

ARRANGEMENTS FOR DEALING WITH STANDARD COMPLAINTS



I. CONTEXT

1.1. These “Arrangements” are made in accordance with section 28 (6) and (7) of the Localism Act 2011. They explain how to make a complaint that a Councillor has failed to comply with Plymouth City Council’s adopted Code of Conduct the process through which it will be dealt with.

- A “Subject Councillor” is a Councillor against who a complaint is made.
- A Complainant is the person making the complaint.

1.2. [The Local Government and Social Care Ombudsman has confirmed](#) that a Monitoring Officer does not have the power to consider a breach of the Code of Conduct in absence of a complaint being submitted to them. This is in line with the law. It also confirmed that every Council should have a full written procedure for how it will deal with complaints under the Code of Conduct.

2. MAKING A COMPLAINT

2.1. A complaint that a Councillor has failed to observe their authorities Code of Conduct should be submitted to the Monitoring Officer in writing:

Online:	Make a complaint about a councillor
By email:	CouncillorComplaints@plymouth.gov.uk
By post:	Monitoring Officer Plymouth City Council Ballard House West Hoe Road Plymouth PL1 3BJ

2.2. An oral complaint will only be accepted where the Complainant is unable to write due to a physical or mental disability or there is a language barrier. Where an oral complaint is received it will be recorded and confirmed in writing to the Complainant and, if required, the Monitoring Officer will talk them through it.

2.3. The Monitoring Officer has statutory responsibility for administering the arrangements for complaints about Councillors’ conduct.

2.4. All complaints will need to clearly set out/include the following information:

- i. The name of the Councillor the complaint is about;
- ii. Details of what the Councillor has done that you believe breaches the Code of Conduct. You should be specific, wherever possible, about exactly what you are alleging the Member said or did
- iii. The paragraphs of the Code you believe they have breached.
- iv. The dates of the alleged incidents. If you cannot provide exact dates there must be a general timeframe.
- v. Where a complaint relates to conduct over 6 months prior to the Complaint the delay for making the complaint must be explained as the Monitoring Officer may reject the complaint in absence of reasonable explanation.
- vi. Details of any witnesses to the alleged conduct, including their contact details;
- vii. All relevant background information and supporting information and/or evidence;
- viii. What action you think would be appropriate to resolve your complaint, with regard to the range of sanctions in paragraph 11;

Anonymity

- 2.5. As a matter of fairness and natural justice the Council will not normally investigate an anonymous complaint, unless there is a clear public interest in doing so. Complainants must therefore provide their name, address and, where possible, their email address.
- 2.6. You may request that your details are kept from the Subject Councillor, explaining why. The request will be considered by the Monitoring Officer during Stage One, but your anonymity cannot be guaranteed. If the Monitoring Officer decides to refuse a request by a Complainant for confidentiality, they will offer the Complainant the option to withdraw the complaint, rather than proceed with his or her identity being disclosed.

Code of Conduct

- 2.7. The Code of Conduct that applies to each Councillor or Co-Opted Member can be found [via this link](#)¹ and is based on the Local Government Associations model code of conduct and the requirements of the Localism Act 2011.

Informal Resolution

- 2.8. Complainants and Subject Councillors (Councillors against whom a complaint has been made) will, depending on the matter, be asked for their views on informal resolution at an early stage. Informal resolution remains open to the parties throughout the process even if a complaint has proceeded to the formal resolution stage.

¹ <https://tinyurl.com/56abxf5z>

Other Courses of Action

- 2.9. If the complaint identifies criminal conduct or breach of other regulations by any person, the Monitoring Officer is authorised to report this to the Police or other prosecuting or regulatory authority, in addition to any action taken pursuant to the Code. In the case of alleged criminal conduct the complaint may be held in abeyance pending the outcome of any criminal investigation to ensure that no criminal investigation is prejudiced.

Discontinuing a Complaint

- 2.10. The Monitoring Officer may discontinue a complaint in the following circumstances, where they consider it appropriate to do so:
- where the Subject Councillor ceases to be a councillor for any reason;
 - where the Complainant has not provided any additional information requested by the Monitoring Officer (see paragraph 2.4)
- 2.11. Where a complaint is discontinued the Monitoring Officer will write to the Complainant setting out the reasons for their decision.

3. INTERACTION WITH OTHER REGIMES

Police

- 3.1. Where there is any criminal element involved the complaint should be made to the Police in the first instance. The Monitoring Officer will not automatically consider a complaint where there is a criminal aspect unless there has been confirmation with the relevant police contacts that it would not prejudice their investigations.
- 3.2. Some breaches of the Code of Conduct are also a criminal offence. Where a complaint is made to the Monitoring Officer that could constitute a criminal offence under the Localism Act 2011 the Monitoring Officer will refer the complaint/Complainant to the Police.

Whistleblowing

- 3.3. Where an issue is complained of which may fall within the Whistleblowing complaints process the Monitoring Officer will consult with the Chief Executive and the Service Director for HROD in order to determine under which process the complaint will be considered.

Safeguarding

- 3.4. Where there are any concerns of a safeguarding nature in a complaint submitted to the Monitoring Officer it will be referred as a safeguarding concern in accordance with the relevant procedures.

4. THE INDEPENDENT PERSON

- 4.1. The Council is required by section 28 (7) of the Localism Act 2011 to appoint at least one Independent Person whose views must be sought and considered before making a decision on a complaint that the Monitoring Officer has decided to investigate.
- 4.2. The Monitoring Officer may also seek the views of an Independent Person at any stage and on any aspect of a complaint, once received.
- 4.3. Any view given by the Independent Person will be recorded by the Monitoring Officer and kept on file. The Monitoring officer has discretion to share the view provide by the Independent Person with the complainant and/or subject councillor, subject to confirmation from the Independent and in line with data protection requirements.

5. RECEIPT OF COMPLAINT

- 5.1. Within five working days of receipt of a complaint, the Monitoring Officer will acknowledge receipt to the Complainant and, where relevant, request any additional information required for the Complaint to be considered valid.
- 5.2. The Monitoring Officer will confirm that a complaint is logged as a formal complaint within a maximum of 10 working days of all required information being provided to them.
- 5.3. Once the Monitoring Officer is satisfied that they have all the required information from the Complainant the complaint will be considered in line with these Arrangements.
- 5.4. Where additional information is requested but not provided within 10 working days of the request the Monitoring Officer may close the complaint. The Complainant will be notified of its closure.

6. INITIAL ASSESSMENT

- 6.1. The Monitoring Officer will review the complaint once received / they have all the information requested.
- 6.2. The Complaint will automatically be rejected where:
 - i. it concerns a Councillor but they were not acting in their capacity as an elected member of the Council at the time of the alleged issue ([see the Code of Conduct](#)). The Monitoring Officer will consider all of the circumstances before reaching a conclusion as to the status of the member

at the time of the alleged breach of the Code and may consult the Independent Person;

- ii. it relates to a matter that is an offence under section 34 of the Localism Act. The proper body for such issues is the Police and the Monitoring Officer will notify the Complainant where this is the case.
- 6.3. The Monitoring Officer has discretion to reject a complaint at this stage and, if they do, they will set out their reasons in the response to the Complainant. This may include, but will not be limited to:
- i. If the matter is considered vexatious or malicious by the Monitoring Officer
 - ii. If the matter complained of has already been subject to a complaint that has been concluded and there is no new information to support re-consideration.
 - iii. Where the matter subject to the complaint is more than 6 months in the past and, in the opinion of the Monitoring Officer, no reasonable explanation for delay has been provided by the Complainant.
- 6.4. Where the Monitoring Officer believes that the complaint falls under the Code of Conduct to be considered they will notify and supply a full copy of the complaint to the Subject Councillor. The only exception to this will be where anonymity has been agreed, in which case the Subject Councillor will be provided with sufficient information in a form to allow them to understand the complaint being made against them.

7. ACCEPTANCE OF COMPLAINT

- 7.1. Where a complaint is valid and not otherwise rejected by the Monitoring Officer (see Section 6) they will:
- i. Notify the Complainant that the complaint has been accepted as a formal complaint; and
 - ii. notify the Subject Councillor and supply a full copy of the complaint to them.
- 7.2. The Subject Councillor will normally be given 10 working days to respond to the allegations made and give views on informal resolution. This can be extended as required, by agreement with the Monitoring Officer.

8. FACT FIND

- 8.1. The Monitoring Officer may, where they consider necessary to determine how to deal with a complaint, conduct an initial fact find on a matter. This may involve the Monitoring Officer (or their nominee) undertaking any of the following:
- i. Speaking with any witnesses
 - ii. Speaking with the complainant to seek any additional information or ask any questions
 - iii. Speaking with the Subject Councillor to ask for their version of events

- 8.2. Any conversations will be solely for the purpose of trying to establish the facts of the event which has led to the complaint being made.

9. INFORMAL RESOLUTION

- 9.1. Where possible and appropriate the Monitoring Officer will try resolve a complaint informally. This may include one or more of the following:

- i. the Subject Councillor providing explanation to the complainant of the circumstances surrounding the complaint.
- ii. the Subject Councillor agreeing to attend relevant training or to take part in a mentoring process.
- iii. the Subject Councillor accepting their conduct was unacceptable.
- iv. the Subject Councillor offering an apology.
- v. the Monitoring officer arranging mediation or conciliation between the Subject Councillor and the complainant.
- vi. any other action capable of resolving the complaint.

- 9.2. Where the Subject Councillor makes a reasonable offer of informal resolution, but the Complainant is unwilling to accept the offer the Monitoring Officer can take this into account in deciding whether the matter merits any further action, including formal investigation.

- 9.3. Where the informal resolution is accepted by the Complainant then the matter will be closed, and the Monitoring Officer will confirm this in writing to the Complainant and the Subject Councillor.

10. WHERE INFORMAL RESOLUTION IS NOT POSSIBLE

- 10.1. Where informal resolution has not been possible the Monitoring Officer may seek the views of the Independent Person as to whether a finding can be made on the Complaint with or without a formal investigation.

- 10.2. Where the Monitoring Officer, in consultation with the Independent Person, considers the facts and evidence provided are sufficient the Monitoring officer may proceed without a formal investigation. They may also determine that a fact find is necessary, rather than a formal investigation, in order to assist with determining the next steps.

Formal Investigation

- 10.3. Where a formal investigation is to be undertaken the Monitoring Officer will appoint an investigator. The investigator may be an officer of the Council, an officer of another council or a third party.
- 10.4. The Investigating Officer will follow any guidance issued by the Monitoring Officer on the investigation of complaints. The Investigator will follow the principles of

proportionality and the cost-effective use of council resources when undertaking their investigation.

- 10.5. At the end of their investigation, the Investigating Officer will produce a draft report to be considered by the Monitoring Officer, in consultation with the Independent Person, to determine next steps.
- 10.6. The Investigating Officer will decide, having reviewed the initial paperwork:
 - i. What additional information they may need from the Complainant or Subject Councillor and may contact the parties directly to request it.
 - ii. whether they need to meet or speak to the Complainant.
 - iii. whether they need to meet or speak to any witnesses/third parties.
- 10.7. The Investigating Officer should provide an update and/or regular progress reports on the investigation to the Monitoring Officer. Updates on progress may be provided by the Investigator to the Complainant or Subject Councillor, where requested by them.
- 10.8. At any point during the investigation the Investigating Officer may refer the matter back to the Monitoring Officer if they believe that the matter may be resolved without a complete investigation, or that the complaint should be rejected. The Monitoring Officer will, in consultation with the Independent Member, determine next steps.
- 10.9. The Investigating Officer will be asked to produce a summary report if the Monitoring Officer agrees that the investigation should not continue. The Monitoring Officer will not be required to automatically share this report but will consider its release to subject councillor and complainant on a case by case basis in line with data protection requirements.

The Investigation Report

- 10.10. At the end of their investigation, the Investigating Officer will produce a draft report. The Investigating Officer may share, in confidence, all or part of the draft report with the Complainant and Subject Councillor for comments on matters of fact.
- 10.11. Having received and taken account of any comments made on the draft report, the Investigating Officer will submit their final report to the Monitoring Officer. An investigation should not normally take more than three months from point of instruction of the Investigator however it is recognised this may be outside of the control of the Investigating Officer.
- 10.12. Upon receiving the Investigation Report, the Monitoring Officer will decide, in consultation with the Independent Person:
 - i. whether to take no further action,

- ii. to conclude the complaint and determine sanctions without reference to the Standards Committee;
- 10.13. The Monitoring Officer may refer the matter to the Standards Committee where they consider that the matter is one or more of the following:
- i. very serious.
 - ii. a conflict of interest has arisen.
 - iii. the matter is particularly complex.
 - iv. the matter is potentially going to attract a high level of public interest.
 - v. the matter is politically sensitive.

11. SANCTIONS

- 11.1. Where a Subject Councillor is found to have breached the Code of Conduct the following sanctions are open to the Monitoring Officer / Standards Committee as they consider necessary to promote and maintain high standards of conduct:
- i. Report their findings to full Council for information and noting.
 - ii. Recommend to full council that the Subject Councillor should be censured.
 - iii. Require the Subject Councillor to provide an apology.
 - iv. Request the Subject Councillor remove any social media content which led to the complaint.
 - v. Recommend to the Subject Councillor Group Leader (or in the case of ungrouped members recommend to Council) that they are removed from any or all committees or sub committees of the Council.
 - vi. Recommend the Group Leader remove the Subject Councillor from any positions they hold on Committees/Cabinet.
 - vii. Requiring the Subject Councillor to attend training.
 - viii. Recommend to full Council or Cabinet that the Subject Councillor be removed from all outside appointments to which they have been appointed or nominated to
 - ix. Place such restrictions on the Subject Councillor's access to staff, buildings or parts of buildings which may be reasonable in the circumstances.
 - x. withdraw facilities (only where this is an appropriate response in the context of the acts complained of and must not prevent the Subject Councillor from carrying out their duties as a Councillor).
 - xi. bar from the offices and put on single point of contact (only where this is an appropriate response in the context of the acts complained of and must not prevent the Subject Councillor from carrying out their duties as a Councillor).
- 11.2. The Monitoring Officer and the Standards Committee have no power to suspend or disqualify the Councillor or to withdraw any Special Responsibility Allowances to which the Councillor may be entitled under the Council's Members' Allowances Scheme.

- 11.3. Any sanctions applied will only commence after the appeal period has expired and any appeal has been concluded.

12. OUTCOME: DECISION OF THE MONITORING OFFICER

- 12.1. The Monitoring Officer will issue a written decision to the Complainant and the Subject Councillor explaining:
 - i. the reasons for the decision
 - ii. any sanction applied (see paragraph 11)
 - iii. setting out any other action that may need to be taken.
- 12.2. This will be sent to the Complainant and the Subject Councillor and copied to the Chief Executive.
- 12.3. The Monitoring Officer will include a summary of the Independent Person's views.

13. OUTCOME: REFERRAL OF THE MATTER TO COMMITTEE

- 13.1. Where the Monitoring Officer considers the matter should be referred to the Standards Committee ("Committee") for determination they will convene a meeting of the Committee as soon as reasonably practicable.
- 13.2. The Monitoring Officer shall prepare a summary report for the Committee detailing:
 - i. The complaint and information supporting it.
 - ii. The provisions of the code engaged by the allegations.
 - iii. Any comments of the Subject Councillor.
 - iv. A summary of the findings of the investigation report.
 - v. A summary of the views of the Independent Person.
 - vi. Where the Monitoring Officer considers appropriate, recommending any possible sanctions to Committee.
- 13.3. The Independent Person is invited to attend all meetings of the Sub-Committee.
- 13.4. Committee will consider, based on the report of the Monitoring Officer and views of the Independent Person, the recommendation before it with a view to concluding whether the Subject Councillor's conduct constitutes a breach of the Code of Conduct.
- 13.5. Where no breach is found the Committee will conclude that the complaint is not upheld and provide reasons for such decision.
- 13.6. Where breach is found the Committee will confirm that the complaint is upheld, provide reasons for such decision, and determine the sanctions to be applied.

- 13.7. Before reaching a decision on sanctions, the Committee will consult with the Independent Person and consider any representations and advice of the Monitoring Officer.
- 13.8. Following the meeting of the Committee the Monitoring Officer will draft and seek agreement of the Chair and Vice-Chair as to the Decision Notice within 7 working days of the meeting. Once agreed the Monitoring Officer will send out the Decision Letter to the Complainant and Subject Councillor confirming the outcome of the Committee.

14. PUBLICATION

- 14.1. Where the subject councillor is found to be in breach of the code, the outcome of the complaint will be published on the Council's website once the Complainant and Subject Councillor have been notified.
- 14.2. The Monitoring Officer will decide if any redaction is necessary in respect of the above documents.

15. APPEAL

- 15.1. There is no right of appeal against the decision of either the Monitoring Officer or the Committee.

16. WITHDRAWAL OF A COMPLAINT

- 16.1. If a complainant withdraws a complaint at any time prior to a decision the complaint cannot continue as there must be a written complaint to act upon.

17. REVISION / AMENDMENT OF THESE ARRANGEMENTS

- 17.1. The Monitoring Officer may, in consultation with the Chair of Audit & Governance Committee, revise these Arrangements, as they consider appropriate, to enable the process to be dealt with efficiently.
- 17.2. Any such revisions are to be reported to the next meeting of full Council.
- 17.3. These Arrangements shall be reviewed where there is a change in law or where circumstances warrant an earlier review.