

Arrangements for dealing with complaints against Councillors

Mission Statement: "To promote and maintain high standards of conduct and governance within the Council and the Parish and Town Councils within the District."

Adopted by Burton Green Parish Council on 15th October 2015

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1 Context

These arrangements are required under the Localism Act 2011. They set out how a complaint about an elected or co-opted member of Burton Green Parish Council will be considered and determined.

Under the Localism Act, Warwick District Council has appointed two Independent Persons. The Independent Persons, having no other direct link with the Councils within the District, are appointed to provide a clear impartial view of any matter being considered. The view of one of these Independent Persons will be sought by the District Council before any decision is taken at each stage of the process. The other of the two Independent Persons will be available for consultation by the Councillor(s) about whom a complaint has been made.

The responsibility for determination of complaints is a matter for Full Council. They have delegated the responsibility to the Monitoring Officer and Standards Committee. Normally, a complaint will be resolved by the Monitoring Officer or a Hearing Panel of the Standards Committee. This does not exclude the possibility, in exceptional circumstances, for either the Standards Committee or the Council to determine a case.

2 The Code of Conduct

Burton Green Parish Council has adopted a Code of Conduct for Councillors, which is attached as Appendix One to these arrangements. The Code of Conduct is displayed on the Council's website and can also be requested from the Clerk.

Councillors of the authorities are bound by the Code of Conduct for that Council and must abide by its requirements, even if they have not specifically signed up to it.

3 Making a complaint

A complaint may be made by completing the complaint form, which is available as Appendix 2 to this procedure, as a download from Warwick District Council's website or on request from Warwick District Council's Monitoring Officer.

The form can be sent either;

By email to: monitoringofficer@warwickdc.gov.uk; or

By post to: The Monitoring Officer, WDC, Riverside House, Royal Leamington Spa CV32 5HZ

The Monitoring Officer is a senior officer of Warwick District Council who has the statutory responsibility for maintaining the register of Councillors' interests and who is responsible for administering the system in respect of complaints of Councillor misconduct.

The complainant should provide their name and a contact address or email address, so that the receipt of the complaint can be acknowledged and the complainant informed of its progress.

In the interests of fairness and natural justice, this Council believes Councillors who are complained about have a right to know who has made the complaint. We also believe they have a right to be provided with a summary of the complaint. A complainant's address and contact details will not be released without prior discussion with, and approval by the complainant. If the complainant has serious concerns about the release of their name and a summary, or details of the complaint, to other people they must complete the relevant section of the complaint form.

The Monitoring Officer is unlikely to withhold identity or the details of a complaint unless the complainant provides good reason to indicate that:

- they will be at risk of physical harm or intimidation if their identity is disclosed;
- they are an officer who works closely with the Councillor concerned and they will suffer a disadvantage to their employment or may lose their job if their identity is disclosed (officers should consult the Council's whistle-blowing procedure); or
- they suffer from a serious health condition leading to medical risks associated with their identity being disclosed.

Please note that requests for confidentiality or requests for suppression of complaint details will not automatically be granted. The Monitoring Officer, in consultation with the Independent Person advising Warwick District Council, will consider the request alongside the substance of the complaint. The Monitoring Officer will then tell the complainant of the decision.

If the request for confidentiality is not to be granted the complainant will be allowed the option of withdrawing their complaint. It is important to understand that in certain exceptional circumstances where the matter complained about is very serious, the Monitoring Officer can proceed with an investigation or other action and disclose the complainant's name even if they have expressly asked us not to.

The Monitoring Officer will acknowledge receipt of the complaint within 5 working days of receiving it, and will keep all parties informed of the progress of the complaint.

The Monitoring Officer will inform the following people that a complaint has been made together with the complainant's name and a summary of the complaint:

- the Councillor(s) who the complaint is about; and
- the Parish or Town Clerk (if applicable)

Warwick District Council would normally expect, unless there are exceptional circumstances, a complaint to be made within 3 months of the potential failure of the Code of Conduct occurring. Where a complaint is received outside this time limit the Monitoring Officer will consult with both the Chairman of the Standards Committee and one of the Independent Persons as to whether the complaint should progress.

It should also be noted that if a complainant seeks to withdraw the complaint at any stage, Warwick District Council reserves the right to continue with the

determination of a complaint if the Monitoring Officer considers that it is in the public interest to do so.

4 Procedure once a complaint has been made

There are three different types of complaint:

- (a) from a Member of the public, or an elected member of another authority about a Councillor;
- (b) from an employee of the Council about a Councillor; and
- (c) from a Councillor about a fellow Councillor of the same authority.

In the case of a complaint by an employee about a Councillor, the Monitoring Officer will, before taking any further steps, expect there to have been a meeting between the Chief Executive, the Councillor and their Group Leader to discuss the complaint to try and resolve it informally.

In the case of a complaint by a Councillor about a fellow Councillor the Monitoring Officer will, before taking any further steps, expect there to have been a meeting between the two Councillors and their relevant Group Leader(s) to discuss the complaint to try and resolve it informally.

If in these two cases a meeting has not taken place the Monitoring Officer will expect an explanation as to why this has not occurred. If a meeting has taken place, it will not exclude the Monitoring Officer also trying this approach as a local resolution.

After any such meetings the Monitoring Officer will review every complaint received and, in consultation with one of the Independent Persons, will consider the following options:

- No further action where complaints fall outside the Code or do not justify investigation and there is no informal resolution;
- The complaint resolved by informal action is acceptable to both the complainant and the Councillor;
- Any allegations of criminal matters are referred to the Police;
- The complaint is referred for investigation if the criteria listed below are met.

The Monitoring Officer will always seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the Councillor accepting that their conduct was unacceptable and offering an apology, mediation between the parties through one of the Independent Persons, or any other remedial action that is considered appropriate.

Where the Councillor concerned, or the Council, makes a reasonable offer of local resolution, 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.

A complaint will only be referred for investigation if the following criteria are met;

- it is serious enough, if proven, to justify the costs of an investigation; **or**
- it is part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the Council and there is no other avenue left to deal with it; **and in either of these cases**
- the conduct complained of occurred within 3 months of the date the complaint was received, unless there are exceptional circumstances.

The Monitoring Officer will not normally refer a complaint for investigation where it falls within one or more of the following categories

- it is believed it to be malicious, relatively minor, or “tit-for-tat”;
- it is the same as, or is substantially similar to, a complaint that has already been the subject of an investigation or inquiry and there is nothing further to be gained by any investigation;
- it concerns acts carried out in the Councillor’s private life, when they are not carrying out the work of their Council or have not misused their position as a Councillor;
- it appears that the complaint is really about dissatisfaction with a Council decision; or
- there is not enough information available to justify a decision to refer the matter for investigation.

This decision will normally be taken within 14 days of receipt of the complaint. When the Monitoring Officer has taken a decision, they will inform the complainant of this and the reasons for that decision.

Where the Monitoring Officer requires additional information in order to come to a decision, they may request information from the complainant, Councillor(s) against whom the complaint is directed, or inspect publicly available information.

If the complaint identifies criminal conduct or breach of other regulation(s) by any person, the Monitoring Officer has the power to call in the Police and other regulatory agencies. Where a breach may relate to the work of a Councillor when acting at more than one authority, the Monitoring Officer would liaise with appropriate officers at the relevant authorities.

5 The conduct of the investigation

If the Monitoring Officer decides that a complaint merits formal investigation, they will appoint an Investigating Officer.

The Investigating Officer will be another senior officer of Warwick District Council, an officer of another authority or an external investigator. The Investigating Officer will meet with the complainant to understand the nature of the complaint so that they can explain their understanding of events and suggest what documents the Investigating Officer needs to see, and who the Investigating Officer needs to interview.

The Investigating Officer will normally write to the Councillor against whom the complaint is made and provide them with a copy of the complaint, and ask the

Councillor to provide their explanation of events, and to identify what documents they need to see and who they need to interview.

In exceptional cases, where it is appropriate to keep the complainant's identity confidential or where the disclosure of details of the complaint to the Councillor might prejudice the investigation, the Monitoring Officer can redact appropriate information from the papers given to the Councillor, or delay notifying the Councillor until the investigation has progressed sufficiently.

The intention will be that any investigation should be concluded within 40 working days of appointment of the Investigating Officer.

At the end of their investigation, the Investigating Officer will produce a draft report and will send copies of that report, in confidence, to the complainant, the Councillor concerned, and the Monitoring Officer. This is to check factual accuracies and all parties will be given no more than two weeks to respond.

The final report will then be passed to the Monitoring Officer for consideration.

The procedure for undertaking investigations of misconduct complaints is attached as Appendix Two to these arrangements.

6 What happens at the conclusion of the investigation?

Within 10 working days of receiving the final report the Monitoring Officer, after consultation with the Independent Person advising Warwick District Council, will determine what happens next, given that there are two possibilities:

- 6(a) the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct.

If the Monitoring Officer is satisfied, after consultation with the Independent Person, that the Investigating Officer's report is sufficient, the Monitoring Officer will write to the complainant and to the Councillor concerned and explain that no further action is required.

If the Monitoring Officer, after consultation with the Independent Person, is not satisfied that the investigation has been conducted properly, he will ask the Investigating Officer to reconsider their report.

- 6(b) 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, in consultation with the Independent Person, and will then either seek local resolution or pass it to a Hearing Panel for determination.

If the Monitoring Officer, after consultation with the Independent Person, is not satisfied that the investigation has been conducted properly, he will ask the Investigating Officer to reconsider their report.

6.1 Local Resolution

In such a case, the Monitoring Officer, following consultation with the Independent Person, will contact the complainant with a proposed fair resolution which also helps to ensure higher standards of conduct for the future.

Such resolution may include the Councillor accepting that their conduct was unacceptable and offering an apology, and/or other remedial action by the Council, and will be required to be completed within a set time period.

If the Councillor complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee and the Parish/Town Council for information, but will take no further action.

If a complainant is not agreeable to the proposed local resolution, but the Councillor is willing to accept this, the complaint will not be allowed to progress to a Hearing Panel.

If the Councillor refuses to comply with the suggested resolution the Monitoring Officer will refer the matter for a hearing by the Hearing Panel.

The Monitoring Officer's report to the Hearing Panel will include the details of the attempted local resolution and why this was not successful.

6.2 Hearing Panel

The Hearing Panel is a Sub-Committee of Warwick District Council's Standards Committee.

A Hearing Panel will be arranged when the Monitoring Officer, after consultation with one of the Independent Person, considers that:

- local resolution is not appropriate, or
- the Councillor concerned is not prepared to undertake any proposed remedial action.

The Panel will comprise of 5 members of the Standards Committee. It will consist of Councillors drawn from at least 2 different political parties. For complaints against District Councillors there will be at least one Parish/Town Councillor on the Panel and for complaints against Town/Parish Councillors there will be at least one District Councillor on the Panel. Subject to those requirements, The Hearing Panel is appointed by the Monitoring Officer in Consultation with the Chairman of the Standards Committee.

Warwick District Council has agreed a procedure for local hearings, which is attached as Appendix 3 to these arrangements.

The Monitoring Officer will conduct a Pre-hearing, requiring the Councillor to give their response to the Investigating Officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing. The Chairman, or Vice Chairman, of the Standards Committee will attend, as normally they will be the Chairman of the

Hearing Panel. This is to issue directions as to the manner in which the Hearing Panel meeting will be conducted.

Following the Pre Hearing, all parties relevant to the complaint will be written to and informed of the outcome of that meeting and the process for the Hearing. This will also be set out within the agenda to the Hearing.

If the Councillor who the investigation is about does not engage in this process this will be considered as a breach of the Code of Conduct in itself, and reported directly to the Hearing Panel for them to determine and issue sanctions for.

The Monitoring Officer will present the Investigating Officer's report to the Hearing Panel which will conduct a hearing before deciding whether the Councillor has failed to comply with the Code of Conduct and, if so, what action to take in respect of the Councillor.

(It should be noted that the Standards Committee and Hearing Panels operate under delegated authority from Full Council. Therefore, if it was minded to do so, either the Standards Committee or Full Council could undertake the Hearing into the Councillors behaviour. It is accepted that this would only occur in exceptional circumstances following discussion between the Monitoring Officer, Independent Person, Chairman of Standards Committee and, if the matter is to go to Council, the Chairman of the Council)

7 Action the Hearing Panel can take where a Councillor has failed to comply with the Code of Conduct

There are no lawful powers to suspend or disqualify the Councillor or to withdraw a Councillor's basic or special responsibility allowances.

The Hearing Panel may issue or recommend any sanctions or combination of sanctions that are relevant and proportionate to the matter. These might include any or all of the sanctions listed below. The lists are not meant to be exhaustive.

Any sanctions must include a time period for compliance by the Councillor and stipulate what would occur if the Councillor fails to comply within that time period.

For Warwick District Councillors, the range of appropriate sanctions might include any or all of the following:

- 7.1 Recommend to Council a vote of formal censure from the Council to confirm that the actions of the Councillor were unacceptable;
- 7.2 A requirement for the Councillor to apologise to the complainant(s) either in writing or in person. The apology must include an explanation for their action. The wording must have been approved in writing by the Chairman of the Standards Committee;
- 7.3 A recommendation to the Councillor's Group Leader (or in the case of ungrouped members and Group Leaders, a recommendation directly to Warwick District Council or to Committees) that they be removed from any or all Committees or Sub-Committees of Warwick District Council;
- 7.4 A recommendation to the Leader of Warwick District Council that the Councillor be removed from the Executive, or removed from particular Portfolio responsibilities, or if it is the Leader of the Executive, make this recommendation to Warwick District Council;
- 7.5 Training for the Councillor, arranged by the Monitoring Officer for which the Councillor will be required to pay half the cost subject to a maximum of one month Member's Allowance payment;
- 7.6 A recommendation to the Monitoring Officer (in consultation with Group Leaders) that the Councillor be removed from all outside appointments and working parties to which they have been appointed/nominated by Warwick District Council;
- 7.7 The withdrawal of facilities provided to the Councillor by Warwick District Council, such as a computer, car parking pass, iPad and Warwick District Council email account access;
- 7.8 The exclusion of the Councillor from Warwick District Council's offices or other premises, with the exception of meeting rooms as necessary for attending Warwick District Council, and Committee and Sub-Committee meetings, of which they are a member; or
- 7.9 A requirement for the Councillor to apologise to Warwick District Council (or the relevant Executive, Committee or Sub-Committee), in a meeting of that body. The apology must include an explanation for their action. The wording must have been approved in writing by the Chairman of the Standards Committee.

Parish and Town Councils

When the case relates to the conduct of a Parish/Town Councillor, the Hearing Panel will determine if a breach has occurred and recommend appropriate and proportionate sanctions for that Parish/Town Council to approve.

For Parish/Town Councillors the range of possible appropriate sanctions that could be recommended to the Parish/Town Council include:

- 7.10 A vote of formal censure from the Parish/Town Council to confirm that the actions of the Councillor were unacceptable;
- 7.11 A requirement for the Councillor to apologise to the complainant(s). The apology must include an explanation for their action. The wording must have been approved in writing by the Chairman of the Standards Committee;
- 7.12 A recommendation to the Councillor's Group Leader (or in the case of ungrouped members and Group Leaders, a recommendation directly to the Parish/Town Council or to Committees) that they be removed from any or all Committees or Sub-Committees of the Council;
- 7.13 Training for the Councillor, to be arranged by the Parish/Town Council and for which the Councillor should be required to pay half the cost subject to a maximum of £100;
- 7.14 A recommendation to the Council that the Councillor be removed from all outside appointments and working parties to which they have been appointed/nominated by the Parish/Town Council;
- 7.15 The withdrawal of facilities provided to the Councillor by the Parish/Town Council, such as a computer and email access;
- 7.16 The exclusion of the Councillor from the Parish/Town Council's offices or other premises, with the exception of meeting rooms as necessary for attending the Parish/Town Council, and Committee and Sub-Committee meetings, of which they are a member; or
- 7.17 A requirement for the Councillor to apologise to the Parish/Town Council (or the relevant Committee or Sub-Committee), in a meeting of that body. The apology must include an explanation for their action. The wording must have been approved in writing by Chairman of the Standards Committee.

8 What happens after the Hearing Panel

As soon as reasonably practicable after the Hearing, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Hearing Panel, and send a copy to:

- the complainant;
- the Councillor the complaint was about;
- the Investigating Officer;
- any witnesses consulted as part of the investigation;
- if they have one, the Group Leader of the Councillor the complaint was about;
- the members of the Standards Committee;
- the Independent Persons;
- if appropriate, the relevant Parish/Town Council;
- the proper officer of any other authority the Councillor is a member of; and
- ensure that a copy is reported to Full Council.

The Monitoring Officer will make the decision notice available for public inspection and will report the minutes to the next convenient meeting of the Standards Committee and Warwick District Council.

Where a breach of the Code is found, a copy of the decision notice will be published; in a local newspaper; on Warwick District Council's website and such other publications the Panel considers are appropriate.

9 Appeals

There is no right of appeal for either the complainant or for the Councillor against a decision of the Monitoring Officer or of the Hearing Panel.

If a complainant feels that Warwick District Council has failed to deal with their complaint properly, they may make a complaint to the Local Government Ombudsman.

10 The Independent Persons

The Independent Persons are those who have applied for the post following advertisement of a vacancy and are then appointed by a positive vote from a majority of all the members of Warwick District Council.

They are invited to all meetings of the Standards Committee and expected to take part in the deliberations of the Committee but are not voting members of that Committee.

Before deciding on whether a complaint will be investigated, the Monitoring Officer will consult with one of the Independent Persons who will be involved at each subsequent stage of the proceedings.

If it is decided to appoint a Hearing Panel, the Independent Person will be invited to attend all its meetings. Their views will be sought and taken into consideration before the Hearing Panel takes any decision on whether the Councillor's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct. They do not, however, form part of the Panel, and will not be present when the Panel determines the case in private session and will not have a vote on the determination of the case

It should be noted that the other Independent Person may also attend a Hearing Panel to act in a supportive role for the Councillor who the complaint is about.

The following disqualifications prevent a person from being an Independent Person (either at the time of appointment or during their time in the role):

- (1) employment by, or Membership (including co-opted) of, Warwick District Council in the last five years or an independent member of Warwick District Council's Standards Committee within the last five years;
- (2) any bankrupt or person who has made a composition or arrangement with creditors which is extant;

- (3) having, within five years of the appointment, a conviction for an offence resulting in a sentence of imprisonment (whether or not suspended) for a period of not less than three months without the option of a fine;
- (4) a disqualification for being elected or being a member of an authority under the Representation of the People Act 1983 (corrupt electoral practices);
- (5) being an officer of another local authority;
- (6) is or has been within the past 5 years, a member, co-opted member or Officer of a Parish/Town Council within Warwick District Council's area; or
- (7) being a relative of a Member or Officer of Warwick District Council or Parish/Town Council within Warwick District

For this purpose, "relative" means –

Spouse or civil partner;

Living with the other person as husband and wife or as if they were civil partners;

Grandparent of the other person;

A lineal descendent of a grandparent of the other person;

A parent, sibling or child of a person within paragraphs (1) or (6);

A spouse or civil partner of a person within paragraphs (1) or (6); or

Living with a person within paragraphs (1) or (6) as husband and wife or as if they were civil partners.

11 Policy for Handling 'Unreasonable complainant behaviour' and 'Unreasonably persistent complainants'

Generally, dealing with a complaint is a straightforward process but in a minority of cases people pursue their complaints in a way which can either impede the investigation or can have significant resource issues for authorities. These actions can occur either while the complaint is being investigated, or once an authority has concluded the complaint investigation.

For this reason the Council uses the terms 'unreasonable complainant behaviour' and 'unreasonably persistent complainants'. The definition for these is set out below:

"Unreasonable and unreasonably persistent complainants are those complainants who, because of the frequency or nature of their contacts with an authority, hinder the authority's consideration of their, or other people's, complaints."

The Council has an established practice on this and it is set out at Appendix 4 to this document.

12 Revision of these arrangements

The Standards Committee may, by resolution, agree to amend these arrangements.

The Council has delegated to the Monitoring Officer, in consultation with the Chairman of the Standards Committee and/or the Independent Person (as appropriate) 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.