

**Arrangements for dealing with
complaints under the Members' Code
of Conduct**



AVON
FIRE AUTHORITY

www.avonfire.gov.uk

Arrangements for dealing with complaints under the Members' Code of Conduct



1. Introduction

- 1.1 At their meeting of 4 October 2023, Avon Fire Authority adopted a new Code of Conduct for Members, which brought the Code in line with the Local Government Association (LGA) Model Councillor Code of Conduct.
- 1.2 In accordance with section 28 of the Localism Act 2011, these arrangements set out how a complaint may be made that an elected member or co-opted member of Avon Fire Authority has failed to comply with the Authority's Code of Conduct for Members and how the Authority will deal with such allegations.

2. Making a complaint

- 2.1 The person making the complaint will be referred to as "the complainant" and the person against whom the complaint is made will be referred to as the "subject member".
- 2.2 A complaint should be made by completing the standard complaint form at **Annex A** - available on Avon Fire Authority's website at the following link:

[insert link]
- 2.3 The complainant should specify the identity of the person(s) alleged to have breached the Code, the conduct that is alleged to give rise to the breach, the evidence that supports the allegation and the names (and contact details) for any potential witnesses able to give direct evidence of the events complained about.
- 2.4 The completed complaint form should be submitted by email or post to:

Email: the.clerk@avonfire.gov.uk

Post: Clerk/Monitoring Officer, Avon Fire Authority, Police and Fire HQ, Valley Road, Portishead, Bristol BS20 8JJ.

3. Anonymous complaints

- 3.1 Complainants must provide their name and postal address when submitting a complaint. Anonymous complaints will not be considered unless the Clerk decides (after consultation with the Independent Person) that the complaint raises a serious issue affecting the public interest which is capable of investigation without the need to ascertain the complainant's identity.



4. Confidentiality

- 4.1 As a matter of fairness and natural justice, the subject member should usually be told who has complained about them and receive details of the complaint. However, in exceptional circumstances, the Clerk may withhold the complainant's identity if on request from the complainant, they are satisfied that the complainant has evidence and reasonable grounds for believing that they or any witness relevant to the complaint may be at risk of actual harm, or their employment may be jeopardised if their identity is disclosed. If the Clerk decides to anonymise the complaint form, this decision will be kept under review.
- 4.2 If the Clerk 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 their identity being disclosed.

5. Acknowledgement

- 5.1 The Clerk will normally acknowledge receipt of the complaint within five working days of receipt.
- 5.2 The complaint may be rejected by the Clerk at this stage if:
- It is against the whole Fire Authority, or the complaint is about service provision by Avon Fire & Rescue Services, rather than member conduct.
 - It is against an elected member who is not appointed to Avon Fire Authority.
 - The subject member was not in office at the time of the alleged misconduct/or at the time of the complaint.
- 5.3 The Clerk will also within five working days and, on a confidential basis, inform the subject member of the substance of the complaint and the identity of the complainant (unless the Clerk considers that such notification would prejudice the proper consideration and investigation of the complaint).
- 5.4 The subject member may, within ten working days of receipt, make written representations to the Clerk which must be taken into account when deciding how the complaint will be dealt with. Representations received after this time may be taken into account, at the discretion of the Clerk, but will not be considered after the Clerk has issued their Initial Assessment.

6. Initial Assessment

- 6.1 The Clerk will review the complaint and decide whether it should be rejected, merits further investigation, or can be resolved informally.

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- 6.2 The Clerk may seek the views of the Independent Person at this stage to aid consideration and may also request further information from the complainant or the subject member.
- 6.3 This initial assessment will normally be completed within 21 working days of receipt of a complaint. A complaint will be rejected by the Clerk where:
- a) The allegation does not demonstrate any potential breach of the Code, for example, it relates to events which occurred when the person complained about was not acting in an official capacity.
 - b) The complainant has failed to provide the information specified in the complaint form or any other information reasonably requested by the Clerk.
 - c) The complaint is anonymous and this impacts on the ability to properly investigate.
 - d) The complaint is the same or substantially the same as a complaint previously dealt with.
 - e) The events complained about took place more than six months ago and there are no valid reasons for the delay in bringing the complaint, such as fresh evidence not available at the time or only recently discovered.
 - f) The complaint is politically motivated, trivial or 'tit for tat'.
 - g) The complaint discloses such a minor or technical breach of the Code that it is not in the public interest to pursue.
 - h) The member against whom the allegation has been made has remedied or made reasonable endeavours to remedy the matter and the complaint does not disclose sufficiently serious potential breaches of the Code to merit further consideration.
 - i) The complaint is about a person who is no longer a member of the Fire Authority and there are no overriding public interest reasons to merit further consideration.
- 6.4 If the complaint is rejected at initial assessment, the complainant and the subject member will be advised of the decision and there will be no right of appeal.
- 6.5 If the complaint is not rejected, the Clerk will then go on to apply the following criteria in deciding whether a complaint should be dealt with by informal resolution or whether a formal investigation is required:
- a) Whether the allegation discloses a potential breach of the Code of Conduct, but the complaint is not serious enough to merit any recommendation other than an apology.



- b) The resources needed to investigate and determine the complaint are wholly disproportionate to the allegation(s).
- c) Whether, in all the circumstances, there is no overriding public interest in carrying out an investigation.
- d) Whether the complaint suggests that there is a wider problem throughout the Authority.
- e) Whether training or mediation would be the appropriate response.

6.6 The decision as to how to proceed will be made by the Clerk after seeking the views of the Independent Person and shall be final. There shall be no right of appeal.

7. Informal Resolution

7.1 Wherever possible, the Clerk will resolve complaints.

7.2 If the Clerk considers, after consultation with the Independent Person, that there has been a breach of the Code and the matter could reasonably be resolved without the need for a formal investigation, a fair resolution shall be suggested.

Such resolution may include:

- advising the subject member about matters of conduct
- arranging training for the subject member
- advising the subject member that an apology might be appropriate
- suggesting a mediation meeting between the subject member and the complainant, or
- another course of action.

7.3 The Clerk will report with full reasons the outcome of the complaint to the complainant and subject member; where appropriate, the unitary authority of the subject member and the relevant group leader(s) will also be informed.

7.4 The Clerk will seek confirmation that the suggested resolution has been complied with.

8. Formal investigation

8.1 Where, in the opinion of the Clerk, following consultation with the Independent Person, a formal investigation is required, the Clerk will appoint an Investigating Officer to investigate the complaint, gather further evidence and prepare a report. The Clerk may investigate themselves or appoint a senior officer of Avon Fire & Rescue Service, an officer of another local authority, or an external investigating officer to investigate, if required, or to avoid any conflict of interest.



- 8.2 The subject member will be required to co-operate fully with the investigation process and the Clerk will keep the complainant and the subject member informed as to progress at appropriate intervals.
- 8.3 Prior to concluding the investigation, the Investigating Officer may discuss the matter in confidence with the Clerk and Independent Person before producing a draft report. Copies of the draft investigation report will be circulated to the complainant and subject member in confidence giving them both an opportunity to correct any factual inaccuracies. Having received and taken account of any comments on the draft investigation report, the Investigating Officer will send the finalised report to the Clerk.
- 9. Investigation report concludes no failure to comply with the Code.**
- 9.1 The Clerk will review the evidence collated and the Investigating Officer's report and, following consultation with the Independent Person, if satisfied that the investigation report is satisfactory, will within 10 working days confirm the finding of no failure to comply with the Code.
- 9.2 The Clerk will write to the complainant and the subject member with the Clerk's decision that there has been no failure to comply with the Code, including a copy of the Investigating Officer's final report.
- 9.3 If the Clerk is not satisfied that the investigation has been conducted satisfactorily, the investigating officer may be asked to reconsider their report and conclusion.
- 10. Investigation report concludes there is evidence of a failure to comply with the Code.**
- 10.1 The Clerk will review the investigation report and will consult with the Independent Person and will decide whether:
- The breach of the Code is suitable for informal resolution (in accordance with paragraph 7 above), or
 - The breach of the Code is not considered suitable for informal resolution and should be referred to a hearing by a sub-committee of the Audit, Governance and Oversight Committee (AGOC) for decision.
- 10.2 If the subject member accepts the suggested informal resolution, no further action will be taken and, where appropriate, the unitary authority of the subject member and the relevant group leader(s) will be informed. If the subject member refuses an informal resolution, then the matter will be referred to a hearing by a sub-committee of the Audit, Governance and Oversight Committee (AGOC) for decision.

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- 11. Hearing of the sub-committee of the Audit, Governance and Oversight Committee (AGOC)**
- 11.1 A hearing of the AGOC sub-committee is not a Court process, but in order to be fair to everyone there is a procedure to be followed at **Annex B**. The sub-committee will comprise a minimum of three members and the hearing will be conducted in exempt session.
- 11.2 If after a hearing the AGOC sub-committee concludes that the subject member did not fail to comply with the Code, the complaint will be dismissed and that will be an end to the matter.
- 11.3 If after a hearing the AGOC sub-committee concludes the subject member failed to comply with the Code the Chair will inform the subject member of this finding and the sub-committee will then consider what action, if any, should be taken as a result of the failure to comply with the Code. The subject member will have an opportunity to make representations and the Independent Person will be consulted.
- 11.4 The AGOC sub-committee may:
- 11.4.1 Publish its findings in respect of the member's conduct.
 - 11.4.2 Report its findings to the member's unitary authority.
 - 11.4.3 Recommend to the member's unitary authority that the member be removed as their council nomination to Avon Fire Authority.
 - 11.4.4 Recommend to the Fire Authority that the member is censured (a formal vote of condemnation or disapproval).
 - 11.4.5 Instruct the Clerk to arrange training for the member.
 - 11.4.6 Require an apology in suitable terms to the complainant/Avon Fire Authority.
- 11.5 The AGOC sub-committee has no power to suspend or disqualify the subject member.
- 11.6 Within 10 working days the Clerk will prepare a formal Decision Notice and send a copy to the complainant and the subject member (and to the member's unitary authority, where appropriate).
- 11.7 The Decision Notice will be published as part of the minutes of the AGOC sub-committee and placed on the Fire Authority's website, unless the Clerk determines that it should remain confidential, or it contains exempt information.



12. Appeals

- 12.1 There is no right of appeal by the subject member against a decision of the Clerk or of the AGOC sub-committee.
- 12.2 If the Complainant feels that the Fire Authority has failed to deal with their complaint properly, they may make a complaint to the Local Government Ombudsman.

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Annex A - COMPLAINT FORM – FOR COMPLAINTS ABOUT MEMBERS

To: The Clerk/Monitoring Officer
Avon Fire Authority
Police and Fire HQ
Valley Road
Portishead
Bristol BS20 8JJ

This form can be submitted by post or email to: the.clerk@avonfire.gov.uk

Please note that this form should only be used for complaints against Avon Fire Authority Elected Members.

1. Your details

Please provide us with your name and contract details:

Title	
First name	
Last name	
Address	
Telephone number	
Email address	
Which complainant type best describes you: <ul style="list-style-type: none">• Member of the public• An elected or co-opted Member of the Fire Authority• Member of Parliament• Local Authority Monitoring Officer• Avon Fire and Rescue service officer or employee, or• Other (please state)	
Date complaint submitted	

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The Clerk will tell the Member(s) you are complaining about and will tell them your name and a summary of your complaint. The Clerk will give them full details of your complaint where necessary or appropriate to deal with it. If you have serious concerns about your name and details of your complaint being released, please complete section 4 of this form.

2. Making your complaint

Please provide the name of the Member(s) you believe have breached the Code of Conduct.

Title	First Name	Last Name

Please explain in this section (or on separate sheets) what the Member has done that you believe breaches the Members' Code of Conduct. If you are complaining about more than one Member you should clearly explain what each individual person has done that you believe breaches the Code of Conduct.

Please adhere to the following:

- Provide all the information you wish to have considered.
- Be specific, wherever possible, about exactly what you are alleging the Member said or did. For example, instead of writing that the Member insulted you, you should state what it was they said.
- Provide the dates of the alleged incidents wherever possible, or a general timeframe.
- Confirm whether there are any witnesses to the alleged conduct and provide their names and contact details, if possible.
- Confirm which clauses of the Member Code of Conduct you consider have been breached.
- Provide any relevant documents, such as letters, screen shots or emails.
- Provide any relevant background information.



My complaint

Please explain the alleged conduct you are complaining about in as much detail as possible.

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If needed, please attach continuation sheets.



3. Privacy statement

In order to deal with your complaint, Avon Fire Authority will use your personal information to consider the complaint and may need to share your information with individuals or organisations relevant to the matter you have raised. This information may include your name and address and the nature of your complaint.

4. Confidentiality

Only complete this section if you are requesting that your identify is kept confidential.

In the interests of fairness and natural justice, we believe Members who are complained about have a right to know who has made the complaint. We also believe they have a right to be provided with a summary of the complaint. We are unlikely to withhold your identity or the details of your complaint unless we consider there are exceptional circumstances, such as you have evidence and reasonable grounds for believing that you or any witness relevant to the complaint may be at risk of actual harm, or your employment may be jeopardised if your identity is disclosed.

To allow us to consider a request for confidentiality we require you to provide an explanation of the reason why you think your details should be kept confidential in the space below.

Please note that requests for confidentiality will not automatically be granted. The Clerk will consider the request alongside the substance of your complaint. We will then contact you with a decision. If your request for confidentiality is not granted, we will allow you the option of withdrawing your complaint.

Reasons for seeking confidentiality

5. Informal Resolution

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It is often possible to resolve complaints without recourse to a formal investigation and hearing. To assist us in determining whether the matter is suitable for informal resolution, it would be

helpful if you could describe what action you think would be appropriate to resolve your complaint.

Informal Resolution

Please explain what action you think would be appropriate to resolve your complaint.

6. Additional Help

Complaints must be submitted in writing; this includes completing this form on a computer and submitting to the Clerk by email.

We can make reasonable adjustments to assist you if you have a disability that presents you from making your complaint in writing. We can also help if English is not your first language. If you need any support in completing this form, please contact the Clerk via the Democratic Services Assistant on: 0117 926 2061, Ext: 231 or Mobile: 07974 584 444 or by email to the.clerk@avonfire.gov.uk

Signed

Dated



Annex B – Procedure for hearing of Audit, Governance and Oversight Committee (AGOC) sub-committee

1. Pre-hearing process

- 1.1 The Clerk will invite the subject member to give their written response to the investigation report and identify any agreed or disputed facts. This will assist in narrowing the issues in dispute at the hearing.
- 1.2 The subject member will be required to identify any witnesses they wish to call in relation to the issues to be determined (not character witnesses).
- 1.3 The subject member will be required to provide any dates when they or their witnesses would be unable to attend a hearing.
- 1.4 The AGOC sub-committee, taking account of the advice of the Clerk, may issue directions for the hearing, including timetabling and witness attendance. Any directions may be issued either beforehand or at the hearing.
- 1.5 Any AGOC sub-committee meeting dealing with the pre-hearing process, will be held in private, without the complainant or the subject member present.

2. Documentation

- 2.1 The hearing of the AGOC sub-committee is subject to the normal rules for publication of agendas and access to information.
- 2.2 The agenda papers for the hearing will include:
 - The clerk's cover report
 - The complaint form and any accompanying documentation
 - Initial representations received from the subject member
 - Investigator's report
 - Subject member's written response to the investigator's report
 - For reference: Avon Fire Authority Code of Conduct, Arrangements for dealing with complaints under the Member's Code of Conduct, and this Annex B.
- 2.3 The agenda and documents will be published under the Authority's rules for exempt information. Prior to the hearing, any documentation issued or exchanged during the process must be treated by all recipients as confidential.



3. Hearing

Representation

- 3.1 The subject member may be represented or accompanied during the meeting by a Solicitor, Counsel or, with the permission of the AGOC sub-committee, another person. The Clerk should be given prior notification where a subject member is to be represented.

Legal Advice

- 3.2 The AGOC sub-committee may take legal advice, in private, if necessary, from its legal adviser at any time during the hearing or while they are considering the outcome.

Procedural Issues

- 3.3 After all members of the AGOC sub-committee and others present have been introduced the Chair will explain how the sub-committee is to proceed.
- 3.4 A hearing will ordinarily follow normal Fire Authority meeting procedures. For example, introductions, apologies, declaration of interests and a request that the Clerk/Investigating Officer introduce the matter to be determined.
- 3.5 If the subject member (or appointed representative) is not present the AGOC sub-committee will consider whether to hear the case in their absence or defer to another time or date. If the subject member has indicated the hearing should continue in absence this will normally happen.
- 3.6 The AGOC sub-committee will resolve any outstanding issues or disagreements about the conduct of the hearing that were not resolved during the pre-hearing process.

Findings of Fact

- 3.7 If there is no disagreement about the facts the AGOC sub-committee will move on to establish whether or not the subject member failed to follow the Code.
- 3.8 If the subject member disagrees with any fact in the Investigation Report without having given notice under the pre-hearing process, they must give good reason why it has been raised at this late stage. After considering the subject member's representation the sub-committee may:
- Continue with the hearing on the facts as presented in the Investigation Report.
 - Allow the Subject Member to make representations on the issue and invite the Investigation Officer to respond with or without witnesses.
 - Defer the Hearing in the public interest to enable witnesses and or the Investigation Officer to attend should they be absent.



3.9 If there is disagreement on the facts the Clerk/Investigating Officer will be invited to make any representations and with the sub-committee's permission call witnesses. The sub-committee may give the subject member an opportunity to challenge any witness evidence put forward by the Clerk/Investigating Officer.

3.10 The subject member will have the opportunity to make representations in support of their version of the facts and call witnesses with the sub-committee's permission. The Investigating Officer may challenge any witness evidence put forward by the subject member.

3.11 The AGOC sub-committee may at any time question those involved including witnesses and the Investigating Officer.

3.12 The AGOC sub-Committee, together with the Clerk/Legal Advisor, will usually move to a private room to consider the representations and evidence.

3.13 On their return, the Chair will announce the sub-committee's findings of fact.

4. Deciding whether the subject member failed to follow the Code

4.1 The subject member will be invited to give a statement as to why the AGOC sub-committee should conclude they have not failed to follow the code.

4.2 The AGOC sub-committee will ask the Investigating Officer for any verbal or written representations.

4.3 At any time the AGOC sub-committee may question those making representations.

4.4 The subject member will be invited to make any relevant closing remarks.

4.5 The AGOC sub-committee, together with the Clerk/Legal Advisor, will usually move to a private room to consider the representations.

4.6 On their return, the Chair will announce the AGOC sub-committee's decision as to whether the subject member failed to follow the Code.

5. If the subject member has not failed to follow the Code of Conduct

5.1 If the AGOC sub-Committee concludes that the subject member did not fail to comply with the Code it will dismiss the complaint and no further action will be taken. In that event, the sub-committee may still make general recommendations to the Fire Authority on any remedial actions if considers necessary to address the issues raised.



6. If the subject member has failed to follow the Code of Conduct

- 6.1 If the AGOC sub-committee determines that the subject member has failed to comply with the Code the Chair will inform the subject member of this finding. The Independent Person will be invited to give their views on the matter and these views will be recorded in the minutes of the meeting. The Chair of the AGOC sub-committee will also explain the reasons why any advice from the Independent Person has or has not been followed in reaching its decision.
- 6.2 The AGOC sub-committee will then consider what action, if any, should be taken as a result of a finding of failure. The sub-committee will give the subject member an opportunity to make representations on any action and the Independent Person will also be consulted in deciding what action, if any, to take. The Independent Person will not act in the capacity of advocate for any party to the proceedings.
- 6.3 The AGOC sub-committee will then deliberate in private to consider what, if any, sanction to impose and, if so, what that sanction should be.
- 6.4 On their return the Chair will announce the AGOC sub-committee's decision.

7. Recommendations

- 7.1 The AGOC sub-committee will consider whether it should make any recommendations to the full Audit, Governance and Oversight Committee or the Fire Authority with a view to promoting high standards of conduct among Members.

8. The Written Decision

- 8.1 The AGOC sub-Committee will announce its decision on the day and a Decision Notice will be issued within 10 working days.

9. Departure from this procedure

- 9.1 The Chair of the AGOC sub-committee has the right to depart from this procedure, in consultation with the Clerk/Legal Advisor, at any hearing where it is considered appropriate to deal with the case fairly and effectively.

