

# Procedure for dealing with code of conduct complaints against councillors



## 1. The Code of Conduct

The Localism Act 2011 requires all local authorities to adopt a code of conduct setting out the standards of behaviour expected from local councillors.

Oxford City Council has adopted a code of conduct for members, which is available for inspection on the [council's website](#) and on request from the Monitoring Officer: [standards@oxford.gov.uk](mailto:standards@oxford.gov.uk).

Each of the parish councils in Oxford may adopt their own Code of Conduct and a copy of their Code of Conduct should be found on the relevant parish council website.

The Localism Act 2011 also requires local authorities to have in place "arrangements" under which allegations that an elected or co-opted member of the district or parish council has failed to comply with the relevant Code of Conduct can be investigated and decisions made on such allegations.

These arrangements set out:

1. how to make a complaint about the conduct of an elected or co-opted member of Oxford City Council or of the following parish councils: Blackbird Leys PC; Old Marston PC; Littlemore PC; Risinghurst & Sandhills PC
2. how the Council will deal with such complaints

Decisions reached by the Monitoring Officer under this complaints process will be reported to the next scheduled meeting of the Standards Committee for noting.

## 2. Making a complaint

Complaints must be submitted in writing to Oxford City Council's Monitoring Officer using the [Code of Conduct complaint form](#). When complete, your form should be sent to the Monitoring Officer by post or email (preferred).

By post: Monitoring Officer (SA 3.8), Oxford City Council St Aldate's Chambers, 109-113 St Aldates, Oxford, OX1 1DS

Email: [standards@oxford.gov.uk](mailto:standards@oxford.gov.uk)

The Monitoring Officer will not normally consider a complaint unless it is in writing and a complaint form has been received. This is to ensure that all of the relevant information is provided and, where necessary, consent to share information has been obtained so that the complaint can be processed.

If you do not have access to the internet or have difficulty completing the form please contact 01865 252402 for assistance.

Where a complaint is made against more than one councillor, a separate complaint form must be completed in respect of each councillor.

If you are making the complaint on behalf of a number of individuals, please nominate one person as the single point of contact to whom all correspondence will be addressed.

### **3. The complaint process**

The Monitoring Officer will acknowledge receipt of the complaint within 5 working days.

The Monitoring Officer is entitled to dismiss the complaint at the outset if:

- the Subject Councillor is no longer a councillor;
- the complaint is made anonymously;
- the same, or substantially the same issue has been the subject of a previous Code of Conduct allegation and there is nothing further to be gained;
- the complaint is essentially against the action of the council as a whole and cannot properly be directed against individual councillor(s);
- the complaint does not relate to the conduct of a councillor and is a service complaint or other matter;
- the complaint is against an officer of the Council.

If the complaint identifies criminal conduct (including a failure to register disclosable pecuniary interests) or breach of other regulations by any person, the Monitoring Officer will refer the complaint to the police or other regulatory agencies. No further action will be taken in relation to such complaints until any related criminal/regulatory investigation, proceedings or processes have been concluded.

Anonymous complaints will not normally be investigated, unless there is clear public interest in doing so and the Monitoring Officer considers that a fair investigation can be carried out.

Requests from Complainants for the Monitoring Officer to withhold their identity, so that they remain anonymous to the Subject Councillor, are not ordinarily granted. The Monitoring Officer has to balance the right of the Subject Councillor to properly understand the complaint against them and respond to it, with the rights of the Complainant. This normally means that the Subject Councillor will need to be told who is making the complaint.

All parties are encouraged to respond promptly to any correspondence in relation to the complaint. All parties will be kept updated as to how the complaint is progressing. If at any stage in the complaint process the Complainant fails to respond, the complaint may be treated as withdrawn; if

the Subject Councillor fails to respond, the complaint will be determined on the basis of the information available.

<b>Index</b>	
This document	gives an explanation of the complaints process
Paragraph 9	indicative timescale for each stage of the complaint process
Annex 1	flow chart detailing the complaint process
Annex 2	glossary of terms used during the complaint process
Annex 3	procedure to be followed by the Local Hearing Panel
Annex 4	Complaint form

#### **4. Will the complaint be investigated?**

The Monitoring Officer will review every complaint received and, after consultation with an Independent Person (either in person or electronically), take a decision as to the following:

- That no further action should be taken
- Refer the complaint for local resolution (which might involve an apology or training or some other form of mediation)
- Refer the complaint for investigation

This is known as the Assessment stage and its purpose is to establish if there are valid grounds to investigate the complaint. At this stage there is no consideration or decision about whether or not there has been a breach of the Code of Conduct.

When reviewing Code of Conduct complaints the Monitoring Officer, in consultation with an Independent Person(s), will have regard to the following assessment criteria:

<b>Adequate information</b>	<p>The Monitoring Officer must be satisfied that there is sufficient information available at the “initial test and assessment stage” to decide whether the complaint should be referred for investigation or other action.</p> <p>The Monitoring Officer may provide other information which is readily available and which may assist in the consideration of the complaint “initial test and assessment stage”. This may include details of attendees at events, copies of agendas, reports and minutes of meetings or copies of the Members’ entry in the Register of Members’ Interests. It will not include conducting interviews with witnesses.</p> <p>If insufficient information is available, the Monitoring Officer will not normally refer the complaint for investigation or other action.</p>
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<b>Official capacity</b>	The Monitoring Officer must be satisfied that that the Subject Member was acting in an official capacity.
<b>Timescale</b>	The Monitoring Officer will take into account when the events subject to the complaint took place and will not normally investigate or pursue other action if the events occurred more than 6 months prior to the complaint being submitted other than in exceptional circumstances, such as where the conduct relates to a pattern of behaviour which has recently been repeated.
<b>Seriousness</b>	<p>The Monitoring Officer will not normally refer a matter for investigation or other action if it is considered trivial, malicious, vexatious, politically motivated<sup>1</sup> or tit-for-tat.</p> <p>Where the complaint appears to relate to the “rough and tumble of political debate” and pertains to conduct between Members or Members and co-opted Members rather than between Members and the public or officers, in most instances no further action will be taken.</p>
<b>Public interest</b>	<p>Consideration will be given as to whether the public interest<sup>2</sup> would be served by referring a complaint for investigation or other action.</p> <ul style="list-style-type: none"> <li>• the public interest would not normally be served where, for instance, a member has died, resigned or is seriously ill.</li> <li>• If the complaint has already been the subject of an investigation or other action relating to the Code of Conduct or the subject of an investigation by other regulatory authorities, it is unlikely that it will be referred for investigation or other action unless it is evident that the public interest will be served by further action being taken.</li> <li>• If the complaint relates to a former Member of Oxford City Council or one of the parish councils within the city boundary who is now a Member of another authority the Monitoring Officer may refer the matter to that authority for consideration.</li> </ul>
<b>Multiple Complaints</b>	A single event may give rise to similar complaints from a number of complainants. Where possible these complaints will be considered by the Monitoring Officer at the same time. Each complaint will, however, be determined separately. If an investigation is deemed to be appropriate the Monitoring Officer may decide that, in the interests of efficiency, only one complaint should go forward for investigation, with the other complainants being treated as potential witnesses in that investigation.

<sup>1</sup> If something is politically motivated, it is carried out in the interests of a particular government or political party or individual

<sup>2</sup> used when talking about people's rights to know the facts about a particular situation

Before reaching a decision the Monitoring Officer may request further information from the Complainant and the Subject Councillor or obtain information which is readily available such as minutes of Council meetings. If the complaint relates to a Parish Councillor the Monitoring Officer may consult the Parish Council. This will extend the timescale for dealing with the complaint.

The Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. If the Subject Councillor makes a reasonable offer to settle the complaint informally, but the Complainant is not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

The Monitoring Officer will normally reach an assessment within 20 working days of receipt of the complaint, however, in some instances this may take longer.

If the Monitoring Officer decides not to investigate the complaint he/she will explain why. That will be the end of the matter.

## **5. How is the investigation conducted?**

If the Monitoring Officer decides that a complaint merits investigation, he/she will appoint an Investigating Officer, who may be another officer of the Council, an officer of another authority or an external investigator.

The Investigating Officer will usually need to speak to the Complainant to discuss the complaint and may need to see relevant documents or interview other witnesses. The Complainant will be able to suggest what documents and which witnesses the Investigating Officer should consider seeing.

The Investigating Officer will also normally see the Subject Councillor and provide them with the same opportunity to identify sources of evidence and witnesses.

At the end of his/her investigation, the Investigating Officer will produce a draft report and send it, in confidence, to the Complainant and to the Subject Councillor, for comment.

The Investigating Officer will consider any comments the Complainant and/or the Subject Councillor make before sending the 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 Code of Conduct?**

The Monitoring Officer will review the Investigating Officer's report and, if he/she is satisfied with the quality of the investigation undertaken and that the Investigating Officer's report is sufficient, the Monitoring Officer will write to

the Complainant and to the Subject Councillor, confirming that he/she is satisfied that no further action is required. A copy of the Investigating Officer's final report will be provided to the Subject Councillor at that time. If the case concerns a Parish councillor he/she will also send a copy to the Parish Council concerned. That will be the end of the matter.

If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider his/her report.

In considering the Investigating Officer's report, the Monitoring Officer may consult with an Independent Person(s) if he/she considers it appropriate to do so.

The Monitoring Officer may consider that there are "learning points" which should be shared with the Subject Councillor or the Standards Committee.

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

The Monitoring Officer will review the Investigating Officer's report and after consulting an Independent Person(s) will then either seek local resolution or send the matter for local hearing before the Standards Committee.

### **Local Resolution**

If the Monitoring Officer thinks that the complaint can reasonably be resolved without the need for a hearing he/she will consult with an Independent Person(s) and with the Complainant and seek to agree a fair resolution. It is important though that any resolution also helps to ensure higher standards of conduct for the future. Possible local resolutions may include the Subject Councillor accepting that his/her conduct was unacceptable and offering an apology. If the Subject Councillor complies with the suggested resolution, the Monitoring Officer will report the outcome to the Standards Committee (and, where relevant, to the Parish Council for information), but will take no further action. That will be the end of the matter.

### **Local Hearing Panel**

If the complaint is not resolved through local resolution then the Monitoring Officer will refer the Investigating Officer's report to the Standards Committee which will convene a Local Hearing Panel to determine whether or not the Code of Conduct was breached.

The Local Hearing Panel will comprise a minimum of three elected members of the Standards Committee plus an Independent Person. The Monitoring Officer will select the membership of each Local Hearing Panel.

This is not a Court process but, in order to be fair to everyone, formalities are followed so that a proper decision can be reached.

The procedure to be followed is detailed at Annex 3.

The Local Hearing Panel may conclude that the Subject Councillor did not fail to comply with the Code of Conduct, and so dismiss the complaint. That will be an end to the matter.

## **8. What action can the Local Hearing Panel of the Standards Committee take when a Councillor has failed to comply with the Code of Conduct?**

If the Local Hearing Panel concludes that the Subject Councillor did fail to comply with the Code of Conduct, the Chair will inform the Subject Councillor of this finding and the Panel will then consider what action, if any, it should take as a result of the failure to comply with the Code of Conduct. In doing this, the Panel will give the Subject Councillor an opportunity to make representations and will consult the Independent Person(s).

The Local Hearing Panel may:

- Censure or reprimand the Subject Councillor;
- Recommend to the Subject Councillor's group leader (or in the case of un-grouped members, recommend to Council) that he/she be removed from any or all Committee or Sub-Committees of the Council;
- Recommend to the Leader of the Council that the Subject Councillor be removed from the City Executive Board, or removed from particular portfolio responsibilities;
- Recommend to Council that the Subject Councillor be replaced as Executive Leader;
- Instruct the Monitoring Officer to, or recommend that a Parish Council, arrange training for the Subject Councillor.
- Publish its findings in respect of the Subject Councillor's conduct;
- Report its findings to Council, or to a Parish Council, for information;

The Local Hearing Panel has no power to suspend or disqualify the member or to withdraw or suspend allowances or restrict access to or use of Council facilities.

Within 10 working days the Monitoring Officer will prepare a formal decision notice, in consultation with the Chair of the Local Hearing Panel, and send a copy to the Complainant, to the Subject Councillor (and to the Parish Council if appropriate).

The decision notice will be published as part of the minutes of the Local Hearing Panel meeting and will be placed on the Council's website unless the Monitoring Officer determines that it should remain confidential or it contains exempt information.

## 9. Timescales

The timescales quoted below are indicative. They are not guaranteed and are included here to illustrate the likely duration of the complaints process. Actual timescales may be significantly shorter or longer depending on the complexity and content of the complaint.

Stage in complaints process	Indicative timescales
Acknowledge receipt of complaint or dismissal of invalid complaints	within <b>5</b> working days of receipt of complaint
Assessment stage decision	Issued to Subject Councillor and Complainant within <b>25</b> working days of receipt of complaint
Investigation	A formal investigation normally takes around <b>8 - 12 weeks</b> from the appointment of an appropriate investigator
Local Hearing Panel	within <b>25</b> working days of receipt of the final investigation report – which includes: <ul style="list-style-type: none"><li>• 10 working days to prepare hearing papers and hold any pre-hearing meetings</li><li>• 10 working days for Subject Councillor to submit a response to the Investigator's report and hearing papers</li><li>• 5 working days for agenda publication</li></ul>
Local Hearing Panel decision	Issued to Subject Councillor and Complainant and published within <b>10</b> working days of the Local Hearing Panel meeting

## 10. Appeals

There is no right of appeal for the Complainant or for the Subject Councillor against a decision of the Monitoring Officer or of the Standards Committee.

However, the Monitoring Officer reports these decisions to the Council's Standards Committee so there is oversight of how these matters are dealt with.

## 11. Document Retention

The documentation relating to a complaint will be retained for 6 years from the conclusion of the complaint, irrespective of the outcome of the complaint. Minutes of the Standards Committee will be retained in the same way as the minutes of other council decision making bodies.

## 12. Revision of these arrangements

The Council may by resolution agree to amend these arrangements. The Standards Committee, on the advice of the Monitoring Officer, may depart from these arrangements where it is necessary to do so in order to secure the effective and fair consideration of any matter.