

Procedure for Dealing with Code of Conduct Complaints Against Members



Table of Contents

Procedure for Dealing with Code of Conduct Complaints Against Members.....	1
1.0 Introduction	3
2.0 Stage One – Submitting a Complaint and Initial Assessment	3
3.0 Initial Assessment.....	4
4.0 Stage 2 – Informal Resolution.....	5
5.0 Stage 3 – Investigation – Monitoring Officer Assessment.....	6
6.0 Complaints that will not normally be investigated	6
7.0 The Public Interest.....	6
8.0 Appointment of an Investigating Officer	7
9.0 Notification	7
10.0 Conduct of the Investigation.....	7
11.0 Production of Documents, Information and Explanations	8
12.0 Representation	8
13.0 Interview Notes.....	8
14.0 Additional evidence of breach of Code of Conduct.....	8
15.0 Early termination of the investigation.....	9
16.0 The Draft Report.....	9
17.0 Final Report.....	10
18.0 Stage 4: Hearing and Determination – Determination Hearing.....	10
19.0 Determination Hearing Procedure – Pre-Hearing Process	10
20.0 Subject Member’s Representation	11
21.0 The Hearing Date and Arrangements.....	11
22.0 The Monitoring Officer’s Report.....	12
23.0 Hearing Sub-Committee	12
24.0 Hearing Procedure	12
25.0 Order of Business.....	13
26.0 Proceeding in the Subject Member’s Absence	13
27.0 Investigation Officer Presentation.....	13
28.0 The Subject Member’s Case	13
29.0 The Decision	14
30.0 Appeal	15
31.0 Notice of Findings.....	15



Appendix 1	16
Appendix 2	20
Appendix 3	22
Glossary	23

1.0 Introduction

- 1.1 This procedure applies to all complaints submitted under the Members' Code of Conduct adopted by Westmorland and Furness Council.
- 1.2 The Council's Monitoring Officer is responsible for the administration of Code of Conduct complaints made under the Members' Code of Conduct and may nominate another officer of suitable experience and seniority to carry out any of the functions listed in this procedure. Complaints that relate to Officers of the Council are subject to the procedures set out in the Officer Code of Conduct.
- 1.3 The Arrangements provide that the Authority has appointed at least one Independent Person, whose views must be sought by the authority before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the Authority at any other stage, or by the Member against whom an allegation has been made. These appointments take place at the Full Council meeting.
- 1.4 The Members' Code of Conduct applies to elected Members and voting co-opted Members when they are acting in that capacity. Complaints must be submitted to the Council's Monitoring Officer. The Monitoring Officer will consider whether a failure to comply with the rules about 'Disclosable Pecuniary Interests' should be directed to the Cumbria Police if s/he considers there are reasonable grounds to consider a criminal offence may have occurred. Complaints about a potential breach of the general obligations should be submitted to the Monitoring Officer for consideration.
- 1.5 Complaints can only be considered where a Member is acting in an official capacity for the Council. It does not apply to a Members actions or omissions in their private life. (This will be case specific)

2.0 Stage One – Submitting a Complaint and Initial Assessment

- 2.1 Complaints must
 - be submitted in writing;
 - contain the identity of the Complainant (in certain circumstances, the Complainant will have the option to withdraw their name to ensure the complaint is treated anonymously as it progresses);



- provide information that substantiates the allegations made; and
 - outline the form of resolution the Complainant is seeking.
- 2.2 The Complainant should use the correct form found on the Council's website.
- 2.3 If the Monitoring Officer considers the complaint does not include sufficient information, the Complainant will be asked to provide the additional information and the complaint will not be accepted until it is received.
- 2.4 The Monitoring Officer will inform the following people a complaint has been made:
- the Subject Member(s);
 - the Council's Independent Person(s) who will be consulted on your complaint;
 - the Investigating Officer appointed to investigate your complaint or persons whom they contact as part of an investigation; and
 - the Council's Standards and Governance Committee.
- 2.5 The Monitoring Officer will provide the name and a summary of a complaint. They will provide full details of a complaint where necessary or appropriate to be able to deal with the complaint.
- 2.6 The Monitoring Officer will consider a request by a Complainant or witness to keep their identity confidential (from the Complainant and / or others) but will only grant such a request in exceptional circumstances.

3.0 Initial Assessment

- 3.1 The Monitoring Officer will consider the complaint and make a decision as to whether it will be treated as a valid complaint or not based on the criteria agreed by the Council attached at Appendix 1 to this document following consultation with the Chair of the Standards and Governance Committee and Independent Person. At this stage, the Chair of the Standards and Governance Committee, may decide to remove themselves from the process so they can take part in any subsequent hearing, if deemed necessary.
- 3.2 If the Monitoring Officer determines that the complaint is about an employee or the provision of a Council service, it will be referred to the relevant service for response. The Monitoring Officer will dismiss the complaint under the Code of Conduct. Complaints about the provision of a Council service will be dealt with in accordance with the Council's complaints procedure.
- 3.3 The Monitoring Officer will dismiss invalid complaints having discussed them with the Chair of the Standards and Governance Committee, Independent Person and the Complainant will be notified in writing providing reasons for the decision. The Subject Member will also be informed and will be notified of the content of the complaint. There is no appeal process for decisions taken by the Monitoring Officer at this stage.



- 3.4 The Monitoring Officer will provide reports on a cyclical basis to the Standards and Governance Committee on all complaints received and their determination.

4.0 Stage 2 – Informal Resolution

- 4.1 If the Monitoring Officer decides the complaint is a valid complaint s/he will normally consider if an informal resolution between the Complainant and the Subject Member is possible, taking the following actions:

- Write to both parties requiring them to seek resolution of the complaint with a reasonable period; and
- Provide such assistance to informally resolve the complaint as considered reasonable, including the involvement of the Chair of the Standards and Governance Committee, Independent Person(s), political groups, or party representatives.

- 4.2 Informal resolution must include the withdrawal of the complaint but may also include:

- An explanation by the Subject Member of the circumstances surrounding the complaint;
- An apology from the Subject Member;
- An agreement from the Subject Member to attend relevant training or to take part in a mentoring process;
- Offering to engage in a process of mediation or conciliation between the Subject Member and the Complainant;
- An agreement by the Complainant that the complaint did not arise from misconduct by the Subject Member; or
- Any other action capable of resolving the complaint.

- 4.3 The Independent Person is available to the Subject Member to give them advice on the severity of the complaint and what form of resolution they would consider appropriate, providing such guidance will not prevent the Independent Person giving a view to the Standards and Governance Committee about the complaint at a later stage.

- 4.4 If the Complainant informs the Monitoring Officer that their complaint has been resolved by informal resolution, no further action will be taken except that the Monitoring Officer:

- will ensure any actions arising from the informal resolution are completed; and
- if so, will inform both the Complainant and Subject Member that the complaint will be dismissed and will record the outcome and report it to the next meeting of the Standards and Governance Committee.



- 4.5 Where informal resolution has not been possible or the Monitoring Officer considers that it is not appropriate in the circumstances of the complaint, the complaint will move to the next stage.

5.0 Stage 3 – Investigation – Monitoring Officer Assessment

- 5.1 The Monitoring Officer will determine if the complaint merits investigation and keep a written record of their decision including reasons.

6.0 Complaints that will not normally be investigated

- 6.1 The following complaints are normally not suitable for investigation, save where the Monitoring Officer accepts there are exceptional circumstances:
- Complaints that are essentially about Council services, its policies or performance. Such complaints will be referred to the relevant service area in accordance with the Council's Complaints Policy.
 - Complaints that are really about the political policies or performance of a councillor in their role. Such complaints will be referred to the councillor and / or their political group for response.
 - Complaints that relate to another authority or an alleged breach of another authority or body's Code of Conduct.
 - Vexatious or frivolous complaints or complaints which are intended to insult individuals.
 - Minor or "tit-for-tat" complaints that do not justify the time and resources of an investigation.
 - Complaints which relate to matters or events more than 3 months before the date of the complaint.
 - Complaints by a Member against another Member will not normally be investigated until the Monitoring Officer considers that other processes, e.g. informal mediation or political group processes, have been exhausted.
 - Complaints by officers should be first made under the Member / Officer Protocol.
 - Complaints that are already subject to other internal or external processes will not be investigated until those other processes have completed to enable the complaint to be resolved by other means. Determination of such complaints will be suspended until the other process is finalised.

7.0 The Public Interest

- 7.1 The Monitoring Officer will consider whether it is in the public interest to investigate the complaint taking into account and balancing the following factors:
- The seriousness of the alleged breach;
 - The level of culpability alleged against the Subject Member including if it is alleged the Subject Member has financially benefitted from the alleged breach;



- What harm if any is alleged to have been caused to the Complainant or others;
- What is the impact on the wider community of the alleged breach; and
- Is an investigation and potential hearing a proportionate response to the complaint?

7.2 Appendix 2 provides further information on the consideration of these questions.

8.0 Appointment of an Investigating Officer

8.1 The Monitoring Officer will appoint an Investigating Officer to investigate the complaint. The Investigating Officer may be a council officer, the officer of another local authority, or an external Investigating Officer.

8.2 The Investigating Officer may with the Monitoring Officer's agreement appoint persons to assist in the conduct of his/her functions or provide professional advice or services.

9.0 Notification

9.1 The Monitoring Officer shall notify the Subject Member in writing:

- that the allegation has been referred for formal investigation and the conduct which is the subject of the allegation;
- the identity of the person making the allegation;
- the identity of the Investigating Officer;
- the procedure which will be followed in respect of the allegation; and
- not to contact the Complainant or seek to improperly influence the determination of the complaint by any means.

9.2 The Monitoring Officer will notify the Complainant in writing of the same matters including that the Subject Member should not contact them or seek to improperly influence the determination of the complaint.

10.0 Conduct of the Investigation

10.1 The Investigating Officer must:

- Collate sufficient information to determine whether the Subject Member has acted in breach of the Code of Conduct and, where there has been a breach of the Code of Conduct, whether any action should be taken in respect of the Subject Member or in consequence of the breach, and what any action should be; and
- Prepare and present a report of the above findings and the evidence to support them to the Monitoring Officer.



11.0 Production of Documents, Information and Explanations

- 11.1 The Investigating Officer (and any person authorised on his/her behalf) is authorised to:
- make such enquiries of any person or organisation and request any person or organisation to provide any document or information which is in their possession or control, or provide any explanation, as he/she thinks necessary for the purposes of carrying out the investigation;
 - require the Council to provide any document which is in its possession or control which the Investigating Officer thinks necessary for the purposes of carrying out the investigation; and
 - request any person to attend and appear before him/her or otherwise provide any information, document, or explanation as he/she thinks necessary for the purposes of carrying out the investigation.

12.0 Representation

- 12.1 Any person interviewed by the Investigating Officer may arrange to be accompanied at their own expense by a solicitor, trade union or friend.

13.0 Interview Notes

- 13.1 Where practicable, following an interview the Investigating Officer shall produce a written note of the material points of the interview, provide two copies of that note to the person interviewed and ask them to return one copy signed as a correct record of the interview, with such corrections or amendments as they may feel necessary for that purpose. The Investigating Officer will determine whether to accept or reject any amendments but will keep a copy of any response.

14.0 Additional evidence of breach of Code of Conduct

- 14.1 Where, in the course of his/her investigation, the Investigating Officer becomes aware of any other matter which appears to him/her to evidence a different or additional breach of the Code of Conduct by the Subject Member the Investigating Officer shall inform the Monitoring Officer with any supporting information.
- 14.2 The Monitoring Officer shall then determine following consultation with the Independent Member:
- whether or not to investigate the additional matter in accordance with this Procedure;
 - whether or not to instruct the Investigating Officer to investigate the additional matter or appoint a different Investigating Officer; and



- If so, notify the Subject Member of the additional allegations and how it will be investigated if at all.

15.0 Early termination of the investigation

15.1 The Investigating Officer may terminate his/her investigation at any point, where they are satisfied they have sufficient information to report to the Monitoring Officer.

16.0 The Draft Report

16.1 The Investigating Officer will prepare and submit to the Monitoring Officer a draft report setting out:

- the details of the allegation;
- the relevant provisions of any relevant statute, the Code of Conduct or protocols;
- the Subject Member's initial response to notification of the allegation [if any];
- the relevant evidence obtained during the investigation;
- a list of any documents relevant to the matter;
- a list of those persons they have interviewed and those organisations from whom they have sought information;
- details any person or organisation that did not cooperate with a request to provide evidence;
- a statement of draft findings of fact;
- findings whether the Member has or has not failed to comply with the Code of Conduct for Members and if so, findings on whether any action should be taken in respect of the Member or in consequence of the breach, and what any action should be; and
- the reasoning for all findings.

16.2 The Monitoring Officer will provide comments on the report to the Investigating Officer within 14 days of receipt and may meet or speak with the Investigating Officer during this time to discuss the draft report.

16.3 The Investigating Officer shall then send a copy of his/her draft report in confidence to the Subject Member and the Complainant and request that they send any factual comments thereon to him/her within 14 days.

16.4 The Investigating Officer may send a copy of, or relevant extracts from his/her draft report in confidence to any person on whose evidence he/she has relied in compiling the draft report, and request that they send any comments thereon to him/her within 14 days.

16.5 It is noted that in some circumstances, the time limits set out above may not be attainable. If it is felt that the investigation will take longer than the 14 days, the Investigating Officer will contact the Complainant.



17.0 Final Report

- 17.1 The Investigating Officer shall reconsider and may amend his/her draft report in the light of any comments received and send their final report to the Monitoring Officer.
- 17.2 The Investigating Officer should append copies of any documents relied on in reaching his/her conclusions.
- 17.3 The Monitoring Officer will review the Investigating Officer's report and, if he/she is satisfied with the Investigating Officer's report shall then:
- **where the final report concludes that there has not been a failure to comply with the Code of Conduct for Members** will write to the Complainant and the Subject Member concerned notifying that no further action is required and provide a copy of the final report; and
 - **where the final report concludes that there has been a failure by the Councillor to comply with the Code of Conduct for Members** will provide a copy of the report to Complainant and Subject Member and either refer the matter for hearing before the Sub-Committee or, after consulting the Chair of the Standards and Governance Committee and Independent Person, seek local resolution.
- 17.4 Local resolution means a resolution of the complaint through agreement between the Complainant and the Subject Member to resolve the complaint taking into account the Investigating Officer's findings. The Monitoring Officer may consider it is not appropriate for more serious allegations and it requires the agreement of both parties.
- 17.5 If the report is resolved by local resolution, then the complaint is closed.

18.0 Stage 4: Hearing and Determination – Determination Hearing

- 18.1 Where a complaint is referred by the Monitoring Officer, the Hearing Sub-Committee will meet to consider the Investigating Officer's report to determine whether the Subject Member has failed to comply with the Code of Conduct and, if so, whether to impose a sanction on the Subject Member.

19.0 Determination Hearing Procedure – Pre-Hearing Process

- 19.1 The Monitoring Officer shall inform the Chair of the Standards and Governance Committee and Independent Person of the requirement to hold a Determination Hearing and a meeting of the Hearing Sub-Committee will be convened.
- 19.2 Where the Monitoring Officer is the Investigating Officer, they will arrange for a separate legal advisor to the Hearing Sub-Committee to be appointed in respect of the allegation.



20.0 Subject Member's Representation

- 20.1 The Subject Member shall be asked to provide a written response to the final report within 14 working days to the final report setting out:
- any disagreement with findings of fact and the reasons for any disagreement;
 - If they intend to be represented at the hearing (at their own expense) and if so the representative's contact details;
 - if they intend to give evidence at the Determination Hearing orally or in writing;
 - the identity of any relevant witnesses they wish to call at the Determination Hearing; and
 - if they consider any part of the Investigating Officer's report or the Determination Hearing should be withheld from public access or held in private in accordance with the Council's Access to Information Rules including the reasons for the request.
- 20.2 The Monitoring Officer will inform the Subject Member if, at the Determination Hearing, they dispute the Investigating Officer's report without having previously notified the Monitoring Officer. The Chair of the Hearing Sub-Committee may either:
- adjourn the meeting to enable the Investigating Officer to provide a response, or
 - refuse to allow the disputed matter to be raised.
- 20.3 Investigating Officer's Response:
- The Monitoring Officer shall invite the Investigating Officer to comment on the Subject Member's response, and to say whether or not they wish:
 - to be represented or be present at the Determination Hearing; or
 - to call relevant witnesses to give evidence or submit written or other evidence.
 - The Monitoring Officer may request the Investigating Officer attend the Determination Hearing to present their report and answer questions.

21.0 The Hearing Date and Arrangements

- 21.1 The Monitoring Officer will set a date and make the arrangements for the Determination Hearing following consultation with the Chair of the Standards and Governance Committee including:
- the calling of witnesses requested by the Subject Member and Investigating Officer;
 - any additional witnesses requested by the Chair who it is considered will assist the Hearing Panel reaching its decision;
 - the agenda and documentation to be considered at the Hearing; and
 - whether or not the whole or part of the hearing or documentation will be exempt from public access and the grounds for this decision.



21.2 The Monitoring Officer and Chair of the Standards and Governance Committee may limit the number of witnesses to be called, if he/she believes the number requested is unreasonable or where witnesses will not provide evidence of fact that will assist the Hearing Sub-Committee to reach its decision.

22.0 The Monitoring Officer's Report

22.1 The Monitoring Officer will prepare a report for the Determination Hearing that will:

- append the Investigating Officer's report and any response from the Subject Member;
- confirm the agreed facts;
- confirm the disputed facts;
- confirm the witnesses who will give evidence; and
- the proposed procedure for the Determination Hearing, including any arrangements for the whole or part of the meeting will be held in private.

23.0 Hearing Sub-Committee

23.1 A Hearing Sub-Committee comprising the Chair of the Standards and Governance Committee and 3 further Members drawn from the Membership of the Standards and Governance Committee (1 from the largest group, 2 from opposition groups) together with an Independent Person as observer be established. The Chair shall be appointed from those Members attending the Hearing Sub-Committee.

23.2 Where the Chair of the Standards and Governance Committee has been involved in earlier assessments of the complaint, the Vice-Chair of the Standards and Governance Committee will be part of the Hearing Sub-Committee. However if the Chair of the Standards and Governance Committee was not involved, the assumption is that they will take part in the Hearing Sub-Committee.

23.3 The Hearing Sub-Committee shall have delegated authority to hear and determine investigations under the Member Code of Conduct.

24.0 Hearing Procedure

24.1 The Hearing Sub-Committee shall adopt an inquisitorial approach at the Hearing seeking information and clarifying facts and issues.

24.2 The Hearing Sub-Committee may seek legal advice from their advisor.

24.3 Subject to anything set out in this document, the Determination Hearing shall follow the Council's rules for committee meetings including but not limited to voting, including that the Chair of the Hearing Sub-Committee shall have a second and casting vote.



25.0 Order of Business

25.1 The initial order of business at the meeting shall be as follows:

- confirmation of quorum;
- declarations of interest;
- introductions;
- consideration as to whether to adjourn or to proceed in the absence of the Subject Member if they are not present; and
- any procedural issues (including any request to hold all or part of the meeting in private).

26.0 Proceeding in the Subject Member's Absence

26.1 If the Subject Member is not present at the start of the Determination Hearing:

- The Chair of the Hearing Sub-Committee will ask the Monitoring Officer whether the Subject Member has been notified of the hearing and if they indicated their intention not to attend the formal hearing and the reasons; and
- The Hearing Sub-Committee will decide whether or not in all the circumstances it is necessary to adjourn the hearing to a later date or make a determination in the absence of the Subject Member.

27.0 Investigation Officer Presentation

27.1 The Investigating Officer will present their report and may introduce relevant evidence, including witness evidence.

27.2 The Subject Member or his/her representative may ask questions of the Investigating Officer or any witness on any matter relevant to any dispute of fact.

27.3 The Hearing Sub-Committee or Independent Person may ask questions of the Investigating Officer or any witness.

28.0 The Subject Member's Case

28.1 The Subject Member will present their report and may introduce relevant evidence, including witness evidence.

28.2 The Investigating Officer may ask questions of the Subject Member or any witness on any matter relevant to any dispute of fact.

28.3 The Hearing Sub-Committee or Independent Person may ask questions of the Subject Member or any witness on any matter relevant to any dispute of fact.



28.4 Submissions – The Investigating Officer and then the Subject Member or his/her representative will have the opportunity to make a final submission. The Chair may determine the length of any submissions.

29.0 The Decision

29.1 The Hearing Sub-Committee will consider their decision in private and may consult with the Independent Person. Decisions will be made on the balance of probabilities.

29.2 The Hearing Sub-Committee will first decide whether or not the Subject Member has breached the Code of Conduct in respect of each allegation made.

29.3 The Hearing Sub-Committee may ask further questions of the Investigating Officer or the Subject Member or seek further information. The other party will be given an opportunity to comment upon the questions asked or the responses made.

29.4 The Hearing Sub-Committee may seek legal advice at any time. Such advice may be given in the presence of the Investigating Officer and the Subject Member if appropriate.

29.5 The Chair of the Hearing Sub-Committee will advise the Subject Member and the Investigating Officer of their findings and whether the Code of Conduct has been breached.

29.6 If the Hearing Sub-Committee decide that the Subject Member has acted in breach of the Code, the Hearing Sub-Committee will invite representations from the Investigating Officer and Subject Member as to what action, if any, it should take. The Hearing Sub-Committee may ask questions of the Subject Member and the Investigating Officer.

29.7 The Hearing Sub-Committee may, having heard any representations, make one of the following decisions:

- No further action needs to be taken; or
- Impose a sanction on the Subject Member (see the Appendix for available sanctions).

29.8 The Chair will announce the Hearing Sub-Committee's decision, the action, if any, it is proposed to take and the reasons for the decision. The Chair of the Hearing Sub-Committee may state that full reasons for the decision will be provided later in writing.

29.9 The Hearing Sub-Committee will consider any recommendations to the Council arising from the consideration of the allegation, e.g. a need for training.

29.10 The Hearing Sub-Committee will decide whether or not its findings shall be published.



30.0 Appeal

30.1 There is no right of appeal against the Hearing Sub-Committee's decision.

31.0 Notice of Findings

31.1 The Monitoring Officer will draft the Hearing Sub-Committee's decision in writing including reasons for the Chair's approval.

31.2 The approved written decision will be sent to the Subject Member, the Independent Person, the Complainant, the Investigating Officer, and any other authority concerned.

31.3 Where the Hearing Sub-Committee decides that its findings shall be published, the Monitoring Officer shall arrange for a summary of the findings to be published in such manner as the Hearing Sub-Committee shall determine.

- **Where the Hearing Sub-Committee determines there was no breach of the Code of Conduct**, the notice shall:
 - a. state the Hearing Sub-Committee finds the Member did not fail to comply with the Code of Conduct and shall give its reasons for reaching that finding; and
 - b. Not be published in the local newspaper if the Member so requests.
- **Where the Hearing Sub-Committee determines the Member failed to comply with the Code of Code, but no action is required**, the notice shall:
 - a. state the Hearing Sub-Committee finds the Member failed to comply with the Code of Conduct but that no action needs to be taken in respect of that failure;
 - b. specify the details of the failure; and
 - c. give reasons for the findings.
- **Where the Hearing Sub-Committee determines that there has been a failure to comply with the Code of Conduct and that a sanction should be imposed**, the notice shall:
 - a. state the Hearing Sub-Committee found the Member failed to comply with the Code of Conduct;
 - b. specify the details of the failure;
 - c. give reasons for the findings; and
 - d. specify the sanction imposed.



Appendix 1

Westmorland and Furness Council

CRITERIA FOR THE ASSESSMENT OF COMPLAINTS

(**Guidance Note:** Complainants will be required to complete the relevant complaints form and asked to indicate what outcome they would wish to see in terms of the complaint being made).

GENERAL CRITERIA –

The Monitoring Officer in consultation with Independent Person (and the Chair of the Standards and Governance Committee where appropriate) should be satisfied that the complaint meets the following tests:

Question 1: Have you contacted the Member concerned directly to try to resolve the matter?

If the answer is yes or no, can you please give either the response or reason. The Complainant will be encouraged to contact the Subject Member unless it is felt there are exceptional circumstances.

Question 2: Is it a complaint against one or more current Members of the Council

If the answer is no, Response: the Complainant and subject Member to be informed that no further action will be taken in respect of the complaint as the person is no longer a Member. In the above circumstances then the Complainant and subject Member to be informed that no further action will be taken in respect of the complaint as this would not prove an effective use of limited council resources to investigate an individual who is no longer a Member of the authority.

Question 3: the complaint, if proven, would not be a breach of the Code under which the Member was operating at the time of the alleged misconduct (note: it maybe a service provision issue or the Complainant is merely dissatisfied with the outcome of a decision of the Council, Cabinet or Committee).

If the answer is no, Response: the Complainant and subject Member to be informed that no further action will be taken in respect of the complaint as this is not a breach of the code of conduct.

Question 4: the matter complained of clearly relates to an incident or issue when the Member has been acting in his/her official capacity as an elected Member.

If the answer is no, Response: the Complainant and subject Member to be informed that no further action will be taken in respect of the complaint as this is not a breach of the code of conduct.



Question 5: Has the Complainant submitted enough information to satisfy the Monitoring Officer and Independent Person (and the Chair of the Standards and Governance Committee where appropriate) that the complaint should be referred for investigation or other action, is it submitted in writing and does it outline what form of resolution the Complainant is seeking?

If the answer is no: Response: The information provided was insufficient to make a decision as to whether the complaint should be referred for investigation or other action. The Complainant to be advised that more information is required, with some examples of relevant evidence.

If no further evidence is submitted, Complainant and subject Member to be advised that no further action is to taken on this complaint.

(Note: the guidance for individuals making complaints to make it very clear that the Complainant needs to ensure that they send through all relevant information that they wish to be considered in support of the complaint)

Question 6: is the Member a Member of another authority?

If it is a Member of another authority, the complaint will be referred to the Monitoring Officer of that authority to consider

Question 7: Has the complaint already been the subject of an investigation or other action relating to the Code of Conduct? Similarly, has the complaint been the subject of an investigation by other regulatory authorities/ police?

If the answer is yes: Response: The matter of complaint has already been subject to a previous investigation or other action and there is nothing more to be gained by further action being taken.

Question 8: Is the complaint about something that happened so long ago that there would be little benefit in taking action now?

If the answer is yes: Response: The period of time that has passed since the alleged conduct occurred was taken into account when deciding whether this matter should be referred for investigation or further action. It was decided under the circumstances that further action was not warranted.

Question 9: Is the complaint adjudged to be too trivial to warrant further action?

If the complaint is adjudged to be trivial by the Chair of the Standards and Governance Committee and Independent Person: The matter is not considered to be sufficiently serious or an effective use of limited Council resources to warrant further action.

Question 10: Does the complaint appear to be simply malicious, politically motivated or retaliatory ?



*If the answer is **yes**: Response: The matter appears to be simply malicious, politically motivated, or retaliatory, and not sufficiently serious or an effective use of limited Council resources, and therefore it was decided that further action was not warranted.*

Question 11: Does the complaint relate to the production of or a statement made on a political leaflet and personal blogs (private social networks) or at political meetings?

If the answer is yes, Response: the complaint will need to be considered in the light of the Council's agreed social media guidance on the use of social media by elected Members as well as whether the allegation relates to -

- the Council's facilities or resources having been used to produce a political leaflet*
- An allegation that confidential information obtained by a Councillor in their official role had been used and published to the public in a leaflet and/ or a social network which may then breach the code of conduct in respect of confidentiality)*

Question 12. Does the complaint appear to be a breach of the law (including the non-disclosure of pecuniary interests)

This is matter for the police and the Complainant to be advised of that fact and advised of whom to contact.

Question 13. Is the Complainant an officer of the Council?

*If the answer is **yes**. Then the officer to be advised to speak to their direct line manager in the first instance to see if the matter can be resolved between the officer and Member concerned using the existing internal structures and the Members and officers protocol.*

Question 14. Does the complaint relate to a failure to respond to a constituent or other individual?

A failure to respond to a request would not constitute a breach of the code.

Question 15. Is the complaint anonymous?

As a matter of fairness and natural justice, a Member should usually be told who has complained about them subject to the considerations below.

If the complaint fails one or more of these tests the complaint is not to be progressed and the Complainant and subject Member must be informed that no further action will be taken in respect of the complaint. The Monitoring Officer to review these types of complaints and if appropriate to give guidance to Complainant of other more appropriate courses of action. The Monitoring Officer to consult the Chair of the Standards and Governance Committee and Independent Person in each instance and report to the Hearing Sub Committee on all complaints including those which did not meet the criteria



CONFIDENTIALITY OF COMPLAINANTS

As a matter of fairness and natural justice, a Member should usually be told who has complained about them. However, there may be instances where the Complainant asks for their identity to be withheld. Such requests should only be granted in exceptional circumstances and at the discretion of the Monitoring Officer. The Monitoring Officer should consider the request for confidentiality alongside the substance of the complaint itself.

Requests for confidentiality will be considered in the following circumstances:

- The Complainant has reasonable grounds for believing that they will be at risk of physical harm if their identity is disclosed; or
- The Complainant is an officer who works closely with the subject Member and they are afraid of the consequences to their employment or of losing their job if their identity is disclosed (this should be covered by the authority's whistle-blowing policy and or Members and officers protocol); or
- The Complainant suffers from a serious health condition and there are medical risks associated with their identity being disclosed.

In such circumstances, the Monitoring Officer may wish to request medical evidence of the Complainant's condition. In certain cases, such as allegations of bullying, revealing the identity of the Complainant may be necessary for investigation of the complaint.

If the Monitoring Officer decides to refuse a request by a Complainant for confidentiality, it may wish to offer the Complainant the option to withdraw, rather than proceed with their identity being disclosed. Such requests and outcomes to be reported to the Hearing Sub-Committee.



Appendix 2

THE PUBLIC INTEREST STAGE

1. The Monitoring Officer will consider the public interest before determining whether to investigate.
2. When deciding the public interest, the Monitoring Officer shall consider each of the questions below to identify and determine the relevant public interest factors tending for and against investigation. The Monitoring Officer will balance the relevant factors to assess the public interest.
3. The explanatory text below for each question provides guidance only to the Monitoring Officer when addressing each particular question and determining whether it identifies public interest factors for or against investigation/hearing. The questions identified are not exhaustive, and not all the questions may be relevant in every case. The weight to be attached to each of the questions, and the factors identified, will also vary according to the facts and merits of each case.
 - 3.1 **How serious is the alleged breach?**
 - 3.1.1 The more serious the breach, the more likely it is that a formal hearing is required.
 - 3.1.2 The Monitoring Officer should consider the answers to the questions below when assessing seriousness.
 - 3.2 **What level of culpability has been alleged against the Subject Member?**
 - 3.2.1 The greater the Subject Member's alleged level of culpability, the more likely it is that an investigation is required. Culpability is likely to be determined by:
 - a. the Subject Member's level of involvement;
 - b. the extent to which the breach of the Code was premeditated and/or planned;
 - c. the extent to which the Member has benefitted from the conduct;
 - d. whether the Member has previously breached the Code of Conduct; and
 - e. whether the breach was or is likely to be continued, repeated or escalated.



3.3 What harm if any is alleged to have been caused to the Complainant or others?

3.3.1 The Complainant's circumstances and if they allege they have suffered harm from the alleged breach are relevant.

3.3.2 The vulnerability of the Complainant.

3.3.3 Whether the Subject Member was or is in a position of trust or authority.

3.3.4 Whether there is an allegation of unlawful discrimination.

3.3.5 Whether there is an allegation of bullying, harassment or exploitation.

3.4 The more vulnerable the Complainant's situation, or the greater the perceived vulnerability of the Complainant, the more likely it is that a formal investigation or hearing is required.

3.5 The same questions apply if it is alleged that another person or persons have been harmed in respect of their circumstances.

3.6 The Monitoring Officer shall consider if a formal investigation or hearing is likely to have an adverse effect on the Complainant's physical or mental health, always bearing in mind the seriousness of the conduct complained of, the availability of special measures and the possibility of a formal hearing without the participation of the Complainant.

3.7 The Monitoring Officer should take into account the views expressed by the Complainant about the impact that the conduct has had. In appropriate cases, this may also include the views of the Complainant's family or carers.

3.8 However, the Monitoring Officer does not act for Complainants or their families in the same way as solicitors act for their clients, and the Monitoring Officer must form an overall view of the public interest.

3.9 What is the impact on the wider community of the alleged breach?

3.9.1 The greater the impact of the alleged breach on the community, the more likely it is that an investigation or formal hearing is required.

3.9.2 Community may include a group of people who share certain characteristics, experiences, or backgrounds, including an occupational group.

3.10 Is an investigation and potential hearing a proportionate response to the complaint?

3.10.1 In considering whether investigation or formal hearing is proportionate to the likely outcome, the cost and availability of resources, especially where it could be regarded as excessive when weighed against any likely penalty.



Appendix 3 - Available Sanctions

The Localism Act 2011 does not provide for any statutory sanctions if a Member is found in breach of the Code of Conduct. Therefore, the potential sanctions are limited and include the following:

1. Publication of its findings in respect of the Subject Member's conduct;
2. Send a formal letter to the Subject Member;
3. Report its findings to the Council;
4. Censure by Motion;
5. Recommend to the Subject Member's group leader (or in the case of un-grouped councillors, recommend to Full Council) that they be removed from any or all committees or sub-committees of the Council;
6. Recommend to the Subject Member's group leader that the Subject Member be removed from positions of responsibility;
7. Recommend the Monitoring Officer arrange training for the Subject Member;
8. Recommend to Full Council that the subject Member be removed from all outside appointments to which they have been appointed or nominated by the Council;
9. Recommend to Council that it withdraws facilities provided to the Subject Member by the authority for a specified period, such as a computer, website and/or email and internet access;
10. Recommend to Council that it excludes the Subject Member from the authority's offices or other premises for a specified period, with the exception of meeting rooms as necessary for attending council, committee and sub-committee meetings and/or restricts contact with officers to named officers;
11. Recommend to the Subject Member's Group Leader (or in the case on an ungrouped Subject Member(s), recommend to Full Council or Committees) that he/she be removed from any or all committees or sub-committees of the Council; or
12. Recommend to the Leader of the Council that the Subject Member be removed from the Executive or removed from portfolio responsibilities



Glossary

Complainant	The person making the complaint.
Subject Member	The elected Councillor or Co-opted Member subject to the complaint.
Investigating Officer	A Council officer, an officer of another Council, and/ or an independent investigator whom the Monitoring Officer has instructed to investigate a complaint.
Monitoring Officer	The Council officer with statutory responsibility under s.5 of the Local Government and Housing Act 1989 and as set out below in this Code. This may include any person whom the Monitoring Officer has authorised to carry out their functions under this procedure.
Independent Person	A person or persons appointed by the Council under the Localism Act 2011 to advise it, the Monitoring Officer or the Member on the determination of complaints.
Standards and Governance Committee	The committee of the Council that determines complaints about Members that are investigated.
Determination Hearing	The hearing at which an investigated complaint is heard.
Hearing Sub-Committee	The sub-committee with powers delegated to hear and determine investigations under the Member Code of Conduct at a Determination Hearing.

