

APPENDIX B



Guidance and Process Relating to

How to make a

Complaint

about the behaviour of a
local authority Councillor
in South Somerset

If you would like this document translated into other languages or into Braille, large print, audio tape or CD, please contact:

 01935 462462

Dokument ten jest na życzenie udostępniany w językowych polskim.

Este documento encontra-se disponível em Português, a pedido.

CODE OF CONDUCT FOR COUNCILLORS: INFORMATION AND GUIDANCE FOR POTENTIAL COMPLAINANTS

The complaints regime

The responsibility for considering written complaints against elected or co-opted councillors of South Somerset District Council and the town and parish councils within our area for breach of a Code of Conduct still sits with this Council's Standards Committee.

The complaints process are overseen by the Standards Committee who together with the Council's Monitoring Officer and appointed Independent Persons help maintain and promote high ethical standards and deal with complaints about members. The Monitoring Officer can refer any complaint to the Standards Committee where he considers it appropriate in all the circumstances.

Is this a complaint that can be dealt with?

The points listed below will help you decide whether this is something that can be dealt with by the Monitoring Officer and/or Standards Committee. You should speak to the Monitoring Officer if you are not clear if either can consider your complaint.

Please note that trivial, frivolous, vexatious and politically motivated tit-for-tat complaints are likely to be rejected.

The Monitoring Officer or the Standards Committee (as appropriate) will make the decision about what action, if any, to take on your complaint.

- Your complaint must be about conduct that occurred while the councillor(s) complained about were in office. Conduct of an individual before they were elected, co-opted or appointed to the authority, or after they have resigned or otherwise ceased to be a councillor, cannot be considered.
- Your complaint must be about one or more named councillors of the authorities listed on the attached Schedule A.

- Your complaint must be that the councillor(s) has, or may have, breached their Council's Code of Conduct.
- The alleged breach must have occurred when the councillor was acting in their "official capacity" – they must be clearly acting as a representative of the council when the alleged breach occurred. A Councillor is entitled to private life and what a councillor does in their private life is not a matter for the Code of Conduct and not something which can be dealt with under this process.
- **Complaints by one member against another member of the same council, or by the clerk against a member of their council, will not normally be progressed unless accompanied by evidence which demonstrates that other processes (e.g. informal mediation or political group processes) have been attempted and exhausted."**
- Complaints about dissatisfaction with a decision or action of the council or one of its committees, a service provided by any council or its procedures or decision making do not fall within the jurisdiction of the Standards Committee. Complaints about the actions of people employed by the council e.g. the Clerk of a local council, also do not fall within the jurisdiction of the Standards Committee.
- **Your complaint must be in writing.** If a disability prevents you from making your complaint in writing then please let us know and we will provide you with appropriate assistance.

It is important to note that only a very small percentage of complaints that fall within the jurisdiction of the Standards Committee will be referred for investigation. The Monitoring Officer or the Standards Committee (as appropriate) must decide when this is appropriate. The Monitoring Officer will endeavour to resolve or deal with most complaints without the need for a formal investigation. The factors to be taken into account in reaching a decision about the appropriate action to be taken in relation to a complaint are:-

- Whether a substantially similar allegation has previously been made by you to the Standards Committee, or the complaint has been the subject of an investigation by another regulatory authority;
- Whether the complaint is about something that happened so long ago that those involved are unlikely to remember it clearly enough to provide credible evidence, or where the lapse of time means there would be little benefit or point in taking action now;
- Whether the allegation is anonymous;
- Whether the breach is technical and relatively minor in nature;
- Whether the allegation discloses a potential breach of the Code of Conduct, but the complaint is not serious enough to merit any action and:-
 - (i) the resources needed to investigate and determine the complaint are wholly disproportionate to the allegations;
 - (ii) whether, in all the circumstances, there is no overriding public benefit in carrying out an investigation;

- Whether the complaint appears to be malicious, vexatious, politically motivated or tit-for-tat;
- Whether the complaint suggests that there is a wider problem throughout the authority;
- Whether it is apparent that the councillor complained about is relatively inexperienced, or has admitted making an error and the matter would not warrant a more serious sanction;
- Whether a simple apology, training or conciliation would be the appropriate response;
- Whether a reasonable offer of local resolution is offered by the councillor the subject matter of the complaint but is rejected by you.

What happens once you submit your complaint?

Preliminary Stage - When you submit your complaint we will write to you to let you know we have received it, usually within 10 working days. The Monitoring Officer will then consider whether the complaint falls within the scope of this process, at what Level and that there is some evidence which would suggest there may have been a material breach of the code.

Level 1 Complaint - Complaints which are about procedural issues or unhappiness with decisions and are not code related or which do not contain any evidence of any breach of the code or are technical minor breaches will be determined at this stage by the Monitoring Officer without further inquiry and the complainant advised accordingly within 20 working days or as soon as possible thereafter. **The decisions which could be reached by the Monitoring Officer are (i) Not Code (ii) No Further Action – Potential Technical or Minor Breach But Not Proven.** For these complaints the Monitoring Officer will not automatically notify the councillor about the complaint although should the member become aware of the complaint and wish to know what has been alleged and the identity of the complainant, then this information will be provided to them. If the Monitoring Officer receives numerous complaints about a member all of which could be classed as minor or technical then the Monitoring Officer can decide to treat any complaint as a Level 2 Complaint.

Level 2 Complaint - If the complaint doesn't fall within Level 1 then we will notify the councillor to whom the complaint relates, provide details of the complaint and invite them to make representations. These should be received by the Monitoring Officer usually within 20 working days of receiving the notification but additional time can be allowed for this stage by the Monitoring Officer. If appropriate, the Monitoring Officer may also contact the clerk of the Town or Parish Council.

You and such other persons as the Monitoring Officer feels appropriate may be required to provide additional information in order that they can complete this assessment. On the completion of this initial assessment the Monitoring Officer will contact you to advise you whether your complaint relates to a

breach of the code of conduct and what action is proposed, if any. Before making that decision, the Monitoring Officer will discuss your complaint with our “Independent Persons”. These are individuals who are not councillors and who South Somerset District Council is required by law to appoint to assist it in dealing with complaints against councillors. **The decisions which could be reached by the Monitoring Officer are (i) No Further Action – No Breach (ii) No Further Action – Potential Breach - Not Proven (iii) Other Action – Potential Breach - Not Proven but Action Recommended (e.g. advice and guidance to be given) and (iv) Potential Breach – Refer for Investigation.**

Investigation Stage - If the Monitoring Officer or Standards Committee considers that the complaint is both very serious in terms of the potential breach of the code and an investigation is warranted in the public interest to establish the facts and the extent of any alleged breach, the Monitoring Officer or someone acting on their behalf will undertake this investigation. **Only very exceptionally will a complaint result in an investigation.**

The Monitoring Officer will let all those involved know that this is the case and the process that will be followed. If an allegation relates to disclosable pecuniary interests then these are matters for the Police and will be referred to them to deal with. Irrespective of the outcome of any Police investigation, these are not matters which will be investigated by this Council although the Council will consider whether advice, guidance or training should be offered to the councillor. At the end of an investigation, the Monitoring Officer will issue a draft report and invite comments which must be received within 10 working days. The Monitoring Officer will send a copy of the final investigation report to you, the Standards Committee, the councillor complained about, the Independent Person and the Clerk to the Town/Parish Council (where relevant). If a hearing is required and reaches a finding that there has been a failure to comply with the Code then there is a very limited range of sanctions that can be imposed.

Outcome 1 - If an investigation reveals no failure to comply with the code or a minor/technical breach may have occurred or identifies a training requirement as opposed to any sanction as being the appropriate response then the Monitoring Officer, after consulting with the Independent Persons is authorised to issue guidance to either party, close the matter and issue his report to the complainant and the councillor complained about. The Monitoring Officer has the discretion to refer the matter to the Standards Committee before exercising that power if he considers it appropriate.

Outcome 2 - If the investigation reveals a more significant failure to comply with the code (which is not minor or technical in nature or where a need for training is not really the issue) then the Monitoring Officer in consultation with the Independent Person is authorised to seek a local resolution of the complaint providing all parties agree (acting reasonably). In the unlikely case that a local resolution is not appropriate or not agreed by the parties then the outcome of the investigation will either (i) be reported to a **Hearings Panel** for a local hearing (Note: the Hearings Panel will consist of three elected members from the Standards Committee who determine whether there has been a breach of the Code of Conduct and if so what sanction, if any, should be imposed) or (ii) form the basis of an **Investigation Outcome Report** which will be both published and issued to all parties and set out the nature of the

complaint, the outcome of any investigation, the local resolution suggested by the Monitoring Officer and the response from the parties to this. The decision whether to proceed with either option (i) or (ii) above rests with the Monitoring Officer who will consult with the Independent Persons before deciding and will have regard to the relative costs involved and which option best serves the public interest.

Hearing Stage - If a hearing is required it will be held in public and will be conducted on a relatively informal basis however both parties will be able to make representations and call witnesses. At the end of the Hearing, the Hearings Panel, after consulting with the Independent Person will decide whether, on the balance of probabilities there has been a failure to comply with the Code of Conduct and what "sanction" or "sanctions" should be imposed.

There is no right of appeal against the decisions of the Monitoring Officer, Standards Committee or Hearings Panel, however if you are unhappy with the outcome then you are still entitled to complain to the Local Government Ombudsman or challenge any decision through the Courts by way of Judicial Review.

The procedure the Council has adopted is designed to be proportionate, timely, cost effective and fair to both sides. Its overriding objectives are to seek to provide pragmatic local solutions to local problems unless that proves to be impossible and also to avoid costly and time consuming investigations except for the very most serious of cases where an investigation is very clearly in the public interest.

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. If a complaint does not contain sufficient information then it will be dealt with accordingly.

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. Although you are not required to prove your complaint at this stage of proceedings, you do have to demonstrate to the Monitoring Officer or Standards Committee that you have reasonable grounds for believing that the councillor(s) complained about has breached the Code of Conduct.

I am the complainant but I don't want my identity revealed

If you ask for your identity to be withheld, this request will be considered by the Monitoring Officer at the initial assessment stage.

As a matter of fairness and natural justice, the councillor you complained about should usually be told who has complained about them and receive details of the complaint. However, in very exceptional circumstances, the Monitoring Officer may withhold your identity if on request from you, or otherwise, they are satisfied that you have reasonable grounds for believing that you or any witness relevant to the complaint may be at risk of physical harm, or employment may be jeopardised if your or their identity is disclosed, or where there are medical risks (supported by medical evidence) associated with their or your identity being disclosed.

If the Monitoring Officer decides to refuse your request for confidentiality, they will offer you the option to withdraw the complaint, rather than proceed with your identity being disclosed. However the Monitoring Officer will balance whether the public interest in taking action on a complaint will outweigh your wish to have your identity withheld and in very exceptional cases further action may be taken in relation to your complaint even where you have asked that it be withdrawn. We will contact you to discuss the matter beforehand to explain our position.

What you should do if you wish to submit a written complaint

- Get a copy of the code of conduct for the relevant council to see whether the behaviour you wish to complain about is covered by their code. **If it is not covered by the relevant code then we will not be able to deal with it.** Copies of all codes are available on our website.
- Talk to / raise the matter with the Council's Monitoring Officer for general advice before submitting a formal complaint.
- Fully complete the attached complaints form (or ensure your letter of complaint addresses, in full, all of the issues covered in the complaint form).
- Submit the written complaint by post, e-mail or fax to the address set out below, **as soon as possible after the date of the alleged breach.**

Address for submission of a written complaint

Angela Watson, & Monitoring Officer
South Somerset District Council
The Council Offices
Yeovil
Somerset.
BA20 2HT

Tel: 01935 462462

Email: angela.watson@southsomerset.gov.uk

Schedule A

List of Authorities subject to South Somerset District Council's Standards Committee's Jurisdiction

South Somerset District Council
Abbas & Templecombe
Aller
Ash
Ashill
Ansford
Babcary
Barrington
Barton St. David
Barwick
Bayford & Stoke Trister
Beercrocombe
Brewham
Broadway
Bruton
Brympton
Buckland St. Mary
Cary Moor (Grouped - Alford, Lovington, North and South Barrow)
Castle Cary
Chaffcombe
Chard
Charlton Musgrove
Charlton Mackrell
Charlton Horethorne
Chilthorne Domer
Chiselborough
Combe St. Nicholas
Compton Dundon
Corton Denham
Crewkerne
Cudworth
Curry Rivel
Curry Mallett
Donyatt
Dowlish Wake
Drayton
East Chinnock
East Coker
Fivehead
Hambridge & Westport
Hardington Mandeville
Haselbury Plucknett
Henstridge
High Ham
Hinton St. George
Horsington
Horton
Huish Episcopi
Ilchester

Iminster
Ilton
Isle Abbotts
Keinton Mandeville
Kingsbury Episcopi
Kingsdon
Langport
Long Sutton
Long Load
Lopen
Marston
Magna
Martock
Merriott
Milborne Port
Misterton
Montacute
Mudford
North Cadbury (Grouped - North Cadbury and
Yarlington) North Perrott
North Vale (Grouped - North Cheriton, Maperton and
Holton) Norton-Sub-Hamdon
Odcombe
Pen
Selwood
Pitcombe
Pitney
Queen Camel
Rimpton
Seavington (Grouped Parish of Seavington St. Mary & Seavington St.
Michael) Shepton Beauchamp
Shepton Montague
Somerton
South Cadbury
South
Petherton
Sparkford
Stocklinch
Stoke-Sub-Hamdon
Tatworth & Forton
Tintinhull
Wayford
West Camel
West Chinnock
West Coker
West Crewkerne
Wincanton
Whitestaunton
Winsham
Yeovil Without
Yeovil Town
Yeovilton

Behaviour covered by the Code of Conduct

You can complain about a councillor breaking any part of their council's Code of Conduct. Each council is entitled to adopt their own code so there is no standard code of conduct that applies to all local authorities. This means you need to have seen the code of conduct that applies to the councillor about whom you wish to complain and that the behaviour you wish to complain about is covered by that code. **The Monitoring Officer/Standards Committee cannot consider any complaints that fall outside of the relevant code of conduct. As mentioned previously, they cannot consider complaints about employees or any behaviour where the councillor is not acting in their official capacity as a councillor. What they do in their private lives are not matters for the code and this complaints process.**

The code that relates to councillors of South Somerset District Council covers the following areas:-

- unlawfully discriminating against someone
- failing to treat people with respect
- bullying any person
- intimidating any person involved in any investigation or proceedings about someone's misconduct
- doing something to prevent those who work for the authority from being unbiased
- revealing information that was given to them in confidence, or stopping someone getting information they are entitled to by law
- damaging the reputation of their office or authority, where the conduct is linked to their public role and not in their private capacity
- using their position improperly, to their own or someone else's advantage or disadvantage
- misusing their authority's resources
- allowing their authority's resources to be misused for the activities of a registered political party
- failing to register financial or other interests
- failing to reveal a personal interest at a meeting
- taking part in the discussion or making a decision where they have a "disclosable pecuniary interest" or an interest that is so significant that it is likely to affect their judgement (known as a 'prejudicial interest')

- improperly influencing a decision about a matter in which they have a “disclosable pecuniary interest” or prejudicial interest
- Failing to register any gifts or hospitality (including its source) that they have received in their role as a member worth over £25.

Any breaches in relation to the requirements around “disclosable pecuniary interests” are matters for the Police as a criminal offence may have been committed. We suggest you speak to the Council’s Monitoring Officer first as he should be able to advise you whether or not it is a matter for the Police. In any event they are not matters where the Council will carry out an investigation.

Although we have encouraged the Town & Parish Councils to adopt similar provisions they are not required to do so. Accordingly their code may look quite different so you do need to see a copy. The Clerk to the relevant Town or Parish Council should be able to provide you with a copy of their code. The code of conduct adopted by South Somerset District Council is on our website www.southsomerset.gov.uk

Sanctions available to Standards Committees

The **only** sanctions available to the Standards Committee are as set out below. These sanctions can only be imposed after a formal investigation and hearing. In relation to the councillors of Town & Parish Councils in our area, it is important to appreciate that we can only recommend the imposition of a particular sanction to those councils; we **do not** have the power to enforce or require compliance.

- Report its findings to Council or Town/Parish Council for information;
- Recommending to the member’s Group Leader that he/she be removed from any or all Committees or Sub-Committees of the Council (other than the relevant Area Committee) ;
- Recommending to the Leader of the Council that the member be removed from the District Executive Committee, or removed from particular Portfolio responsibilities;
- Instructing the Monitoring Officer to arrange training for the member;
- Removing from all outside appointments to which he/she has been appointed or nominated by the authority;
- Withdrawing facilities provided to the member by the Council, such as a computer, website and/or email and Internet access;
- Restricting contact to named officers or requiring contact be through named officers; or
- Excluding 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.