

# APPENDIX 1

## Part 4:5 Part A: Arrangements for Dealing with Allegations and Determinations of Complaints Under Section 28(6) Localism Act 2011

### **1. Introduction**

- 1.1. This procedure applies when a complaint is received that a member, or co-opted member, of West Surrey Shadow Authority has or may have failed to comply with the adopted Code of Conduct for members.
- 1.2. A complaint is confidential and remains so until the complaint is resolved.

### **2. Code of Conduct**

- 2.1. The Shadow Authority is required under the Surrey (Structural Changes) Order 2026 (Para 14) to have regard to s27 Localism Act 2011 to promote and maintain high standards of conduct by members and co-opted members of the authority. In discharging that duty, the Council must adopt a code dealing with the conduct and standards of behaviour that is expected of its members and co-opted members when they are acting in that capacity.

A copy of the West Surrey Shadow Authority Code of Conduct can be found here [\[insert link\]](#).

- 2.2. The Code applies to all councillors when they are acting in their capacity as a councillor.

### **3. Making a complaint**

- 3.1. If you consider that a councillor has breached the Code of Conduct for the Shadow Authority, you may make a complaint. The Shadow Authority can only accept complaints which are in written form. We have a form which is available to complete [\[insert link\]](#) or on request by contacting us. If you have problems in completing the complaints form then you (or someone else on your behalf) can ask the Shadow Authority for assistance by contacting the Monitoring Officer, by email at [Monitoring.Officer@westsurrey.gov.uk](mailto:Monitoring.Officer@westsurrey.gov.uk). If you prefer to write a letter, then you should ensure that your complaint contains all relevant information

including which part of the code of conduct you think has been breached, the outcome you are seeking and your contact details.

3.2. Complaints must be submitted in writing, by post or email to:

The Monitoring Officer, West Surrey Shadow Authority c/o Guildford Borough Council, Millmead House, Millmead, Surrey, GU2 4BB

Email: [Monitoring.Officer@westsurrey.gov.uk](mailto:Monitoring.Officer@westsurrey.gov.uk)

3.3. The Shadow Authority's Monitoring Officer is the appointed officer who has responsibility for managing code of conduct complaints on behalf of the Shadow Authority.

3.4. If your complaint is in relation to a member of the West Surrey Shadow Authority who is also a member of another Council, then you should note that we can only accept complaints in respect of conduct directly relating to the Shadow Authority and we may pass your complaint to the Monitoring Officer of the relevant Council if we consider that we are not the correct Authority.

#### **4. Acknowledging the complaint**

4.1. The Monitoring Officer (or an officer acting on their behalf) will normally acknowledge receipt of the complaint within five clear working days and advise the complainant that the complaint will be assessed, to consider whether it is within the Monitoring Officer's jurisdiction and meets the initial assessment criteria. Where we consider there is insufficient information to identify a possible breach of the Code of Conduct, we may request further information.

#### **5. Confidentiality**

5.1. If a complainant has asked for their identity to be withheld, this request will be considered by the Monitoring Officer at the Initial Assessment stage.

5.2. As a matter of fairness and natural justice, the subject member should usually be told who has complained about them and receive details of the complaint. However, in exceptional circumstances, the Monitoring Officer may withhold the complainant's identity if, on request from the complainant, they are satisfied that the complainant has evidence and reasonable grounds for believing that they or any witness relevant to the complaint may be at risk of actual harm, or their employment may be jeopardised if their identity is disclosed, or there is a risk that evidence would be compromised and/or that the investigation would be prejudiced.

- 5.3. If the Monitoring Officer decides to anonymise the complainants' details, this will be kept under continuous review.
- 5.4. If the Monitoring Officer decides to refuse a request by a complainant for confidentiality, they will offer the Complainant the option to withdraw the complaint.
- 5.5. The Monitoring Officer will advise the Chief Executive, Chief Finance Officer and relevant Group Leader that a complaint has been received against the named councillor but will not disclose the substance of the complaint.

## **6. Anonymous complaints**

- 6.1. The Monitoring Officer will not normally allow anonymous complaints as they are against the principles of transparency and fairness and make matters much more difficult to investigate. However, the Monitoring Officer may accept an anonymous complaint where they consider that there may be exceptional compelling reasons why the complaint could be accepted without detriment to the process and where the allegation can be evidenced without reference to the complainant. For example, if an anonymous complainant submitted a video showing the councillor acting inappropriately or sent in documentation disclosing an undeclared directorship in a matter relating to local authority business, it may be considered that the public interest in investigating the allegation would outweigh the issue of anonymity.

## **7. Conflicts of Interest**

- 7.1. If at any time the Monitoring Officer considers that they have an actual or potential conflict of interest, then they will instruct a Deputy Monitoring Officer to act in their place.

## **8. Initial Assessment**

- 8.1. A complaint can only be accepted if: -
  - it is made against one or more named Members or co-opted Members of the Shadow Authority, and
  - the Subject Member held office at the time of the alleged misconduct; and
  - the complaint relates to matters where the councillor was acting as a councillor or representative of the Shadow Authority (not any other Council) and it is not a private matter;

- the complaint, if proven, would be a breach of the Code under which the councillor was operating at the time of the alleged misconduct.
- 8.2. If the above criteria are not met, then the complaint will be automatically rejected, as the Monitoring Officer is not able to deal with the complaint. This is known as the 'Jurisdiction Test'.
- 8.3. If a complaint is about a Council service, rather than misconduct by a councillor, then the complainant will be referred to the complaints team at the relevant Council which the Monitoring Officer considers is responsible for the service, and the complainant will be advised accordingly.
- 8.4. The Monitoring Officer will usually advise the subject member of the complaint and ask them for comment at this stage. They will allow 10 working days for comment.
- 8.5. The initial assessment is made against the following criteria:
1. Whether the complaint is trivial, malicious, vexatious, politically motivated, or 'tit for tat';
  2. Whether an investigation would be in the public interest or the matter, if proven, would be serious enough to warrant any sanction;
  3. Whether a substantially similar complaint has been considered, and no material evidence has been submitted;
  4. Whether a substantially similar complaint been submitted and accepted;
  5. Whether the complaint relates to conduct that took place more than 6 months ago;
  6. Whether the behaviour has already been dealt with, e.g. the subject member has apologised for making an error and the matter would not warrant a more serious sanction;
  7. Whether the complaint relates to dissatisfaction with a local authority decision rather than conduct;
  8. Whether the complaint is about someone who is seriously ill; and
  9. Whether the complaint is so serious that it should be reported to the Police.
  10. Whether there has been a delay of over 30 days between the incident complained of and the complaint (the matter will not ordinarily be considered further unless there are very good reasons).

Depending on the outcome of assessment against these criteria, the complaint could be rejected at this stage.

- 8.6. The complainant and the subject member will be notified of the outcome of the assessment within 20 working days of the acknowledgement of the complaint, and what further action (if any) will be taken. This can be:-

- (a) That no further action should be taken, with reasons given.
- (b) That the allegation should be referred for informal resolution.
- (c) That the allegation should be referred for formal investigation.
- (d) That the allegation should be referred to the police or another regulatory body.

## **9. Independent Person**

- 9.1. The Shadow Authority must appoint at least one Independent Person under S28 Localism Act 2011. An Independent Person must not be a councillor or a member of staff. The Act sets out criteria on who can be an 'Independent Person' and their views must be sought and taken into account before the Monitoring Officer makes their decision on whether to investigate an allegation. The Monitoring Officer may choose whether to seek their views on rejecting a complaint for lack of jurisdiction or other reasons. The Monitoring Officer may also seek their views at any other time.
- 9.2. The views of an Independent Person may also be sought by a subject member at any time. To avoid any conflicts of interest, the Shadow Authority has a pool of Independent Persons.
- 9.3. If an Independent Person has been consulted by a subject member at any time, then they may not provide their views to the Monitoring Officer or be consulted by them, to avoid any potential conflict of interest. They must notify the Monitoring Officer of any contact with the subject member, although they should not disclose the content.

## **10. Rejection of the Complaint**

- 10.1. If the complaint is so serious that it should be reported to the Police or another agency, then the Monitoring Officer may refer the matter themselves or advise the complainant that they should contact the Police or other agency direct. The Monitoring Officer may decide not to advise the subject member of the complaint in these circumstances and consideration of the complaint will be deferred until the outcome of any Police investigation.
- 10.2. If the complaint is rejected, the complainant will be provided with a notification of the rejection of the complaint, and the reasons for this. If the Independent Person was consulted on the decision to reject, then the notification will make it clear whether they agreed with the decision. If they did not agree, then the Monitoring Officer will explain how they took account of the Independent Person's views in reaching a different decision.

- 10.3. If the subject member resigns at any point before the Monitoring Officer has issued a decision, then the Monitoring Officer will consider whether the matter should be closed, having regard to the public interest test and the resources required. The Monitoring Officer will consult the Independent Person before making their decision.

## **11. Complaints which have been accepted**

- 11.1. If the complaint is accepted, the Monitoring Officer will consult with the Independent Person and will take their views into account before deciding on one of the following outcomes:
- a) The matter should be dealt with through a process of informal resolution in the first instance; or
  - b) The matter should be referred for a formal investigation.
- 11.2. There is no legal requirement for a decision notice to be published at this stage, but the Monitoring Officer will consider whether an assessment notice should be published in the public interest.
- 11.3. The Monitoring Officer may discontinue a complaint or terminate an investigation at any time if they consider it to be in the public interest, following consultation with the Independent Person. Where a complaint is discontinued or terminated, the Monitoring Officer will advise the complainant and subject member within five working days of the decision, setting out reasons.

## **12. Informal Resolution**

- 12.1. Wherever possible, the Monitoring Officer will resolve complaints informally. An informal resolution is a more proportionate way of dealing with relatively minor allegations, one-off incidents or underlying disagreements between individuals. Informal resolution does not mean that a subject member has been found to have breached the Code of Conduct, because the matter has not been investigated at this stage and the purpose is to address any underlying causes.
- 12.2. Informal resolution can take a wide variety of forms, and may include:
- arranging training for the subject member
  - requesting that the subject member apologise
  - suggesting a mediation meeting between the subject member and the complainant
  - any other action capable of resolving the complaint.

- 12.3. Where a complaint concerns an issue between two Councillors, the Monitoring Officer may choose to refer the matter to the appropriate Group Leader(s) to resolve amongst themselves, if possible.
- 12.4. If the Monitoring Officer considers, after consultation with the Independent Person, that the complaint could be dealt with through informal resolution then the subject member and the complainant will be informed of this proposal and given 10 working days to comment before the Monitoring Officer reaches a final decision. The purpose of this is to establish how successful the resolution might be. It does not give either party the right of veto.
- 12.5. Both parties will be informed by the Monitoring Officer of the action to be taken and the time scales in which it will be undertaken.
- 12.6. The Monitoring Officer will seek confirmation that the suggested resolution has been complied with, within the timescales, and if it has then the Monitoring Officer will notify both parties that the matter is then closed.
- 12.7. Where a subject member or the complainant disagrees with or refuses to comply with the proposed resolution, fails to co-operate or has taken inadequate action, then the Monitoring Officer will consider whether a formal investigation is needed, having regard to the public interest test and the resources required. The Monitoring Officer will consult the Independent Person before making a decision whether to commence a formal investigation. The Monitoring Officer may consider that no further action is required even where the resolution has not been complied with.

### **13. Formal investigation**

- 13.1. If the Monitoring Officer considers that the matter should proceed by way of formal investigation, they will make arrangements (within 10 working days of the decision being made) for the complaint to be formally investigated and may appoint an Investigator to investigate the complaint, gather further evidence and prepare a report.
- 13.2. The Investigator may be the Deputy Monitoring Officer, a suitably qualified member of staff or an external investigator. The Monitoring Officer will advise the subject member and complainant of their appointment, so that they know who is dealing with the case, the scope of the investigation and what will happen next. A copy of the complaint will be provided to the subject member if they have not already received this.

- 13.3. The subject member will also be informed that they have the right to seek the views of an Independent Person and be accompanied at any interviews with the Investigator.
- 13.4. The scope of the delegation of the investigation will be kept in writing, and there will be agreed timelines for delivery of the report, usually within two months. Any extension of time will be agreed by the Monitoring Officer.
- 13.5. The Investigator may make enquiries of any person they think necessary, however there is no obligation for such persons to respond. This will not delay the investigation, but it will be made clear in the Investigator's report where there have been unreasonable delays or lack of responses.
- 13.6. During the investigation, there may be evidence of further breaches which extend beyond the scope of the investigation. These cannot be investigated and should be the subject of a separate complaint to the Shadow Authority if necessary.
- 13.7. The Investigator can refer the investigation back to the Monitoring Officer in the event that circumstances change during the investigation, and it will be for the Monitoring Officer to decide whether the investigation should continue, after consulting with the Independent Person.
- 13.8. All information gathered will be kept confidential and all those being interviewed will be asked to maintain confidentiality. Any draft report will be marked as confidential and all requests for information will be dealt with having regard to the relevant legislation.
- 13.9. The draft report will be shared with the Monitoring Officer and the Independent Person so that they can be satisfied that the investigation is of an acceptable standard and met the scope of the complaint. The draft report will contain the agreed and disputed facts, the Investigator's view on whether there has been a breach of the Code and their reasons for their conclusion.
- 13.10. Once the Monitoring Officer is satisfied with the report, it will be sent by the Investigator to the relevant parties requesting comments within 10 working days. The Investigator is under no obligation to accept any comments from the parties, but where they do not, then they will make a note explaining why.
- 13.11. The final report will contain a finding on the balance of probabilities as to whether there has been any failure to comply with the Code of Conduct. The final report will be sent by the Investigator to the Monitoring Officer and the



Independent Person, and the investigation will be regarded as complete if the Monitoring Officer receives the final report and agrees that no further investigation is necessary.

13.12. The Monitoring Officer will review the Investigating Officer's report within 10 working days, and will consult with the Independent Person before deciding whether:

- a) there has been no breach and no further action will be taken;
- b) there have been one or more breaches, but no further action is needed;
- c) there have been one or more breaches, but the matters should be resolved in a way other than by a hearing (see informal resolution above); or
- d) that the matters be referred to a hearing (see hearings procedure set out in Appendix 1)

13.13. The final report will be issued to the subject member and the complainant, and others as the Monitoring Officer considers appropriate including members of the Standards Committee.

13.14. The Monitoring Officer will give their decision when sending out the report and will also make it clear whether any of the report is confidential.

#### **14. Publicising the findings**

14.1. In all cases where there has been an investigation, whether or not any further action is taken, then the Monitoring Officer will arrange for a decision notice to be published on the Shadow Authority's website.