

Guidance – Councillor Complaints Procedure

Part 1

How do I make a complaint?

If you want to make a complaint about the conduct of a County Councillor or if you think that he or she may have breached the Code of Conduct for Members you may complain to the County Council's Standards Committee

The Code of Conduct for Members is set out in the [County Council's Constitution](#).

Any complaints about the conduct of County Councillors should normally be submitted, in writing, to:

Jan Shadbolt (County Solicitor)
Devon County Council
County Hall
Topsham Road
Exeter
EX2 4QD

who will arrange for it to be considered by the Council's Standards Committee or for any other course of action to be taken, as appropriate.

You may use the official [Complaint Form](#) referred to below or simply set out your complaint in a letter. Complaints may be sent in by post to the above address or by email (members.services@devon.gov.uk). If you are unable to download a copy of the form from the Council's website a copy may be sent to you upon request. We can also help if English is not your first language.

If you are unable to make a written complaint we will offer to transpose your complaint onto a complaint form with an accompanying written statement (if required) which you will then be asked to sign or otherwise indicate to the Council's satisfaction that you wish to make a complaint in those terms. If you are unwilling to sign the documentation or fail indicate to the Council's satisfaction that you wish to make a complaint in those terms it will not take any further action on the complaint unless the Monitoring Officer is satisfied that the circumstances justify a departure from this position. If you make a verbal complaint and simply decline to confirm the complaint in writing for reasons which the Council does not consider to be justifiable it will take no further action on the complaint. The Council does understand that complaints about sensitive personal issues, such as alleged harassment, bullying or victimisation may need to be progressed while preserving the confidentiality or anonymity of the complainant.

Some complaints will fall outside of the scope of this Procedure. If that happens the complaints will be forwarded to the relevant officers in the Council, the complainant will be advised of this. Similarly if your complaint is about a District, Unitary or Town or Parish Councillor then you should send it to the relevant District or Unitary Council – in other words, the Council that collects your council tax.

Part 2

What is a Standards Committee?

The County Council's Standards Committee is a group of people appointed by the Council to help it maintain and promote high ethical standards. The Committee is made up of Councillors and co-opted members drawn from the community (who are not councillors or employees of the County Council).

Part 3

What complaints does the Standards Committee deal with?

The Standards Committee can only deal with complaints about the behaviour of a County Councillor. It will not deal with complaints about things that are not covered by the Members' Code of Conduct. If you make a complaint to the Standards Committee it must be in writing. You should say who it is about and why you think they have not followed the Code of Conduct.

The Committee cannot look at complaints that are about:

- incidents that happened before the Councillor was elected or chosen to serve;
- incidents that happened before the Council adopted the Code of Conduct other than incidents of alleged harassment, bullying or victimisation;
- the way the Council conducts or records its meetings; or
- that would not disclose a breach of the Code of Conduct.

Complaints about:

- the actions of the Council's employees;
- the way the Council has or has not done something; or
- decisions of the Council or one of the services it provides;
- are the subject of a separate complaints system which can be accessed on the County Council's [Feedback/Complaints](#) system (please follow the link).

Ultimately, if you think the Council has not dealt with the matter properly and has failed to resolve a complaint locally, you can ask the Local Government Ombudsman to investigate.

Part 4

How should I set out my complaint?

It is very important that you set your complaint out fully and clearly and provide all the information at the outset. You should also provide any documents or other material that you wish to be considered, wherever possible.

We recommend that you use our complaint form or provide a covering note summarising what you are complaining about, especially if your complaint includes a lot of supporting documentation. In the summary you should tell us exactly what each person you are complaining about said or did that has caused you to complain. If you are sending supporting documentation please cross-reference it against the summary of your complaint.

You should be as detailed as possible and substantiate your complaint where you can, to demonstrate why you believe that the Councillor(s) complained about has breached the Code of Conduct.

It is very important that you set your complaint out clearly and provide at the outset all the information you wish the Council to consider. The Monitoring Officer may need to contact you to seek clarification of your complaint but this will not, hopefully, delay consideration of your complaint.

Part 5

What happens to my complaint – how is it processed and dealt with?

Once you have made a complaint you will be told what will happen to it.

When a complaint is received which is within the scope of this Procedure the Council would aim to acknowledge receipt within 3 working days.

The Monitoring Officer will first carry out a preliminary assessment of whether the alleged behaviour falls within the Code of Conduct – and collect any information he/she deems necessary – to see if there may be a case to answer under this procedure or if, for example, a local settlement can be achieved or conciliation can be brokered between the subject member and complainant without recourse to the full process, following consultation with the Independent Person.

This will normally be done 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, namely:

- 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 to be inequitable, 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 the complaint 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 a relevant council and there are no overriding public interest reasons to merit further consideration

At this stage, and following consultation with the Independent Person, if the complaint is not to progress further the Monitoring Officer will notify the complainant in writing of that fact, with reasons.

The Monitoring Officer will also write to the subject member with details of the complaint, the decision made and the reasons for the decision. The name of the complainant will be disclosed to the subject member unless confidentiality has been requested and the Monitoring Officer considers a request to be justified.

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.

For those complaints which are to be taken beyond the preliminary process outlined above the following steps will be followed.

If after following the steps detailed above, the Monitoring Officer is of the view that local settlement is unlikely or unachievable, or the complaint warrants it, an Assessment Sub-Committee of the Standards Committee may then be convened (comprising 3 Members of the Standards Committee of whom at least one shall be a co-opted member) to determine whether or not the allegation appears to disclose a failure to observe the Members' Code of Conduct and then, if it judges that such a failure is disclosed, whether the matter merits investigation. Thereafter and, as appropriate, the Monitoring Officer shall

- consult the Independent Person if the Assessment Sub-Committee suggest any action other than a formal investigation;
- institute a formal investigation if the Assessment Sub-Committee is of the view that the matter merits investigation;
- report the findings of that investigation together with the views of the Independent Person on those findings to the full Standards Committee for hearing and determination (with neither party having the right of attendance).

The Monitoring Officer and the subject member may seek the views of the nominated Independent Person at any time during this process

The assessment and review of complaints will normally be conducted by an Assessment Sub-Committee or the full Standards Committee in 'Part II or closed' session and information relating thereto will be considered exempt under the provisions of the Local Government (Access to Information) Act 1985 and Schedule 12A of the Local Government Act 1972, subject to the application of the public interest test, as appropriate.

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

On completion of the assessment or consideration of the review a written summary of the assessment will be published. 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 or review and a copy will be placed on the Councils website in line with the

requirements of the Local Government (Access to Information) Act 1985 and Schedule 12A of the Local Government Act 1972.

| Step | Action |
|------|--|
| 1 | The Monitoring Officer will write to the subject member with details of the complaint, including those of the complainant (unless any confidentiality request has been agreed), and also the name and contact details of the Independent Person who has been appointed to advise on the particular complaint and who the subject member may contact to seek their views. At this stage the subject member will be given an opportunity to provide the Monitoring Officer with a written response to the complaint. A time limit for providing a written response may be imposed. |
| 2 | The subject member will provide their written comments, with supporting documentation or indicate that they do not wish to provide a written response to the complaint in which case the time limit for the submission of a written response will lapse. |
| 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 | The Monitoring Officer will, following consultation with the Independent Person, determine what action to be taken on the complaint in accordance with the Assessment Criteria set out in the Annex to this Procedure. The options available are: (i) to make no finding as to whether there has been a breach of the Code and take no further action; (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 including, for example, some form of local settlement or conciliation exercise; (iii) to find no breach of the Code; (iv) to find a breach of the Code without an investigation but take no action; (v) to find a breach of the Code without an investigation and take some action; (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; (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. |
| 5 | Where a complaint is investigated, a report shall be generated which shall be presented to the full Standards Committee for consideration. Having considered the investigation report the Standards Committee shall make a finding as to whether or not there has been a breach of the Code and, if there is a finding of a breach, what action should be taken. |
| 6 | The outcome of the determination of the complaint will be notified in writing to the complainant and the subject member within 5 working days. |

[NB: Steps 1 to 4 above will normally be conducted within 28 days of receipt of the complaint. If it is not possible to complete any such tasks within that time the complainant and subject member will be contacted and advised of the delay and when the Steps will be completed.]

Part 6

What happens after my complaint has been looked at?

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

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 their investigation.

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

When a decision has been reached on your complaint the Council will notify you in writing telling you what that decision is and what action has or will be taken.

Part 7

Withdrawal of complaints

Any request to withdraw a complaint 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) whether 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 pressurised into withdrawing the complaint.

Part 8

Complainant confidentiality

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.

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 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 that 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.

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.

Confidentiality will always be respected when requested in relation to allegations of harassment, bullying or victimisation, however complainants must recognise that maintaining confidentiality may hinder the effectiveness of any investigation.

Part 10

Retention of Records

All records relating to any complaint and the consideration thereof will be stored in accordance with the County Council's records management policy and procedures and the provisions of the Local Government (Access to Information) Act 1985 and Schedule 12A of the Local Government Act 1972.

Part 11

Generally

After applying the tests set out above, the actions that the Monitoring Officer may then decide upon, following consultation with an Independent Person, are:

- that no further action, for reasons as set out, will be taken in relation to the complaint as is made.
- that the subject member has breached the Code of Conduct for Members' and what action, if any, will be taken as a result of the breach.
- that, on the information provided, a potential breach of the Code of Conduct may have occurred and the matter be referred for investigation.
- that, on the information provided, the subject member may have committed an offence under the Localism Act 2011 and the matter be referred for investigation.

All complaints and reviews will be considered on their merits and according to the facts. The assessment criteria, which are subject to review by the County Council's Standards Committee, will be used as guidance in the consideration and determination of complaints and reviews but the Monitoring Officer or other decision maker, which will be an Assessment Sub-Committee or the full Standards Committee when it is not the Monitoring Officer, are entitled to depart from these criteria when they consider it appropriate to do so. It is recognised that while complaints may relate to the same aspect of the Code they may differ considerably in terms of the facts and how serious they are. There may be huge differences in the relevance and amount of detail regarding the complaint. For these reasons these assessment criteria can only be a guide

Part 12

Assessment Criteria

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 the County Council?
- was the subject member in office at the time of the alleged conduct?
- did the incident complained of happen before the Council adopted the Code of Conduct?
- if proven, would the complaint disclose a breach of the Code of Conduct?

No finding of whether 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.

No finding of whether 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, the alleged conduct does not merit an investigation, having regard to the public interest, but the allegation and any response from the subject member disclose 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. The other action information below needs to be considered in these circumstances.

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, conciliation, training or some other form of local settlement might still be considered.

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 without the need for an investigation
- 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.

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.

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 widespread problem rather than a specific one concerning the members 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 than 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 that council?

Referral for Investigation

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

- the complaint has passed the initial tests
- the subject member has 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 be discount or substantiate the complaint and to determine what action, if any, is appropriate

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 or 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 appropriate sanction, if any.