



Audit & Governance Hearing Subcommittee

Date: Wednesday, 1 December 2021

Time: 10.00 am

Venue: Council Chamber, County Hall, Dorchester, DT1 1XJ

Membership: (Quorum 3)

Matthew Hall, Jon Orrell and Richard Biggs

Chief Executive: Matt Prosser, Dorset Council, County Hall,
Dorchester, Dorset DT1 1XJ

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A G E N D A

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1 ELECTION OF CHAIRMAN

To elect a Chairman for the meeting.

2 APOLOGIES

To receive any apologies for absence.

3 DECLARATIONS OF INTEREST

To disclose any pecuniary, other registrable or non-registrable interest as set out in the adopted Code of Conduct. In making their decision councillors are asked to state the agenda item, the nature of the interest and any action they propose to take as part of their declaration.

If required, further advice should be sought from the Monitoring Officer in advance of the meeting.

4 HEARING SUB-COMMITTEE TERMS OF REFERENCE AND DORSET COUNCIL MEMBER COMPLAINT PROCESS

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To note the Sub-Committee's terms of reference:-

Audit and Governance (Hearing) Sub-Committees for the consideration of Code of Conduct Issues

- (a) The Audit and Governance Committee shall arrange that, to the extent it is called upon to determine any allegation relating to a Member Code of Code (including that of a Town Council or a Parish Council), the determination shall be made by a Sub-Committee of the Audit and Governance Committee. An Audit and Governance Sub-Committee with such responsibility may include non-Members. An Audit and Governance Sub-Committee that has non-Members forming part of it shall not have any power relating to the regulation and/or control of the finances of the Council.
- (b) Substitutes may only be appointed to an Audit and Governance Sub-Committee from the membership of the Audit and Governance Committee. There shall be no

power to appoint non Member substitutes.

To note the Dorset Council Member Complaint Process (attached).

5 URGENT ITEMS

To consider any items of business which the Chairman has had prior notification and considers to be urgent pursuant to section 100B (4) b) of the Local Government Act 1972. The reason for urgency shall be recorded in the minutes.

6 EXEMPT BUSINESS

To move the exclusion of press and the public for the following items in view of the likely disclosure of exempt information within the meaning of paragraph 1 of schedule 12A to the Local government act 1972 (as amended).

7 CODE OF CONDUCT COMPLAINT 1

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Arrangements for dealing with Code of Conduct complaints against Councillors

What is a Code of Conduct complaint?

Dorset Council has adopted a code of conduct for its Councillors (also known as Members) and Co-opted Members, which is available for inspection on the council's website and on request from the Monitoring Officer.

Each of the parish and town councils in Dorset have adopted a Code of Conduct for their Councillors and Co-opted Members which they publish on their own website.

A Code of Conduct complaint is one that alleges that a Dorset Council or Dorset parish or town Councillor or Co-opted Member has failed to comply with their council's code of conduct.

Dorset Council is required to have arrangements in place to investigate and reach decisions about Code of Conduct complaints.

These arrangements set out:

1. who you can complain about
2. what you can complain about
3. what cannot be complained about
4. how to make a complaint
5. how Dorset Council will deal with such complaints

1. Who you can complain about?

You can complain about Councillors and Co-opted Members of Dorset Council or any Town or Parish Council in the area of Dorset Council. A co-opted Member is a voting member of a council or one of its committees, who was appointed to their position rather than being elected.

2. What can you complain about?

You can complain about the conduct of current, individual Councillors or Co-opted Members.

The conduct complained of must be covered by the Code of Conduct and must have occurred during the Councillor or Co-opted Members time in office.

The conduct complained of must have happened in the last 20 working days. It could be a one-off incident or the last incident in a series of connected events (if a series of connected events is complained of all the connected events may be considered as

part of the complaint even if some of the events are older than 20 working days). Only in exceptional circumstances will a complaint received outside the timeframe be considered.

Types of complaint alleging breach of Code of Conduct may include:

- unlawfully discriminating against someone
- failing to treat people with respect
- bullying any person
- intimidating any person involved in any investigation or proceedings about someone's misconduct
- doing something to prevent those who work for the authority from being unbiased
- revealing information that was given to them in confidence, or stopping someone getting information they are entitled to by law
- damaging the reputation of their office or authority, where the conduct is linked to their public role and not in their private capacity
- using their position improperly, to their own or someone else's advantage or disadvantage
- misusing their authority's resources
- allowing their authority's resources to be misused for the activities of a registered political party
- failing to register an appropriate interest correctly
- failing to register any gifts or hospitality (including its source) that they have received in their role as a member worth over £50.00.

3. What cannot be complained about under these arrangements?

The following types of complaint cannot be considered under these arrangements:

- Complaints about a Councillor or Co-opted Member who is no longer in office cannot be considered.
- Complaints about the conduct which happened before a Councillor or Co-opted member were elected, co-opted or appointed to their council, or after they have resigned or otherwise ceased to be in office cannot be considered.
- Complaints about a council as a whole or people employed by it cannot be considered under these arrangements.
- Complaints about dissatisfaction with a decision or action of a Council, one of its committees or employees, a service provided by a Council or a Council's procedures, cannot be considered under these arrangements.
- Complaints which relate to conduct (one-off incident or the last in a series of connected events) which happened over 20 working days ago, unless there are exceptional circumstances.
- Where the complaint alleges criminal conduct (including failure to register or declare a Disclosable Pecuniary Interest or voting at a council meeting where such an interest exists), this is a matter for the police and cannot be dealt with under the Code of Conduct. The Monitoring Officer will consider whether it is appropriate to refer to the Police. No further action will be taken in relation to

such complaints until any related criminal/regulatory investigation, proceedings or processes have been concluded. Complainants may refer criminal allegations directly to the Police.

4. How to make a complaint

Complaints must be submitted in writing to Dorset Council's Monitoring Officer using the [Code of Conduct complaint form](#).

You will need to set out details of your complaint including:

- identify the Councillor(s) or Co-Opted Member(s) complained about
- the conduct that caused you to complain
- what part of the code of conduct do you think has been breached
- when the incident complained of took place
- what remedy you are asking for

It is very important that you set your complaint out fully and clearly and provide all the information at the outset.

For complaints concerning the conduct of a parish or town councillor you will also be asked if you have raised your complaint with the clerk of the council and what attempts have been made to resolve your complaint before submission of a complaint to the Monitoring Officer.

When complete, your form should be sent to the Monitoring Officer:

E-mail: councillorcomplaints@dorsetcouncil.gov.uk

The Monitoring Officer will not normally consider a complaint unless it is in writing and a complaint form has been received. This is to ensure that all of the relevant information is provided and, where necessary, consent to share information has been obtained so that the complaint can be processed.

If you do not have access to the internet or have difficulty completing the form, please contact 01305 224181 for assistance.

Where a complaint is made against more than one councillor, a separate complaint form must be completed in respect of each councillor.

If you are making the complaint on behalf of a number of individuals, please nominate one person as the single point of contact to whom all correspondence will be addressed.

Before you complain

Before you send us your complaint, you should be aware that anonymous complaints will not normally be investigated.

You may request that your identity is withheld but this will only be agreed by the Monitoring Officer in exceptional circumstances. The Monitoring Officer has to balance the right of the Councillor complained of to properly understand the complaint against them and respond to it, with your rights as Complainant. This normally means that the Councillor will need to be told who is making the complaint. You will be informed if your complaint cannot be investigated without disclosing your identity and be provided with the opportunity to proceed or withdraw your complaint.

5. How Dorset Council will deal with complaints

Initial Check

The Monitoring Officer will check that your complaint is covered by these arrangements and consult with an Independent Person before making a decision.

(An Independent Person is someone appointed by the Council to give an independent view on complaints about councillors and co-opted members. They are not employed by the council and act voluntarily. An independent person must be consulted by the Council before it makes its decision on an allegation that it has decided to investigate. The Independent person is also available to be consulted by a councillor or co-opted member if their behaviour is the subject of a complaint.)

The initial checks are:

- Is the complaint about a current, individual Councillor or Co-opted Member
- Is the conduct complained of covered by the council's Code of Conduct?
- Did the conduct complained of occur during the Councillor or Co-opted Members time in office?
- Did the conduct complained of happen in the last 20 working days (one-off incident or the last incident in a series of connected events even if some of them are older than 20 working days) and/or whether there are any exceptional circumstances for considering a complaint received outside this timeframe.
- Is the complaint about criminal conduct.

Within 5 working days of receiving your complaint the Monitoring Officer will write to you to acknowledge receipt of your complaint and confirm if it is covered by the complaint process or not.

If the complaint is covered by the complaint process, then within 5 working days of receiving your complaint the Monitoring Officer will also write to the Councillor or Co-opted Member with details of the complaint. In exceptional circumstances, the Monitoring Officer may keep your identity confidential if considered necessary or may

delay notifying the Councillor or Co-opted Member of the investigation where this may prejudice the investigation.

The Councillor or Co-Opted Member will be invited to respond within 5 working days, or longer at the discretion of the Monitoring Officer, including providing details of witnesses and relevant information and documents.

The Councillor or Co-Opted Member will be advised of their right to seek the views of the Independent Person throughout the process and contact details will be provided.

Monitoring Officer Assessment

At this stage the complaint is confidential. You and the Councillor or Co-Opted Member complained of are asked not to disclose information about the complaint to anyone else.

The Monitoring Officer will consider the complaint and after consultation with an Independent Person (either in person or electronically), take a decision:

1. That no further action should be taken, and the complaint is dismissed.

Where a complaint is dismissed the case is closed and a letter will be sent to you and the Councillor or Co-opted Member complained of with an explanation for the decision. (Where the complaint relates to a town or parish Councillor or Co-opted Member the Monitoring Officer will also write to the town or parish clerk with the decision). The Councillor or Co-Opted Member has the option to request that details of the complaint and outcome be published. If not, details of the complaint remain confidential. The decision is final and there is no right of appeal.

Below are some examples of circumstances where no further action may be appropriate:

- The complaint is the same or substantially the same as a complaint previously dealt with and there is nothing further to be gained;
- The complaint is trivial or discloses such a minor or technical breach of the Code that it is not in the public interest to pursue
- The complaint is or appears to be malicious, politically motivated, tit-for-tat or otherwise submitted with an improper motive and the complaint is not considered to disclose sufficiently serious potential breaches of the Code to merit further consideration
- The councillor has provided a satisfactory remedy to the complaint
- There is evidence to suggest a potential breach of the Code, but the circumstances do not warrant further action

2. Refer the complaint for local resolution (which might involve an apology or training or some other form of mediation)

Where the Monitoring Officer considers a potential breach has occurred, they can decide to refer your complaint for informal resolution. This might include councillor training or referral to the political group leaders or the town or parish council or an apology.

Where the Monitoring Officer decides on local resolution you and the Councillor or Co-opted Member complained of will be sent the decision with an explanation. (Where the complaint relates to a town or parish Councillor or Co-opted Member the Monitoring Officer will also write to the town or parish clerk with the decision).

The Councillor or Co-opted Member has the option to request that details of the complaint and outcome be published on the council's website. If not, details of the complaint remain confidential.

If the Councillor or Co-opted Member agrees with the local resolution and carries it out, the decision will be final, will conclude the complaint and there is no right of appeal.

If the Councillor or Co-opted Member does not agree with local resolution or fails to carry it out the Monitoring Officer will refer the complaint for investigation and inform you and the Councillor or Co-opted Member.

Below are some examples where local resolution may be appropriate:

- Less serious complaints where the Councillor or Co-opted Member wishes to put their actions right;
- A general breakdown in relationships at the Council where other action such as mediation might help;
- Complaints where the public interest in conducting an investigation does not justify the costs of such an investigation;
- Where there is a lack of experience or the Councillor or Co-opted Member may benefit from training or mentoring;
- Where the issue appears to be in the political arena and therefore appropriate for referral to a leader(s) of a political group to deal with;
- Where it appears that the town or parish council would be best placed to resolve the issue;
- Where there is the same alleged breach of the Code by many of the council's Councillors or Co-opted Members, indicating a poor understanding of the Code and authority's procedures;

3. Refer the complaint for investigation

Where the complaint has raised a potential breach, that the Monitoring Officer, in consultation with the Independent Person, decides:

- cannot be resolved by local settlement and / or
- is serious enough to warrant investigation,
- or where a Councillor or Co-opted Member has failed to agree or carry out local resolution,

the Monitoring Officer will appoint an investigator.

This could be an appropriately skilled council officer from this or another council, or an external investigator. The investigation will be proportionate and include interviews with everyone the investigator decides will help them assess the complaint and reach a conclusion on whether there has been a breach of the Code of Conduct.

The Monitoring Officer will write to notify you of the decision to refer your complaint for investigation, with an explanation. (Where the complaint relates to a town or parish Councillor or Co-opted Member the Monitoring Officer will also write to the town or parish clerk with the decision).

In exceptional circumstances, we may keep the identity of the complainant confidential if we agree it is necessary, or we may delay notifying the Councillor or Co-opted Member of the investigation where this may prejudice the investigation.

Investigation Report

The Investigating Officer will prepare a report setting out:

- (a) the agreed facts;
- (b) any facts which are not agreed and the conflicting evidence; and
- (c) their conclusion on whether or not there has been a breach of the Code of Conduct.

The report will be supplied to you, the Independent Person and the Councillor or Co-opted Member for any comments to be provided to the Investigating Officer within 10 working days.

The report will then be finalised and sent to the Monitoring Officer, Independent Person, you and the Councillor or Co-opted Member.

The Monitoring Officer will arrange a meeting of the Audit and Governance (Hearing) Sub-Committee.

Meeting of the Audit and Governance (Hearing) Sub-Committee

This will be a public meeting unless the Councillor or Co-opted Member request the hearing takes place in confidential session and the Committee agrees. The Investigating Officer will be invited to present their report. You and the Councillor or Co-opted Member, any representative or witnesses may be asked to attend and be questioned by the Committee. The Independent Person will be invited to attend for the Committee to seek their view before making a decision.

The Committee will decide whether there has been a breach of the Code of Conduct and, if so, what action is appropriate.

Within 5 working days of the hearing the Monitoring Officer will write to notify you and the Councillor or Co-opted Member of the Committee decision with reasons.

Where the Council makes a decision on an allegation of misconduct following a formal investigation, a decision notice will be published as soon as possible on our website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied

The decision of the Hearings Sub-Committee is final and there is no right of appeal.

6. How Dorset Council will Learn from Complaints

Things do not always happen in the way they should and councillors and co-opted members do not always behave as they should, in accordance with their Code of Conduct.

Dorset Council is a learning organisation. Sometimes a hearing might result in sanctions being imposed upon a councillor but it is also important for all councillors to be able to learn from complaints.

In addition to acting upon individual complaints the Council will, through the Audit and Governance Committee, receive monitoring information about complaints and an annual report on councillor and co-opted member conduct. The focus in doing so will be upon helping individual councillors, Dorset Council as a whole and the 163 Parish and Town Councils in Dorset to maintain high standards of conduct.

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By virtue of paragraph(s) 1 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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