Local Resolution is not appropriate, or you are not satisfied by the proposed resolution, or the Member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigating Officer's report to the Hearings Panel which will conduct a Hearing before deciding whether the Member has failed to comply with the adopted Code of Conduct and, if so, whether to take any action in respect of the Member.
 - (b)(ii) The Council has agreed a procedure for Hearings, which is attached as Appendix Two to these arrangements.
 - (b)(iii) Essentially, the Monitoring Officer will conduct a "pre-hearing process", requiring the Member to give their response to the Investigating Officer's report, in order to identify what in the Investigating Officer's report is likely to be agreed and what is likely to be in contention at the Hearing, and the Chair of the Hearings Panel, who will be a member of the Audit and Governance Committee may determine the process to be followed by the sub-committee at the Hearing and how it will be conducted. At the Hearing, the Investigating Officer will present their report, call such witnesses as they consider necessary and make representations to substantiate their conclusion that the Member has failed to comply with the adopted Code of Conduct. For this purpose, the Investigating Officer may ask you, as the complainant, to attend and give evidence to the Hearing. The Member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Hearing as to why they consider that they did not fail to comply with the adopted Code of Conduct.
 - (b)(iv) The Hearing sub-committee, with the benefit of any advice from the Independent Person, may conclude that the Member did not fail to comply with the Code of Conduct, and so dismiss the complaint. If the Hearing sub-committee concludes that the Member did fail to comply with the Code of Conduct, the Chair will inform the Member of this finding and the Hearing sub-committee will then consider what action, if any, the Hearing sub-committee should take as a result of the Member's failure to comply with the adopted Code of Conduct. In doing this, the Hearing sub-committee will give the Member an opportunity to make representations to the Hearing sub-committee and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

8 What action can the Hearing sub-committee take where a Member has failed to comply with the adopted Code of Conduct?

- 8.01** The Council has delegated to the Hearing sub-committee such of its powers to take action in respect of individual Members as may be necessary to promote and maintain the high standards of conduct expected of Members. Accordingly the Hearing sub-committee may –

- (a) Censure or reprimand the Member;
- (b) Publish its findings in respect of the Member's conduct;
- (c) Report its findings to Council or to the Town Council for information;
- (d) Recommend to the Member's Group Leader (or in the case of un-grouped Members, recommend to Council or to Committees) that they are removed from any or all Committees or Sub-Committees of the Council;
- (e) Recommend to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- (f) Recommend to Council that the Member be replaced as Executive Leader;
- (g) Instruct the Monitoring Officer to or recommend that the Town Council arrange training for the Member;
- (h) Remove, or recommend to the Town Council that the Member be removed, from all outside appointments to which he/she has been appointed or nominated by the Council or by the Town Council;
- (i) Withdraw, or recommend to the Town Council that it withdraws, facilities provided to the Member by the Council, such as a computer, website and/or email and Internet access; or
- (j) Exclude, or recommend that the Town Council exclude, the 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.

8.02 The Hearings sub-committee has no power to suspend or disqualify the Member or to withdraw Members' or special responsibility allowances.

9 What happens at the end of the Hearing?

9.01 At the end of the hearing, the Chair will state the decision of the Hearing sub-committee as to whether the Member failed to comply with the Council's adopted Code of Conduct and as to any actions which the Hearings Panel resolves to take.

9.02 As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Hearings Panel, and send a copy to the complainant, to the Member and, if appropriate, to the Town Council. The formal decision notice will be made available for public inspection and the Monitoring Officer will report the decision to the next convenient meeting of the Council.

10 Who are the Hearing sub-committee?

10.01 The Hearing sub-committee is a sub-committee of the Council's Audit and Governance Committee whose membership will be determined on a case-by-case basis. The Audit and Governance Committee has decided that a Hearing sub-committee will comprise at three members of the Audit and Governance Committee.

10.02 The Independent Person will be invited to attend all meetings of the Hearing sub-committees and their views will be sought and taken into consideration before the Hearing sub-committee takes any decision on whether the Member's conduct constitutes a failure to comply with the Council's adopted Code of Conduct and as to any action to be taken following a finding of failure to comply with the adopted Code of Conduct.

11 Who is the Independent Person?

11.01 The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post and is appointed by a positive vote from a majority of all the Members of Council.

12 Revision of these arrangements

12.01 The Council may by resolution agree to amend these arrangements and has delegated to the Chair of the Hearing sub-committee the right to depart from these arrangements where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

13 Appeals

13.01 There is no right of appeal for the complainant or for the Member against a decision of the Monitoring Officer or of the Hearing sub-committee.

13.02 If you, as a complainant, feel that the Council has failed to deal with your complaint properly, you may make a complaint to the Local Government and Social Care Ombudsman.

CRITERIA FOR DETERMINING IF COMPLAINT WARRANTS INVESTIGATION

- Q. Has the complainant submitted enough information to satisfy the Monitoring Officer and/or Hearings Panel that the complaint should be referred for investigation or other action?**

If the answer is No, no further action will be taken.

- Q. Has the complainant already been the subject of an investigation or other action or has the complaint been the subject of an investigation by other regulatory authorities?**

If the answer is Yes, then it is likely that no further action will be taken if there is nothing to be gained by further action being taken.

- Q. Is the complaint about something that happened so long ago that there would be little benefit in taking action now?**

If the answer is Yes, the complaint is unlikely to be investigated.

- Q. Is the complaint too trivial to warrant further action?**

If the answer is Yes, the matter will not warrant further action.

- Q. Does the complaint appear to be malicious, politically motivated or tit for tat?**

If the answer is Yes, the matter is unlikely to be investigated but further action may be considered particularly where it appears that a town or parish council has become dysfunctional.

- Q. Is the complaint anonymous?**

If the answer is Yes, no further action will be taken other than in exceptional circumstances.

- Q. Would an investigation serve any public benefit?**

If the answer is No, an investigation is unlikely to be undertaken but other appropriate action may be considered.

PROCEDURE FOR CONDUCTING HEARINGS

1. Chairman opens hearing:
 - (i) Introduces the Members of the Hearing Panel and the other parties present (Member against whom complaint made, Investigating Officer and other officers).
 - (ii) Explains procedure as follows: *“The Investigating Officer will give a summary of their report and their conclusions. The Member who is the subject of the investigation can then ask questions of the Investigating Officer. The Panel may also wish to ask questions. The Subject Member will then present their case. The Investigating Officer may wish to ask questions of the Subject Member. The Panel may also wish to ask further questions. At the end of this process the Panel will ask the parties to leave whilst they consider their conclusions on the facts and on whether there has been a breach of the code. The parties will then be asked to return and to make representations on what sanctions should be imposed if we decide that there has been a breach”.*
2. Chairman asks Members of the Panel if they have any interests to declare.
3. Chairman invites Investigating Officer to present summary of their report.
4. Chairman invites Subject Member to question Investigating Officer.
5. Chairman invites Members of Panel to question Investigating Officer.
6. Chairman invites Subject Member to present their case.
7. Chairman invites Investigating Officer to question Member.
8. Chairman invites Members of Panel to question Member.
9. Chairman asks parties to leave room so that Panel can retire in private to:
 - (a) Reach its conclusions on the facts;
 - (b) Decide if there has been a breach of the code.
10. Parties are invited to come back to the room.
11. Chairman advises parties of conclusions reached.
12. Chairman (where appropriate if there is a breach) invites firstly Investigating Officer then Subject Member to give their views on what sanction should be imposed. Chairman may seek legal advice.
13. Chairman asked parties to leave room whilst Panel sits in private to decide on appropriate sanctions.
14. Parties invited to return.
15. Chairman advises parties of decision. Informs parties that it will be confirmed in writing in the next few days.
16. Chairman closes hearing and thanks everybody for their attendance.