

1 March 2024

<b>Committee</b>	Standards Committee
<b>Date</b>	Monday, 11 March 2024
<b>Time of Meeting</b>	2:00 pm
<b>Venue</b>	Tewkesbury Borough Council Offices, Severn Room

## **ALL MEMBERS OF THE COMMITTEE ARE REQUESTED TO ATTEND**

### **Agenda**

#### **1. ANNOUNCEMENTS**

When the continuous alarm sounds you must evacuate the building by the nearest available fire exit. Members and visitors should proceed to the visitors' car park at the front of the building and await further instructions (during office hours staff should proceed to their usual assembly point; outside of office hours proceed to the visitors' car park). Please do not re-enter the building unless instructed to do so.

In the event of a fire any person with a disability should be assisted in leaving the building.

#### **2. APOLOGIES FOR ABSENCE**

To receive apologies for absence.

#### **3. DECLARATIONS OF INTEREST**

Pursuant to the adoption by the Council on 24 January 2023 of the Tewkesbury Borough Council Code of Conduct, effective from 1 February 2023, as set out in Minute No. CL.72, Members are invited to declare any interest they may have in the business set out on the Agenda to which the approved Code applies.

	<b>Item</b>	<b>Page(s)</b>
<b>4.</b>	<b>MINUTES</b>	3 - 4
	To approve the Minutes of the meeting held on 16 October 2023.	
<b>5.</b>	<b>CODE OF CONDUCT COMPLAINT GUIDANCE</b>	5 - 16
	To note the agreed procedure for investigating complaints and agree Appendices 1, 2, 3 and 4 of the report for display on the Tewkesbury Borough Council website.	

<b>DATE OF NEXT MEETING</b>	
<b>MONDAY, 8 JULY 2024</b>	
<b>MEMBERSHIP OF COMMITTEE</b>	
Tewkesbury Borough Council Members	Councillor H J Bowman Councillor S R Dove Councillor E J MacTiernan (Chair) Councillor P D McLain Councillor G M Porter (Vice-Chair) Councillor P E Smith Councillor M J Williams
Non-Voting Independent Persons	Martin Jauch Peter Kimber
Non-Voting Parish Representative	Simon Clayson Charles Coats Sue Mitchell

### **Recording of Meetings**

In accordance with the Openness of Local Government Bodies Regulations 2014, please be aware that the proceedings of this meeting may be recorded and this may include recording of persons seated in the public gallery or speaking at the meeting. Please notify the Democratic Services Officer if you have any objections to this practice and the Chair will take reasonable steps to ensure that any request not to be recorded is complied with.

Any recording must take place in such a way as to ensure that the view of Councillors, Officers, the public and press is not obstructed. The use of flash photography and/or additional lighting will not be allowed unless this has been discussed and agreed in advance of the meeting.

## TEWKESBURY BOROUGH COUNCIL

**Minutes of a Meeting of the Standards Committee held at the Council Offices,  
Gloucester Road, Tewkesbury on Monday, 16 October 2023 commencing  
at 2:00 pm**

### **Present:**

Tewkesbury Borough Council  
Members:

Councillor H J Bowman  
Councillor S R Dove  
Councillor E J MacTiernan (Chair)  
Councillor G M Porter (Vice-Chair)  
Councillor P E Smith  
Councillor M J Williams

Non-Voting Independent  
Person(s):

Martin Jauch  
Peter Kimber

### **ST.3 ANNOUNCEMENTS**

3.1 The evacuation procedure, as noted on the Agenda, was taken as read.

### **ST.4 APOLOGIES FOR ABSENCE**

4.1 Apologies for absence were received from Councillor P D McLain.

### **ST.5 DECLARATIONS OF INTEREST**

5.1 The Committee's attention was drawn to the Tewkesbury Borough Code of Conduct which was adopted by the Council on 24 January 2023 and took effect on 1 February 2023.

5.2 There were no declarations of interest made on this occasion.

### **ST.6 MINUTES**

6.1 The Minutes of the meetings held on 21 September 2022 and 17 May 2023, copies of which had been circulated, were approved as a correct record and signed by the Chair.

### **ST.7 PROCEDURE FOR CODE OF CONDUCT COMPLAINTS AND INCREASE TO THE NUMBER OF INDEPENDENT PERSONS AND PARISH COUNCILLORS ON THE STANDARDS COMMITTEE**

7.1 The report of the Monitoring Officer, circulated at Pages No. 6-8, set out a new procedure to deal with Code of Conduct complaints that presented potential breaches of the Members Code of Conduct and recommended increasing the number of independent persons and Parish Councillors on the Standards Committee. The Committee was asked to adopt the procedure for dealing with Code of Conduct complaints as set out at Paragraph 2.1 of the report and to recommend to Council that the number of independent persons on the Standards

Committee be increased from two to three and the number of Parish Councillors on the Standards Committee be increased from one to three.

7.2 The Monitoring Officer explained that the proposed procedure intended to involve members of the Standards Committee, including Parish Councillors, in assessing complaints and having a role at hearings which was where the work tended to be focused. When the Monitoring Officer received a Code of Conduct complaint, it was intended they would share it with the independent persons and consider their view on the complaint. If the complaint was thought to have substance, an Assessment Panel would be convened comprising three Standards Committee members to consider the complaint at a confidential, informal meeting that could be held remotely. In order to ensure sufficient independent involvement, it was recommended that the number of independent persons on the Committee be increased from two to three on a four year term. In addition, the Monitoring Officer explained that it was also proposed to increase the number of Parish Councillors on the Committee from one to three to ensure that a Parish Councillor was able to sit on the Panel and to avoid reliance on a single person to fulfil that role – ideally there would be a spread of Parish Councillors so that any complaints about particular areas could be heard by a Parish Councillor from a different part of the borough. The number of independent persons and Parish Councillors on the Committee required a Council decision but the way in which complaints were dealt with was a matter for the Committee and Monitoring Officer and his view was that it would be beneficial for members of the Committee to have an understanding of complaints and gain the knowledge to be able to speak to others regarding conduct.

7.3 The Chair asked the independent persons for their view on increasing the number of independent persons from two to three and they were both of the opinion it was a good idea given they were long serving members of the Committee and would be looking to stand down from their roles at some point in the future. In response to a query as to when the four year term would start from, the Monitoring Officer indicated that it could be anytime - introducing a four year term was intended to introduce the potential for turnover; however, this did not prevent members from standing again. The Committee on Standards in Public Life promoted the regular review of arrangements so it was a good idea to review the procedure at this point and, if things were not working, they could be changed going forward. A Member indicated that he had been an independent person on an Independent Remuneration Panel for another authority and knew it could be difficult to find enough people for those roles so he asked how it was intended to recruit. In response, the Monitoring Officer advised that he would email all Parish and Town Councils regarding the Parish Councillor positions and interviews would be conducted by himself and the Chair and Vice-Chair of the Committee. An advertisement for independent persons would be placed on the Council's website and in the local newspaper for a period of two weeks following which interviews would be carried out and the appointments would need to be agreed by Council in April.

7.4 It was subsequently

**RESOLVED**

1. That the procedure for dealing with Code of Conduct complaints be **ADOPTED** as set out at Paragraph 2.1 of the report.
2. That it be **RECOMMENDED TO COUNCIL** that:
  - the number of independent persons on the Standards Committee be increased from two to three; and,
  - the number of Parish Councillors on the Standards Committee be increased from one to three.

The meeting closed at 2:15 pm

## TEWKESBURY BOROUGH COUNCIL

<b>Report to:</b>	Standards Committee
<b>Date of Meeting:</b>	11 March 2024
<b>Subject:</b>	Code of Conduct Complaints Guidance
<b>Report of:</b>	Monitoring Officer
<b>Head of Service/Director:</b>	Monitoring Officer
<b>Lead Member:</b>	Lead Member for Corporate Governance
<b>Number of Appendices:</b>	4

<p><b>Executive Summary:</b></p> <p>The report details how Code of Conduct reports will be dealt with from the position of complainant, the Councillor in receipt of the complaint and the Sub-Committee dealing with the complaint. There are also criteria to assess the complaint.</p>
<p><b>Recommendation:</b></p> <p><b>To NOTE the agreed procedure for investigating complaints and AGREE Appendices 1, 2, 3 and 4 for display on the Tewkesbury Borough Council website.</b></p>

<p><b>Financial Implications:</b></p> <p>None arising from this report</p>
<p><b>Legal Implications:</b></p> <p>The Localism Act 2011 requires the Borough Council to have a process to deal with Code of Conduct complaints involving both Borough and Parish Council Members.</p>
<p><b>Environmental and Sustainability Implications:</b></p> <p>There are no issues arising from this report.</p>
<p><b>Resource Implications (including impact on equalities):</b></p> <p>The procedure will be operated in accordance with all Equalities legislation. There is no Equality Impact Assessment.</p>
<p><b>Safeguarding Implications:</b></p> <p>There are no safeguarding issues.</p>
<p><b>Impact on the Customer:</b></p> <p>This procedure offers greater transparency.</p>

## **1.0 INTRODUCTION**

1.1 The report asks the Committee to agree information sheets to go under the Tewkesbury Borough Council information about making a code of Conduct Complaint.

## **2.0 CODE OF CONDUCT COMPLAINTS**

2.1 At its meeting on 16 October 2023, the Standards Committee adopted the following procedure for dealing with Code of Conduct complaints:

1. When the Monitoring Officer receives a Code of Conduct complaint he/she will share that complaint with the independent persons and consider their view on the complaint.
2. If there is thought to be substance to the complaint which may justify the cost to the public purse of a formal investigation, the Monitoring Officer will set up an Assessment Panel of three members of the Standards Committee to consider the complaint at a private, informal meeting that can be held on Teams.
3. The Assessment Panel can:
  - i) decide there is no potential breach of the relevant Code of Conduct;
  - ii) decide there is a potential breach of the relevant Code of Conduct but that it is not in the public interest for the matter to be investigated; or,
  - iii) decide that there is a potential breach of the relevant Code of Conduct and it is in the public interest for it to be formally investigated and for the investigation report to be considered at a Standards Committee Hearings Panel to be held in public.

2.2 In order to offer guidance to those involved in a possible Code of Conduct complaint, it is proposed to publish the following appendices on the Tewkesbury Borough Council website:

- Appendix 1 - guidance for those thinking of making a complaint.
- Appendix 2 - guidance for Councillors in receipt of a complaint.
- Appendix 3 - information about how the complaint will be dealt with.
- Appendix 4 - criteria for assessing a complaint.

## **3.0 CONSULTATION**

3.1 The Standards Committee and Monitoring Officer are charged under the Localism Act 2011 with dealing with Code of Conduct complaints, therefore, no other consultation is required.

## **4.0 ASSOCIATED RISKS**

4.1 The process is more open than previously and therefore potentially open to greater scrutiny.

## **5.0 MONITORING**

5.1 The Standards Committee will report on its work annually to the Council.

**6.0 RELEVANT COUNCIL PLAN PRIORITIES/COUNCIL POLICIES/STRATEGIES**

**6.1** This relates to governance changes.

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**Background Papers:** Standards Committee Report and Minutes - 16 October 2023

**Contact Officer:** Monitoring Officer  
01684 272211 tom.clark@teWKesbury.gov.uk Officer

**Appendices:** Appendix 1 - Information for someone wishing to make a complaint  
Appendix 2 - Information for a Member in receipt of a complaint  
Appendix 3 - The process for dealing with a complaint  
Appendix 4 - The criteria to assess a complaint





**Making a complaint against an Elected Borough or Town/Parish Councillor**

1. If you wish to make a complaint against an elected Councillor on the basis that they have breached the Members' Code of Conduct (and not for any other reason) you should address your complaint in writing to the Borough Council's Monitoring Officer who will discuss your complaint with the independent persons on the Standards Committee.
2. Assuming the written complaint indicates some prospect that the Members' Code of Conduct has been breached, a copy will be sent to the Member who is the subject of the complaint with their written comments requested within 14 days.
3. An Assessment Sub-Committee will be set-up comprising three members of the Standards Committee to include at least one Borough Council Member and one Town/Parish Council Member.
4. That Sub-Committee will consider the complaint and any member response to the complaint and decide whether there is a potential breach of the Members' Code of Conduct and, if so, whether that potential breach requires investigation, taking into account the cost to the public purse. The written material you give with your complaint should be as detailed as possible given it will form the basis of that decision.
5. The Assessment Sub-Committee can either decide:
  - i. to refer your complaint for investigation locally,
  - ii. that the matter should be considered in some other way, or
  - iii. that no action should be taken.
6. You will be advised of the outcome of the Assessment Sub-Committee Hearing.

**Decision to refer the complaint for investigation locally:**

If the matter is investigated, a report will be prepared following a series of interviews by the Investigating Officer. You will normally see the draft report and be given an opportunity to comment on it factually and you will then receive a copy of the final report. This report will be discussed with one of the independent persons on the Standards Committee. The report will then go to a Hearings Sub-Committee, once again comprised of three Members of the Standards Committee. That Sub-Committee must decide whether or not there has been a breach of the Members' Code of Conduct or can decide to adjourn the matter whilst further information is obtained. The Hearings Sub Committee may decide it would like you to attend the hearing to clarify an evidential uncertainty but there is no obligation for you to attend. The Member who is in receipt of the complaint can make a case in their favour and bring witnesses with them.

If the Sub Committee decide there has been a breach of the Code of Conduct it will look at the appropriate sanctions which are now restricted to a public statement of the breach.

**Decision to take no further action:**

In the event that the Assessment Sub-Committee determine to take no further action and you disagree with that decision, you have a right of appeal to a separately constituted Review Sub-Committee comprising three members of the Standards Committee who will consider your original complaint, any response from the member in receipt of the complaint and any further written information you may wish to provide. The Review Sub-Committee will make its own decision on the complaint but there is no further right of appeal (save for a judicial review at the High Court) against the Sub-Committee decision.

### **The Standards Committee Process for a Member who is the subject of a complaint**

1. If anybody complains in writing about an alleged breach of the Members' Code of Conduct by you as an elected Borough or Town/Parish Councillor it will be sent to the Monitoring Officer. On receipt, the Monitoring Officer will consult with the independent persons on the Standards Committee and some complaints will be declined at this point if they do not indicate a realistic breach of the Members' Code of Conduct.
2. Assuming the complaint has potential substance, you will be sent a copy of the complaint and have 14 days to respond in writing if you wish.
3. The complaint and any response will be referred to an Assessment Sub-Committee, drawn from the Council's Standards Committee, which will decide, on the basis of the written documentation submitted by the complainant and the Member in receipt of the complaint, whether the complaint merits investigation.
4. If the Sub-Committee decides there is no breach requiring investigation, the matter will proceed no further and you will be notified accordingly. If, however, the Sub-Committee concludes that the alleged events could be a breach of the code requiring investigation, you will be informed by the Monitoring Officer and you will then be contacted by the Investigating Officer. Alternatively, where the Sub-Committee considers there has been a potential breach of the Code of Conduct but an investigation is not appropriate, the Sub-Committee can ask the Monitoring Officer to take other action.
5. The Investigating Officer will interview all those involved and prepare a report. You will see a draft report at least two weeks before the report is finalised and be invited to comment on its content. A hearing date will be agreed, and all reasonable efforts will be made to avoid delay.
6. Prior to the hearing date, the report will be circulated to an independent person on the Standards Committee and to the three Hearings Sub-Committee Members but will not be made public on the Council's website.
7. You will be invited to attend the public hearing of the complaint from the Investigating Officer and to raise any questions with them, or any witnesses they choose to bring. The original complainant is unlikely to be a witness since their view will be incorporated into the Investigating Officer's report.
8. You will then have a chance to present your own case (otherwise than already set out in the Investigating Officer's report), either in person or through a legal representative. You may also bring a limited number of witnesses to support your views. You can be questioned both by the Investigating Officer and by the Hearings Sub-Committee Members.
9. The Hearings Sub-Committee will first decide whether or not there has been a breach of the Code of Conduct.
10. If the Hearings Sub-Committee decide there has been a breach, you will be invited to make representations about the appropriate penalty. The likely penalty is publication of the details of the breach. The Hearings Sub-Committee decision can be looked at by the High Court by way of appeal.

11. If, at the initial stage, the Assessment Sub-Committee believe that the matter should not be investigated, its reasons will be explained both to you and the complainant. The complainant then has a right of appeal to a Review Sub-Committee based on the evidence submitted to the Assessment Sub-Committee and any further material submitted in the interim. The decision of the Sub-Committee is only reviewable by Judicial Review.

**Process for Dealing with Member Code of Conduct Complaints**

1. The Council's website gives a brief explanation about making a complaint alleging that a Member has breached the Members' Code of Conduct. Any complaint should be made to the Monitoring Officer, who is the officer appointed by Tewkesbury Borough Council to deal with, among other things, alleged breaches of the Members' Code of Conduct by Elected Members at the Borough Council or Town/Parish Councils in Tewkesbury Borough. There is an optional complaint form which guides a complainant to give the information required. Once a complaint has been made, a complainant is invited, if they wish, to contact one of the independent persons on the Standards Committee.
2. On receipt of a written complaint, the Monitoring Officer will send a copy to the independent persons and will consult them as to whether the complaint appears to relate to the Code of Conduct and has sufficient substance to justify consideration by the Standards Committee.
3. If, following this consultation, the Monitoring Officer concludes that the complaint is not appropriate for consideration by the Standards Committee, they will write to the complainant explaining this decision and any other course of action the complainant may wish to take. If the Monitoring Officer concludes that the complaint does justify Committee consideration, a letter will be sent to the complainant explaining that their complaint is now being sent to the Member named in the complaint for their comments.
4. The Member in receipt of the complaint has 14 days in which to respond in writing, if they wish. They are advised they may wish to take professional advice.
5. Normally the person in receipt of the complaint makes a written submission with their version of events.
6. The papers are copied and sent to an Assessment Sub-Committee of three Standards Committee Members, together with a letter giving advice about the complaint. The Standards Committee charged with maintaining high standards of conduct among Elected Members in Tewkesbury Borough and dealing with any complaints alleging a breach of the relevant Code of Conduct.
7. The Assessment Sub-Committee meets privately with the Monitoring Officer and the first question asked is whether the Code of Conduct applies to events described. If the Sub-Committee decide there is no potential breach of the Code of Conduct that is the end of the matter. If the Sub-Committee believe there is a breach of the Code of Conduct it will need to decide whether it is in the public interest for that potential breach to be further investigated at public expense, or whether some more informal guidance should be given to the Member who has potentially breached the Members' Code of Conduct.
8. The results of the Sub-Committee deliberations are sent in writing to the person who made the complaint, to the Member in receipt of the complaint and to any relevant Town or Parish Council.

9. If the Assessment Sub-Committee has decided, for whatever reason, against the matter being investigated, the person making the complaint can ask for this decision to be reviewed. The Member in receipt of the complaint has no right to request a review. If the complainant does request a review, a Review Sub-Committee is appointed consisting of three different Members of the Standards Committee to consider all the previous papers, any additional submissions that may be made by the complainant, and the comments of the Member in receipt of the complaint on those submissions.
10. The Review Sub-Committee go through the same exercise in private and its deliberations are reported in the same way. The decision letter is normally drafted by the Monitoring Officer but sent to Sub-Committee Members for their approval and amendment. There is an option for this letter to go out in the name of the Sub-Committee Chair.
11. If the Assessment Sub-Committee or the Review Sub-Committee decide that the matter should be investigated, an independent Investigating Officer is appointed by the Monitoring Officer to carry out that investigation. The Investigating Officer will have no previous involvement or knowledge of the matter. They would normally interview relevant persons and prepare a report and recommendations. That draft report will be shared with the independent person on the Standards Committee for their comments. It will then be shared with the complainant and the Member in receipt of the complaint for their comments before the report is finalised.
12. The finalised report is sent to the Hearings Sub-Committee. If the report concludes there is no breach of the Code of Conduct, and the Hearings Sub Committee agrees, that will be the end of the matter and it will be reported accordingly. If, however, the Hearings Sub-Committee decide there has been a breach of the Members' Code of Conduct, the report will be presented by the Investigating Officer. The Member in receipt of the complaint will then be able to respond, and be legally represented if they wish, and can call a limited number of witnesses. This is a public meeting, and the complainant may wish to be present.
13. The powers of the Hearing Sub-Committee are limited and are around publication of its findings. If, however, something has been uncovered that could potentially be a criminal offence, the Hearings Sub Committee could report it to the Police for further investigation; the Hearings Sub-Committee currently has no power to suspend or disqualify an elected member itself.

### Local Assessment Criteria

The following criteria shall be applied by the Standards Sub-Committees when considering allegations that a Member has failed to comply with the Members' Code of Conduct. The first five criteria are also used by the Monitoring Officer in consultation with the independent persons on the Standards Committee to judge whether a complaint can be brought before the Sub-Committee as a possible breach of the Members' Code of Conduct. The Sub-Committees, however, need to make their own decisions on these five criteria if a matter is brought before them.

If an investigation is carried out and a Hearings Sub-Committee find there has been a breach of the Members' Code of Conduct, the only penalty available to that Sub-Committee is one of censure.

#### Criteria

1. Is the complaint within the jurisdiction of the Committee?
2. Is it a complaint against one or more name Members or co-opted Members of the authority covered by the Members' Code of Conduct?
3. Was the named Member in office at the time of the alleged conduct and the Code of Conduct in force at the time?
4. Would the complaint, if proven, be a breach of the Code under which the Member was operating at the time of the alleged misconduct?
5. Is the complaint really about dissatisfaction with a Council decision?

Note – if the complaint fails one or more of the above tests it cannot be investigated as the breach of the Code.

6. Is there prima facie evidence of a breach of the Code?
7. Is it serious enough to require investigation?
8. Is this part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the authority and there is no other avenue left to deal with it expect investigation?
9. How much time has passed since the alleged conduct occurred?
10. Is the case suitable for local investigation?
11. Is there enough information currently available to justify a decision to take the matter further for investigation?

While anonymous complaints will not be accepted, in exceptional circumstances the name of the complainant will not be disclosed to the Member that is the subject of the allegation applying the following factors:

1. There are reasonable grounds for believing the complainant will be at risk of physical harm if their identity is disclosed.

2. The complainant is an Officer who works closely with the Member and is afraid of the consequences to their employment if their identity is disclosed.
3. There is evidence of medical risks associated with the complainant's identity being disclosed.
4. It is feasible for the complaint to be investigated without the complainant's identity being disclosed.
5. There are grounds to believe that disclosure of the complainant's identity and/or the provision of the written summary of the allegation may lead to intimidation of the witness or the destruction of evidence.