

Guidance

July 2024

Complaining about the behaviour of a local councillor in South Gloucestershire

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Contents

Code of conduct for councillors: information and guidance for potential complainants ..	3
1. Introduction	3
2. Making a complaint	4
3. Confidentiality – how we will deal with your complaint if you don't want your identity revealed	5
4. Processing your complaint - what happens once you submit your complaint?	5
5. Complaint assessment - first stage	6
6. Complaint assessment - second stage.....	7
7. Behaviour that constitutes a criminal offence	8
8. Multiple complaints about a councillor	9
9. Outcomes of the assessment process	9
10. Referral for investigation.....	10
11. Outcome of an investigation	10
12. Oral hearing.....	11
13. If you are dissatisfied with the outcome.....	12
14. Purpose of these procedures	12
15. Timescales for dealing with complaints.....	12
Appendix A - behaviour covered by the Code of Conduct	13
Appendix B - Sanctions available to Standards Committees	15

Code of conduct for councillors: information and guidance for potential complainants

1. Introduction

- 1.1 South Gloucestershire Council (“the council”) has legal obligations to:
 - 1.1.1 promote and maintain high standards of conduct by its councillors and co-opted members; and
 - 1.1.2 make arrangements to make decisions regarding allegations that its councillors and co-opted members have breached the council’s Code of Conduct.
- 1.2 The council’s Code of Conduct for councillors is available on the [Complain about a councillor web page](#).
- 1.3 Overall responsibility for the process of dealing with complaints against councillors of the council sits with the council’s Standards Sub-Committee (a sub-committee of the council’s Regulatory Committee), referred to in the rest of this document as the Standards Committee or the Committee. This Committee is a group of councillors appointed by the council to help maintain and promote high ethical standards.
- 1.4 The Monitoring Officer, a senior officer of the council, administers the process in respect of all complaints of alleged councillor misconduct on behalf of the Standards Committee and reports on breaches of the council’s Code of Conduct to the Standards Committee. The council also appoints an independent person to advise the Monitoring Officer and/or the committee.
- 1.5 The council is also responsible for investigating complaints that town or parish councillors in South Gloucestershire have breached their particular council’s code of conduct. Where a complaint is about the conduct of a member of a town or parish council the allegations will be assessed against the relevant council’s code of conduct.
- 1.6 This guidance sets out:
 - 1.6.1 how you may make a complaint that a councillor of South Gloucestershire Council, or of a town or parish council in South Gloucestershire, has failed to comply with their council’s code of conduct; and
 - 1.6.2 how the council will deal with any complaints about the conduct of a councillor of South Gloucestershire Council or of a town or parish council in South Gloucestershire
- 1.7 The Monitoring Officer will publish details of complaints received in an annual report to the council’s Regulatory Committee.

2. Making a complaint

2.1 If you wish to make a complaint, please write to the Monitoring Officer at:

John McCormack
Monitoring Officer
South Gloucestershire Council
Dept for Resources and Business Change
PO Box 1953
Bristol
BS37 0DE

or e-mail the Monitoring Officer at: legal.support@southglos.gov.uk

2.2 In order to ensure that we have all of the information we need to be able to process your complaint, we would recommend that you use our standard complaint form and return it to us in a word document if possible. This is available on request or can be downloaded from the [Complain about a councillor web page](#).

2.3 Your complaint must be made in writing. If a disability prevents you from making your complaint in writing we will offer to put your complaint into writing and you will be asked to sign or otherwise indicate that you want to make a complaint in the terms set out. It will be your responsibility to provide any supporting documentation. If you are unwilling to sign the documentation or indicate your satisfaction, your complaint will be rejected. We can also help if English is not your first language.

2.4 You are encouraged to read all of this guidance before submitting your complaint. We will aim to acknowledge receipt of your complaint within five working days.

2.5 We also recommend that you:

- ✓ 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.**
- ✓ Fully complete the attached complaint form (or ensure your letter of complaint addresses, in full, all of the issues covered in the complaint form). Please be as detailed as possible and include any supporting documentation you wish to rely on.
- ✓ Submit the written complaint by post or preferably e-mail to the address set out above, as soon as possible after the date of the alleged breach.
- ✓ The council will not accept any complaints more than 3 months old except in exceptional circumstances.

3. Confidentiality – how we will deal with your complaint if you don't want your identity revealed

- 3.1 If you ask for your identity to be withheld, this request will be considered by the Monitoring Officer at the First Stage of the process.
- 3.2 As a matter of fairness and natural justice, the councillor you have 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 either on request from you, or otherwise where they are satisfied that it is in the interests of all parties to do so, having regard to the factors set out in paragraph 3.3 below.
- 3.3 The factors that the Monitoring Officer may take into account are:
- 3.3.1 whether you have reasonable grounds for believing that you or somebody closely connected to you, will be at risk of physical harm if your or their identity is disclosed;
 - 3.3.2 whether you are reasonably concerned about the consequences to your employment or that of somebody closely connected to you, if your or their identity is disclosed;
 - 3.3.3 whether you or someone closely connected to you suffers from a medical condition and there is evidence of medical risks associated with your or their identity being disclosed or confirmation from an appropriate medical professional that this is the case;
 - 3.3.4 whether the specifics of the complaint will disclose who has made the complaint even without confirming your identity; and
 - 3.3.5 whether in spite of any other factor, the public interest in proceeding with the complaint outweighs the complainant's interest in having their identity withheld.
- 3.4 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. The Monitoring Officer will balance whether the public interest in taking action on a complaint will outweigh your wish to have your identity withheld.

4. Processing your complaint - what happens once you submit your complaint?

- 4.1 When you submit your complaint, we will aim to write to you to let you know we have received it within 5 working days.
- 4.2 The Monitoring Officer or one of his duly appointed officers will then consider whether the complaint meets the jurisdictional test (set out in the first stage of the process (see below)). The first stage determines whether the act complained of falls within the scope of the code of conduct.

- 4.3 If it does, then your complaint will then proceed to the second stage. This stage seeks to establish whether the complaint is sufficiently serious to warrant assessment.
- 4.4 If your complaint does proceed for further assessment, we will aim to complete this within 20 working days.

It is important to note that the first two stages are classed as an assessment and not an investigation and in reaching this decision.

- 4.5 The points listed under the First Stage at paragraph 5 below will help you decide whether this is something that can be dealt with by the Monitoring Officer.
- 4.6 Please note that trivial, frivolous, vexatious and politically motivated tit-for-tat complaints are likely to be rejected.

5. Complaint assessment - first stage

- 5.1 When a complaint is received, the Monitoring Officer (or other appointed Officer) will carry out “a jurisdictional test” against which complaints will be filtered to determine whether the allegation is within the scope of these procedures. We will aim to complete this First Stage process within 5 working days.
- 5.2 Where there is insufficient information to make a determination as to whether the conduct complained of may demonstrate a potential breach of the Code of Conduct you may be offered (at the Appointed Officer’s discretion) a further 10 working days to provide further information to support the complaint. If no further information is provided your complaint will be rejected.
- 5.3 In order to assess whether the First Stage requirements are met the Appointed Officer will consider whether:-
- 5.3.1 your complaint is about one or more of the councillors of South Gloucestershire Council or one of the town or parish councils in the District;
- 5.3.2 Your complaint is 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;
- 5.4 Your complaint must also:
- 5.4.1 demonstrate that the councillor has, or may have, breached the relevant council’s Code of Conduct;
- 5.4.2 relate to matters where the councillor was acting as a councillor or representative of their council and therefore is not a private matter;
- 5.5 The following matters do not fall within the scope of the procedure for dealing with complaints about the conduct of members and will be rejected:

5.5.1 Complaints against a council as a whole.

These will be rejected and should be referred directly to the council in question for consideration under their own procedures.¹

5.5.2 Complaints about employees of a council.

Complaints about the actions of people employed by the relevant council e.g. the clerk of a town or parish council, also do not fall within the jurisdiction of the Standards Committee. Again, these complaints should be pursued through the relevant council's own internal complaints procedure.

6. Complaint assessment - second stage

6.1 Complaints that satisfy the First Stage will then be assessed to determine whether they are sufficiently serious to proceed further.

6.2 The criteria to be taken into account in assessing seriousness are set out below; your complaint will usually be rejected at this stage if, in the opinion of the Monitoring Officer, any of the following criteria applies:

6.2.1 the complaint is the same or substantially the same as a complaint previously dealt with whether submitted by you or some other person;

6.2.2 it is over 3 months since the alleged behaviour occurred and it would be unfair, unreasonable or otherwise not in the public interest to pursue unless there are, in the Monitoring Officer's opinion, exceptional circumstances, such as there has been a failure to declare a disclosable pecuniary interest which would warrant the complaint being progressed;

6.2.3 the allegation is anonymous and there are no exceptional compelling reasons to progress the complaint;

6.2.4 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; and/or

(ii) whether, in all the circumstances, there is no overriding public benefit in carrying out an investigation;

6.2.5 the complaint appears on an objective basis to be malicious, vexatious, politically motivated or tit-for-tat or is part of a series of complaints from the complainant and it is not in the public interest to pursue it;

¹ These complaints should be pursued through the relevant council's own internal complaints procedure. For example, if a complaint relates to a councillor's behaviour in relation to the determination of a planning application, this procedure will relate only to the councillor's conduct and will not comment on the decision relating to the planning application, save to the extent necessary to explain the decision in relation to the code of conduct complaint.

- 6.2.6 the councillor has remedied, or made reasonable endeavours to remedy, the issues to which the complaint relates and the complaint does not disclose sufficiently serious potential breaches of the Code of Conduct to merit further consideration;
 - 6.2.7 the complaint is about a person who is no longer a councillor of a relevant council and there are no overriding public interest reasons to merit further consideration;
 - 6.2.8 the complaint is from a councillor about another councillor of their council and the Monitoring Officer considers the allegations to be such that the issues between the councillors ought to be capable of resolution between them, whether with or without the assistance of their Clerk or some other person; and
 - 6.2.9 that a simple apology, training or conciliation would be the appropriate response to the complaint;
 - 6.2.10 that a reasonable offer of local resolution is offered by the councillor but has been rejected by you;
 - 6.2.11 It would otherwise be inappropriate to expend the council's resources on determining the complaint having regard to the circumstances of the complaint, any previous related complaints and the public interest.
- 6.3 It is important to note that not every complaint that falls within the jurisdiction of the Standards Committee will be referred for investigation. The Monitoring Officer or the Standards Committee (as appropriate) must decide whether this is appropriate. The Monitoring Officer will endeavour to resolve complaints without the need for a formal investigation wherever possible.

7. Behaviour that constitutes a criminal offence

- 7.1 Where a complaint is received which discloses behaviour that may constitute a criminal offence - the Monitoring Officer will determine whether to refer such allegations to the police or other appropriate body.
- 7.2 If the conduct complained of relates to the failure to declare a disclosable pecuniary interest this will be done by initially undertaking the assessment of the complaint in the manner set out at the First Stage 1 prior to referral in order to determine if a potential failure to declare a disclosable pecuniary interest has occurred.
- 7.3 Where a complaint is referred to the police or some other body the council will not take any action on the complaint, other than the referral, until the body to which the complaint has been referred to decides to take no action or any action it takes has been finally determined.
- 7.4 The council will take such action as is necessary to ensure that it does not compromise the integrity of any investigation or proceedings undertaken by another body in relation to the allegations.
- 7.5 If the police or other body decides to progress the complaint, then no further

action will be taken on the complaint by this council. If it decides not to progress the complaint, the council will proceed to consider the complaint at Second Stage of the process (see paragraph 8 above).

8. Multiple complaints about a councillor

- 8.1 There may be instances when a number of complaints will be received about the same councillor from different complainants that relate to the same incident.
- 8.2 When a complaint is substantially the same, it will (at the discretion of the Monitoring Officer) be processed as a single complaint taking into consideration all of the complaints received up to the time the complaint is processed.
- 8.3 A single decision notice will be issued and may reflect the fact there has been more than one complainant associated with the matter, though all may not be named. If further complaints relating to the same matter are received after the complaint is being processed these will not be added to the complaint but the complainants will be advised that a complaint about this matter is already being considered.

9. Outcomes of the assessment process

- 9.1 The Monitoring Officer may decide on the information provided that the complaint can be resolved by recommending on or more of the sanctions set out in Appendix B or by way of an informal resolution.
- 9.2 An informal resolution is a more proportionate way of dealing with relatively minor allegations, one-off incidents or underlying disagreements between individuals. It is important to note that dealing with a matter by alternative resolution at the initial assessment stage is making no finding of fact as there has been no formal investigation.
- 9.3 Matters which the Monitoring Officer might consider appropriate for informal resolution may include:
 - 9.3.1 the same particular breach of the Code by many councillors, indicating poor understanding of the Code and the authority's procedures;
 - 9.3.2 a general breakdown of relationships, including those between councillors and officers, as evidenced by a pattern of allegations of minor disrespect, harassment or bullying to such an extent that it becomes difficult to conduct the business of the relevant council;
 - 9.3.3 misunderstanding of procedures or protocols;
 - 9.3.4 misleading, unclear or misunderstood advice from officers;
 - 9.3.5 lack of experience or training;
 - 9.3.6 interpersonal conflict;

- 9.3.7 allegations and retaliatory allegations from the same councillors;
- 9.3.8 allegations about how formal meetings are conducted;
- 9.3.9 allegations that may be symptomatic of governance problems within the council, which are more significant than the allegations in themselves.
- 9.4 Informal resolution could either be directed at the councillor who is the subject of the complaint, the councillor and yourself as complainant, or at the council more generally.
- 9.5 Informal resolution can also include such things as training, providing an apology, withdrawing a remark, mentoring, conflict resolution, mediation.
- 9.6 Both you and the councillor will be consulted before a decision is made to proceed with informal resolution.

10. Referral for investigation

- 10.1 If the Monitoring Officer considers following an assessment at the Second Stage 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, then the Monitoring Officer or someone acting on their behalf will undertake this. Only very exceptionally will a complaint result in an investigation.
- 10.2 Because the circumstances of each serious complaint will vary it would be unrealistic to impose set timescales on each investigation at this stage. However, having reviewed the circumstances the Monitoring Officer will propose timescales for the completion of the investigation and will clearly communicate those to all interested parties. The Monitoring Officer will keep all parties informed of the progress of the investigation and where extensions to timescales are required, will clearly communicate to all parties the revised timescales and the reasons giving rise to the need to extend timescales. The Monitoring Officer will let all those involved know that this is the case and the process that will be followed.

11. Outcome of an investigation

- 11.1 At the end of an investigation, the Monitoring Officer (or investigator) will issue a draft report and invite comments from the complainant and councillor. The Monitoring Officer will then issue a final report which he/she will send to the complainant, the Standards Committee, the councillor complained about, the Independent Person and the Clerk to the town or parish council (where relevant).

- 11.2 The following options are available to the Monitoring Officer as outcomes:

11.2.1 Option 1 – issuing guidance

If the 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 other form of sanction as being the appropriate response, then the Monitoring Officer, after consulting with the Independent Person, is authorised to issue guidance to either party, close the matter and issue the 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 they consider it appropriate.

11.2.2 Option 2 – local resolution

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).

11.2.3 Option 3 – oral hearing or report publication

If a local resolution is not appropriate or not agreed by the parties then the outcome of the investigation will either be:

(A) reported to the Standards Committee's Hearings Panel for a local oral hearing (see paragraph 16.5 below); or,

(B) the investigation will form the basis of an Investigation Outcome report which will be published and issued to all parties. This will 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.

- 11.3 The decision as to whether to proceed with Option 1,2 or 3(A) or (B) above shall rest with the Monitoring Officer in consultation with the Independent Person. In making his decision, the Monitoring Officer will have regard to the relative costs involved and which option best serves the public interest.

12. Oral hearing

- 12.1 If the Monitoring Officer considers that it is necessary and appropriate to proceed to an oral hearing, then that hearing will be held in accordance with the rules on public access to meetings and information of the council.
- 12.2 Within the limits set by those rules, however, the hearing will be conducted on a relatively informal basis, both parties will be able to make representations and call witnesses.
- 12.3 At the end of the hearing the 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" (if any) should be imposed.

- 12.4 If an oral hearing concludes that there has been a failure to comply with the Code then there is a limited range of sanctions available, as set out at Appendix B to this guidance. There is no ability for the Standards Committee to suspend or disqualify a councillor.

13. If you are dissatisfied with the outcome

- 13.1 Although there is no right of appeal against the decisions of the Monitoring Officer or Panel Standards Hearing Sub-Committee, if you are unhappy with the procedures followed (as opposed to the outcome) then you are still entitled to complain to the Local Government Ombudsman or challenge a decision through the Courts by way of Judicial Review.

14. Purpose of these procedures

- 14.1 The procedure the council has adopted is designed to be proportionate, timely and fair to both sides. Its overriding objective is to seek to provide pragmatic local solutions to local problems wherever possible and to avoid costly and time-consuming investigations/hearings.

15. Timescales for dealing with complaints

- 15.1 This procedure sets out how long it will usually take the council to complete each stage of dealing with a complaint. The estimated timescales are:

15.1.1 Acknowledgement within 5 working days

15.1.2 First stage – jurisdictional test within 5 working days of acknowledgement

15.1.3 Second Stage – decision within 20 working days

- 15.2 Parties must comply in a timely manner to requests for further information, and where information has not been provided within the specified timescales the Monitoring Officer will proceed in the absence of the information requested. This might lead to a complaint being rejected for lack of supporting evidence from the complainant or upheld for lack of contrary evidence from the councillor concerned.
- 15.3 Where either of the parties is unable to comply with a given timescale for response, they may request an extension by setting out their reasons in writing to the Monitoring Officer.
- 15.4 Any extension of a timescale is at the sole discretion of the Monitoring Officer who will only grant the extension where he / she is satisfied that it is in the public interest to do so. Where the Monitoring Officer does extend a timescale he / she will communicate the revised timescales to the parties together with the reason for their extension.

Appendix A - behaviour covered by the Code of Conduct

You can complain about a councillor breaking any part of their council's Code of Conduct. As each council can adopt their own code there is no longer a standard code of conduct that applies to all local authorities. This means you need to have seen the code of conduct relating to the councillor about whom you wish to complain and that the behaviour you wish to complain about is covered by the code. The Standards Committee cannot consider any complaints that fall outside of the relevant code of conduct.

The code that relates to councillors of South Gloucestershire Council covers the following areas:- (please note that the principles set out in the code only underpin the code they are not the obligations used to assess whether there has been a breach)

- Treating others with respect
- Not bullying any person
- Not harassing any person
- Promoting equalities and not discriminating unlawfully against any person
- Not compromising or attempting to compromise, the impartiality of anyone who works for or on behalf of the council
- Not intimidating any person likely to be involved in any investigation or proceedings about someone's misconduct
- Not disclosing confidential information given in confidence or acquired or improperly using information gained as a result of their role for the advancement of those connected with them or preventing anyone from getting information they are entitled to by law
- Not bringing their role or the council into disrepute
- Not using their position improperly, to their own or someone else's advantage or disadvantage
- Not misusing the council's resources
- When using resources or authorising their use, acting in accordance with the council's requirements and not used for political purposes
- Paying due regard and giving reasons for departing from any advice from the council's Chief Finance Officer or Monitoring Officer
- Undertaking Code of Conduct training and co-operating with any Code of Conduct investigation and/or determination
- Not making trivial or malicious complaints against other councillors

- Complying with any sanction imposed where they have been found to have breached the Code of Conduct
- Failing to register or disclose their interests
- Taking part in the discussion or making a decision where they have a “disclosable pecuniary interest”
- Failing to register any gifts or hospitality (including its source) worth over £50 that they have received or refused in their role as a councillor

Any breaches in relation to 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 they should be able to advise you whether or not it is a matter for the Police.

Although we have encouraged the town and 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.

Appendix B - Sanctions available to Standards Committees

The sanctions available to the Standards Committee are as set out below. In relation to the town and parish councils in our area, we can only **recommend** a particular sanction to them we do not have the power to enforce compliance.

The Standards Committee does not have the power to suspend or disqualify a councillor. The sanctions available are:-

- Report its findings to council or town/parish council for information;
- Issue (or recommend to town/parish to issue) a formal censure
- Recommending to the councillor's Group Leader (or in the case of un-grouped councillors, recommend to council) that he/she be removed from any or all Committees or Sub-Committees of the council (or recommend such action to the town/parish council);
- Recommending to the Leader of the Council that the councillor be removed from the Executive, or removed from particular Portfolio responsibilities;
- Instructing the Monitoring Officer to (or recommend to the town/parish) to arrange training for the councillor;
- Removing from all outside appointments to which he/she has been appointed or nominated by the authority (or recommend to the town/parish council);
- Withdrawing facilities (or recommend to the town/parish council) provided to the councillor by the council, such as a computer, website and/or email and internet access;
- Restricting contact (or recommend to the town/parish council) to named officers or requiring contact be through named officers;
- Excluding the councillor from the council's offices or other premises (or recommend to the town/parish council), with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings;
- If relevant, recommend to council that the councillor be removed from their role as leader of the council;
- If relevant, recommend to the secretary or appropriate official of a political group that the councillor be removed as group leader or other position of responsibility.