

**Swindon Borough Council
Procedure for Determination of Complaints
under the Protocol for Member/Officer relations**

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Procedure for Determination of Complaints under the Protocol for Member / Officer relations

The purpose of this Procedure is to set out in detail how the findings of investigations in relation to alleged breaches of the Protocol for Member/Officer relations ('the Protocol') will be dealt with by Swindon Borough Council.

1. INTERPRETATION

- 1.1 'Chair' means the person appointed as Chair for each individual hearing.
- 1.2 'Complainant' means the person making the complaint (who may be a councillor or an officer). It also includes the Complainant's nominated representative.
- 1.3 'Councillor' means an elected or co-opted Member of the Council. The councillor may either be the complainant or the respondent. It also includes the Councillor's nominated representative.
- 1.4 'Hearing' means the hearing by the Standards Committee of a complaint under the Protocol.
- 1.5 'Investigator' means the person appointed by the Monitoring Officer to undertake that investigation, which may include the Monitoring Officer, and his or her nominated representative.
- 1.6 'Legal Advisor' means the Officer responsible for providing legal advice to the Standards Committee. This will usually be the Monitoring Officer, unless he/she has a conflict of interest in which case another legally qualified officer of the Council, or someone appointed for this purpose from outside the Council, who is also legally qualified.
- 1.7 'Monitoring Officer' means the Officer appointed by the Council to be the Monitoring Officer under Section 5 of the Local Government and Housing Act 1989. Where the context refers to administrative acts being carried out it shall be permissible for those to be done by a member of the Monitoring Officer's staff.
- 1.8 'Officer' means an officer of the Council who may be either the complainant or the respondent.
- 1.9 'Parties' means the Complainant and the Respondent.
- 1.10 'Respondent' means the person complained against (who may be a councillor or an officer). It also includes the Respondent's nominated representative.

2. RIGHT TO REPRESENTATION

- 2.1 The Parties may be represented or accompanied during the hearing by a solicitor, barrister, or (with the permission of the Standards Committee) another person.

- 2.2 The Parties should meet their own costs of such representation, unless the Council has otherwise agreed.

3. LEGAL ADVICE

- 3.1 The Standards Committee may take legal advice from its Legal Advisor at any time during the hearing or while it is considering the outcome. The substance of any legal advice given to the Standards Committee should be shared with the Parties and the Investigator if they are present at the hearing.

4. TIMESCALE

- 4.1 The hearing should, so far as practicable, be held within 3 months of receipt by the Monitoring Officer of the Investigator's Final Report ('the report').
- 4.2 All hearings will be arranged in the shortest timescale possible, but may not be held until at least 14 days after the Monitoring Officer has sent the report to the Parties unless the Parties agree otherwise.

5. CONSIDERATION OF REPORTS BY THE STANDARDS COMMITTEE

- 5.1 Where the Monitoring Officer refers the report to the Standards Committee then the Committee or a panel of the Committee shall convene to consider that report and make one of the following findings -

- (a) that it accepts the Investigating Officer's finding of no failure ("a finding of acceptance"); or
- (b) that the matter should be considered at a hearing of the standards committee.

6. PRE-HEARING

- 6.1 The following pre-hearing process to deal with procedural matters will normally be carried out in writing, although exceptionally, a face-to-face meeting between the Chair, the Parties, the Legal Advisor, and the Investigator, and their representatives may be necessary.
- 6.2 As soon as reasonably practicable, and wherever possible within 3 working days after receiving a copy of the report, the Monitoring Officer shall send a copy of the report to the Parties.
- 6.3 The Monitoring Officer (or an Officer on his / her behalf) in consultation with the Chair of the Committee, will also write to the Parties, enclosing a copy of this Procedure and to propose, where practicable, an approximate date, time and place for the hearing. They will also ask for a written response from the Parties, within a set time of 10 working days, unless otherwise agreed with the Parties, to find out whether or not he or she:
- disagrees with any of the findings of fact in the report, and if so, which ones and the reasons for any disagreements;
 - wants to be represented at the hearing by a solicitor, barrister or any other person (the latter will require the express permission of the Standards Committee which is not to be unreasonably withheld);

- wants to give evidence to the Standards Committee, either orally or in writing;
- wants to call relevant witnesses to give evidence or submit written evidence on any disagreements as to the findings of fact or mitigation to the Standards Committee;
- wants any part of the hearing to be held in private;
- wants any part of the report or other relevant documents to be withheld from the public; and
- can come to the hearing.

NOTE:

- (i) The Parties are encouraged to use the forms attached to this part of the Procedure to identify any findings of fact that he or she disagrees with (Form A) and outline any further evidence that he or she believes the Standards Committee should consider (Form B).
- (ii) The Respondent is encouraged to give advance consideration to any representations to be taken into account if he or she is found to have failed to follow the Protocol (Form C).
- (iii) The Respondent will be asked to give information about his or her requirements for representation and witness attendance at the hearing (Forms D and E).

6.4 The Monitoring Officer will ask the Investigator to comment on the Parties' responses, within a set time of 10 working days from the date of receipt unless otherwise agreed with the Investigator, to say whether or not he or she:

- wants to be represented at any hearing (and if so to indicate their availability to attend);
- wants to call relevant witnesses to give evidence to the Standards Committee;
- wants any part of the hearing to be held in private; and
- wants any part of the report or other relevant documents to be withheld from the public.

6.5 For the avoidance of doubt, should the Parties and/or the Investigator fail to respond within the time set for a response they will, for the purpose of this procedure, be deemed to have no objection to the findings of fact or the Parties' response as the case may be.

6.6 Where practicable, those members of the Standards Committee who will be present for the hearing will then meet within 10 working days to consider any responses from the Parties and the Investigator, and to decide whether any other witnesses should be present who they feel may help in determining the case, including the person who made the original allegation. However, no witnesses can be ordered to appear or give evidence. They should then resolve any issues

or disagreements about how the hearing should be conducted, which have been raised but not resolved during the pre-hearing process above.

NOTE: The Monitoring Officer will produce a pre-hearing process summary to include information listed in Form F and will include this with the letter to everyone involved.

6.7 When the Standards Committee has considered any responses as set out above, the Monitoring Officer, in consultation with the Chair, should then write to everyone involved giving, unless otherwise agreed with the Parties, at least 10 working days before the hearing, to:-

- set the date, time and place for the hearing;
- summarise the allegation;
- outline the main facts of the case that are agreed;
- outline the main facts which are not agreed;
- state whether the Parties or the Investigator will go to or be represented at the hearing;
- list those witnesses, if any, who will be asked to give evidence; and
- outline the proposed procedure for the hearing.

7. PROCEDURE FOR THE HEARING - SETTING THE SCENE

7.1 After the members of the Standards Committee and everyone involved have been formally introduced, the Chair should explain how the Standards Committee is going to run the hearing.

7.2 The Chair shall ask members of the Standards Committee to disclose the existence and nature of any personal or prejudicial interests which they have in the matter, and to withdraw from consideration of the matter if so required.

7.3 The Standards Committee may exclude the press and public from its consideration of this matter, where it appears likely that confidential or exempt information will be disclosed in the course of this consideration.

7.4 Accordingly, the Chair shall ask the Parties, the Investigator and the legal adviser to the Standards Committee whether they wish to ask the Standards Committee to exclude the press or public from all or any part of the hearing. If any of them so request, the Chair shall ask them to put forward reasons for so doing and ask for responses from the others and the Standards Committee shall then determine whether to exclude the press and public from all or any part of the hearing.

7.5 Where the Standards Committee does not resolve to exclude press and public, the agenda and any documents which have been withheld from the press and public in advance of the meeting shall then be made available to the press and public.

8. ABSENCE OF THE RESPONDENT

- 8.1 If the Respondent is not present at the time and place fixed for the hearing and the Standards Committee is satisfied that he or she has been given due notice of the hearing, the Standards Committee may, unless it is satisfied that there is sufficient reason for that Party's absence, consider the allegation and make a determination in the absence of the Party concerned; or adjourn the hearing to another date.

9. MAKING FINDINGS OF FACT

- 9.1 After dealing with any preliminary issues, the Standards Committee should then move on to consider whether or not there are any significant disagreements about the facts contained in the report.
- 9.2 If there is no disagreement about the facts, the Standards Committee will move on to the next stage of the hearing set out at section 10 below.
- 9.3 If there is a disagreement, the Investigator, if present, should be invited to make any necessary representations to support the relevant findings of fact in the report.
- 9.4 With the Standards Committee's permission, the Investigator may call any necessary supporting witnesses to give evidence. The Standards Committee may give the Respondent an opportunity to challenge any evidence put forward by any witness called by the Investigator.
- 9.5 The Respondent should then have the opportunity to make representations to support his or her version of the facts and, with the Standards Committee's permission, to call any necessary witnesses to give evidence.
- 9.6 At any time, the Standards Committee may question any of the people involved or any of the witnesses, and may allow the Investigator to challenge any evidence put forward by witnesses called by the Respondent.
- 9.7 If the Respondent disagrees with any relevant fact in the report, without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the hearing. After considering their explanation for not raising the issue at an earlier stage, the Standards Committee may, if the Investigator is present:
- continue with the hearing, relying on the information in the report;
 - allow the Respondent to make representations about the issue, and invite the Investigator to respond and call any witnesses, as necessary; or
 - adjourn the hearing to arrange for appropriate witnesses to be present.
- 9.8 Should the circumstances mentioned in paragraph 9.7 arise, and the Investigator is not present, then the Standards Committee will consider also whether or not it would be in the public interest to continue in his or her absence. If the Standards Committee decides that it is not in the public interest to continue, it shall adjourn the hearing to allow the Investigator to attend or to make further representations.

9.9 The Standards Committee will usually move to another room to consider the representations and evidence in private. Officers may accompany the Standards Committee for administrative/minuting purpose or as requested by the Standards Committee.

9.10 On their return, the Chair will announce the Standards Committee's findings of fact.

10. DID THE RESPONDENT FAIL TO COMPLY WITH THE PROTOCOL?

10.1 The Standards Committee will then consider whether or not, based on the facts either as agreed at section 9.2 or based on its findings following sections 9.3 to 9.7, it has found a failure to comply with the Protocol.

10.2 The Standards Committee will consider any oral or written representations from the Respondent as to why they should not decide that he or she has failed to comply with the Protocol.

10.3 The Standards Committee will consider any verbal or written representations from the Investigator.

10.4 The Standards Committee may, at any time, question anyone involved on any point they raise in their representations.

10.5 The Respondent will, if present, be invited to make any final relevant points.

10.6 The Standards Committee will then move to another room to consider the representations. Officers may accompany the Standards Committee for administrative/minuting purposes, or as requested by the Standards Committee.

10.7 The Committee may make one of the following findings:-

- the Respondent has not failed to comply with the Protocol; or
- the Respondent has failed to comply with the Protocol.

10.8 On their return, the Chair will announce the Standards Committee's decision as to whether or not the Respondent has failed to comply with the Protocol.

11. IF THE RESPONDENT HAS NOT FAILED TO COMPLY WITH THE PROTOCOL

11.1 If the Standards Committee decides that the Respondent has not failed to comply with the Protocol, the Standards Committee will consider having regard to any oral or written representations from the Investigator whether it should make any recommendations to the Council with a view to promoting high standards of conduct among Councillors and/or officers.

11.2 If the Standards Committee considers, from the evidence which they have received during the hearing, that the Respondent has failed to comply with the Protocol for reasons other than those covered by the complaint, the Chair shall outline the Standards Committee's concerns and state that there can be no further action without a written allegation from a complainant.

12. IF THE RESPONDENT HAS FAILED TO COMPLY WITH THE PROTOCOL

- 12.1 If the Standards Committee decides that the respondent has failed to comply with the Protocol, it will consider any verbal or written representations from the Investigator and the Respondent as to:
- whether or not the Standards Committee should set a sanction/penalty; and
 - what form any sanction/penalty should take.
- 12.2 The Standards Committee may question the Investigator and Respondent, and take legal advice, to make sure they have the information they need in order to make an informed decision.
- 12.3 The Committee will then move to another room to consider whether or not to impose a penalty on the Respondent and, if so, what the penalty should be. Officers may accompany the Standards Committee for administrative/minuting purposes or as requested by the Standards Committee.
- 12.4 On their return, the Chairman will announce the Standards Committee's decision in relation to sanctions or penalties, namely any one or a combination of the following:-
- censure the Respondent;
 - request the Respondent to submit a written apology in a form specified by the Standards Committee;
 - request the Respondent to undertake such training as the Standards Committee specifies;
 - request that the Respondent participates in such conciliation as the Standards Committee specifies;
 - report to Council on the outcome of the hearing with an appropriate recommendation;
 - advise the Chief Executive, if the Respondent is an officer of the Council, and/or the Leader of the Council and/or Leader of the Political Group to which the person belongs if he or she is a councillor, of the outcome of the hearing in order that they can consider what appropriate disciplinary or other action should be taken, taking into account any relevant case law, which could include:
 - Formal letter of censure from them;
 - Formal censure of members e.g. through a motion at Council or Committee of the Council;
 - Securing the removal of a member from cabinet / committees;
 - Issuing a press release setting out the outcome of the hearing;
- 12.5 Any sanction imposed shall take effect immediately unless the Standards Committee direct that it shall commence on any date specified within six months of the date of the hearing.

13. THE WRITTEN DECISION

- 13.1 Where practicable, the Standards Committee will announce its decision on the day and provide a short written decision either on that day, or the following working day. It will also issue a full written decision as soon as reasonably practicable after the meeting.

14. APPEAL

- 14.1 There shall be no right of appeal except through the courts by way of judicial challenge.

FORM A Please enter the number of any paragraph where you disagree with the findings of fact in the Investigating Officer's report, and give your reasons and your suggested alternative.

Response of Complainant / Respondent to the evidence set out in the Investigator's report

| Paragraph number from the report | Reasons for disagreeing with the findings of fact provided in that paragraph | Suggestion as to how the paragraph should read |
|----------------------------------|--|--|
| | | |
| | | |
| | | |
| | | |

Please attach separate sheets if necessary.

FORM B

Please set out below, using the numbered paragraphs, any other evidence you feel is relevant to the allegation made about you.

Other evidence relevant to the allegation

| Paragraph number | Details of the evidence |
|------------------|-------------------------|
| 1 | |
| 2 | |
| 3 | |
| 4 | |
| 5 | |

Please attach separate sheets if necessary.

FORM C

Please set out below, using the numbered paragraphs, any factors that the Standards Committee should take into account if it finds that the Respondent is in breach of the Protocol.

Representations to be taken into account if the Respondent is found to have failed to comply with the Protocol

Please note that no such finding has yet been made.

| Paragraph number | Factors for the Standards Committee to take into account when deciding on sanctions or penalties |
|------------------|--|
| 1 | |
| 2 | |
| 3 | |
| 4 | |
| 5 | |

Please attach separate sheets if necessary.

FORM D

Arrangements for the Standards Committee hearing

Please tick the relevant boxes

| | | |
|---|--|---|
| <p>1 The proposed date for the Standards Committee hearing is given in the accompanying letter. Are you planning to go to the hearing?</p> <p>If 'No', please explain why.</p> | <p>YES <input type="checkbox"/></p> <p>NO <input type="checkbox"/></p> | <p>Reason:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> |
| <p>2 Are you going to present your own case?</p> | <p>YES <input type="checkbox"/></p> <p>NO <input type="checkbox"/></p> | |
| <p>3 If you are not presenting your own case, will a representative present it for you?</p> <p>If 'Yes', please state the name of your representative.</p> | <p>YES <input type="checkbox"/></p> <p>NO <input type="checkbox"/></p> | <p>Name:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> |
| <p>4 Is your representative a practising solicitor or barrister?</p> <p>If 'Yes', please give his or her legal qualifications. Then go to question 6.</p> <p>If 'No', please go to question 5.</p> | <p>YES <input type="checkbox"/></p> <p>NO <input type="checkbox"/></p> | <p>Qualifications:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> |
| <p>5 Does your representative have any connection with the case?</p> <p>If 'Yes', please give details</p> | <p>YES <input type="checkbox"/></p> <p>NO <input type="checkbox"/></p> | <p>Details:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> |

| | | |
|--|--|--|
| <p>6 Are you going to call any witnesses?</p> <p>If 'Yes', please fill in Form E.</p> | <p>YES <input type="checkbox"/></p> <p>NO <input type="checkbox"/></p> | |
| <p>7 Do you, your representative or your witnesses have any access difficulties (for example, is wheelchair access needed)?</p> <p>If 'Yes', please give details.</p> | <p>YES <input type="checkbox"/></p> <p>NO <input type="checkbox"/></p> | <p>Details:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> |
| <p>8 Do you, your representative or witnesses have any special needs (for example, is an interpreter needed)?</p> <p>If 'Yes', please give details.</p> | <p>YES <input type="checkbox"/></p> <p>NO <input type="checkbox"/></p> | <p>Details:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> |
| <p>9 Do you want any part of the hearing to be held in private?</p> <p>If 'Yes', please give reasons.</p> | <p>YES <input type="checkbox"/></p> <p>NO <input type="checkbox"/></p> | <p>Reasons:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> |
| <p>10 Do you want any part of the relevant documents to be withheld from public inspection?</p> <p>If 'Yes', please give reasons.</p> | <p>YES <input type="checkbox"/></p> <p>NO <input type="checkbox"/></p> | <p>Reasons:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> |

Please attach separate sheets if necessary.

FORM E

Details of proposed witnesses to be called

| | | |
|---|---|--|
| Name of witness or witnesses | 1 | |
| | 2 | |
| | 3 | |
| WITNESS 1 | | |
| A Will the witness give evidence about the allegation? If 'Yes', please provide an outline of the evidence the witness will give. | YES <input type="checkbox"/> NO <input type="checkbox"/> | Outline of evidence: |
| B Will the witness give evidence about what action the Standards Committee should take if it finds that there has been a breach of the Protocol? If 'Yes', please provide an outline of the evidence the witness will give. | YES <input type="checkbox"/> NO <input type="checkbox"/> | Outline of evidence: |

FORM F

Checklist for the pre-hearing process summary

After the Standards Committee has received responses from the Councillor about whom the allegation has been made and from the Investigating Officer, it should prepare a summary of the main aspects of the case that will be heard.

The pre-hearing process summary should include:-

- the name of the authority;
- the name of the respondent;
- the name of the person who made the original complaint (unless there are good reasons to keep his or her identity confidential);
- case reference number of the Council;
- the name of the Standards Committee Member who will chair the hearing;
- the name of the Monitoring Officer;
- the name of the Investigating Officer who referred the matter;
- the name of the clerk of the hearing or other administrative officer;
- the date the pre-hearing process summary was produced;
- the date, time and place of the hearing;
- a summary of the allegation;
- the relevant section or sections of the Protocol;
- the findings of fact in the Investigating Officer's report that are agreed;
- the findings of fact in the Investigating Officer's report that are not agreed;
- whether or not the respondent or the Investigating Officer will attend or be represented;
- the names of any witnesses who will be asked to give evidence; and
- an outline of the proposed procedure for the hearing.

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