

## GUILDFORD BOROUGH COUNCIL

### ARRANGEMENTS FOR DEALING WITH ALLEGATIONS OF MISCONDUCT BY COUNCILLORS AND CO-OPTED MEMBERS

#### 1 Context

- 1.1 It is expected that elected and co-opted members of Guildford Borough Council and the 23 Parish Councils within the borough uphold the highest standards of public office. However, in the event that there is a complaint, it is important that this is handled effectively to ensure that public confidence is maintained.
- 1.2 These Arrangements set out:
- (a) how you may make a complaint that a councillor or co-opted member of Guildford Borough Council (“the Council”) or of any parish council within the borough has failed to comply with the code of conduct adopted by the Council or relevant parish council, and
  - (b) how the Council will deal with allegations of a failure to comply with the relevant code of conduct.
- 1.3 Under Section 28(6) and (7) of the Localism Act 2011, the Council must have in place arrangements under which allegations that a councillor or co-opted member of the Council or of any parish council within the borough has failed to comply with the relevant code of conduct (a) can be investigated and (b) decisions made on such allegations.
- 1.4 Such arrangements must provide for the Council to appoint at least one Independent Person, whose views:
- (a) must be sought by the Council before it takes a decision on any allegation which it has decided shall be investigated,
  - (b) may be sought by the authority at any other stage, and
  - (c) may be sought by a councillor or co-opted member against whom an allegation has been made.

#### 2 Interpretation

- 2.1 ‘Complainant’ means a person who has submitted a complaint in accordance with these Arrangements alleging that a Subject Member has breached the Code of Conduct.
- 2.2 ‘Subject Member’ means an elected or co-opted member of the Council or any elected or co-opted member of any parish council within the borough against whom a complaint has been made alleging a breach of the Code of Conduct.
- 2.3 ‘Independent Person’ means a person or persons appointed by the Council under section 28(7) of the Localism Act 2011 who has the functions set out in section 28(7) of the Localism Act 2011.
- 2.4 ‘Parish Member’ means a co-opted member of any parish council within the borough who sits on the Corporate Governance and Standards Committee and in respect of parish

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matters the Assessment or Hearings Sub-Committees in an advisory capacity but who is not entitled to vote at meetings.

- 2.5 'Independent Member' means a co-opted person who is not a Councillor or Officer of the Council who sits on the Corporate Governance and Standards Committee in an advisory capacity but who is not entitled to vote.
- 2.6 'Investigating Officer' means the person appointed by the Monitoring Officer to undertake a formal investigation of a complaint alleging a breach of the Code of Conduct by a Subject Member. The Investigating Officer may be another senior officer of the Council, an officer of another authority or an external investigator.
- 2.7 'Monitoring Officer' means a statutory officer appointed by the Council under the Local Government and Housing Act 1989 ss 5 and 5A who has a role in the assessment of complaints and the promotion and maintenance of high standards of conduct within local authorities and his or her deputy or representative.
- 2.8 'the Corporate Governance and Standards Committee' refers to the Corporate Governance and Standards Committee or to a sub-committee to which it has delegated the assessment of complaints or the conduct of a hearing unless the context indicates that it refers only to the Corporate Governance and Standards Committee.

### **3 The Code of Conduct**

- 3.1 The Council has adopted a code of conduct for councillors and co-opted members, which is available for inspection on the Council's website and on request from the Monitoring Officer. The various codes of conduct adopted by the 23 parish councils within the borough are available for inspection by arrangement with the relevant parish clerk, whose contact details may be viewed by visiting the Council's website:

[www.guildford.gov.uk/parishcouncils](http://www.guildford.gov.uk/parishcouncils)

### **4 Making a complaint**

- 4.1 All complaints must be made in writing and shall be on the official complaint form. Completion of the official complaint form will enable the Council to process the complaint efficiently and transparently. The complaint form can be posted or e-mailed to the Council's Monitoring Officer whose contact details are:

Sandra Herbert  
Monitoring Officer  
Guildford Borough Council  
Legal Services  
Millmead House  
Millmead  
GUILDFORD  
Surrey GU2 4BB  
Email: [monitoringofficer@guildford.gov.uk](mailto:monitoringofficer@guildford.gov.uk)

- 4.2 Complainants who find difficulty in making their complaint in writing (e.g. because of a disability) will be offered assistance. A request for assistance should be made in the first instance by contacting the Monitoring Officer by letter or e-mail to the address set out in paragraph 4.1 above.

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### **5 Openness and notification of complaint to the Subject Member**

- 5.1 In the interests of fairness and in compliance with natural justice, we believe the Subject Member who has been complained about has the right to know who has made the complaint and the substance of the allegation(s) made against him/her. The Complainant's name and a summary of his or her complaint may be sent to the Subject Member and the Clerk to the Parish Council where the Subject Member is a parish councillor.
- 5.2 If the Complainant wishes his or her name and the details of his or her complaint to remain confidential, this must be indicated on the complaint form and the request will be considered by the Monitoring Officer in consultation with the Independent Person when they assess the complaint. The Council does not normally investigate anonymous complaints, unless there is a clear public interest in doing so. The Complainant would have to show exceptional circumstances in which to disclose would be contrary to the public interest or would prejudice a person's ability to investigate the allegation and may include where the Complainant believes:
- (a) he or she may be victimised or harassed by the Subject Member(s) against whom he or she is submitting a written complaint (or by a person associated with him or her); or
  - (b) the Complainant may receive less favourable treatment from the Council because of the seniority of the Subject Member against whom he or she is submitting a written complaint in terms of any existing Council service provision or any tender/contract that the Complainant may have or is about to submit to the Council; or
  - (c) the Complainant is an officer who works closely with the Subject Member against whom the allegation is made and has a reasonable belief that he or she may be adversely affected in his or her employment if his or her identity is disclosed.
- 5.3 The Monitoring Officer, in consultation with the Independent Person, will balance whether the public interest in accepting the complaint outweighs the Complainant's wish to have his or her identity withheld from the Subject Member. If the Monitoring Officer decides to refuse the Complainant's request for confidentiality, he or she will offer the Complainant the option to withdraw their complaint. The Complainant will be notified of the Monitoring Officer's decision with reasons given by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision to refuse the Complainant's request for confidentiality.
- 5.4 If the Complainant's request for confidentiality is upheld, the Monitoring Officer will inform the Complainant that confidentiality may not be able to be maintained dependent upon how matters progress. If confidentiality cannot be maintained the Complainant will be informed and will have the option to withdraw the complaint.

### **6 The Handling of Complaints**

- 6.1 A valid member complaint must relate to the conduct of a named individual Subject Member in office at the time of the alleged conduct. A complaint must comprise a potential breach by the Subject Member of the relevant Code of Conduct. In addition, the Subject Member must have been acting in his or her capacity as a Councillor and not in his or her capacity as a private individual when the alleged breach of the Code took place. The Monitoring Officer cannot deal with complaints about the Borough Council or Parish Councils, their staff or services (in respect of which other means of complaint or redress are available); or about an individual's conduct before he or she was elected, co-opted or

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appointed or after he/she ceased to be a Member or to a period before the adoption of the statutory Code of Conduct on 1 July 2012.

- 6.2 The Monitoring Officer will normally acknowledge receipt of a complaint within five working days of receiving it, and will keep the Complainant informed of the progress of their complaint. Communications throughout the process of dealing with a complaint against a Subject Member will be governed by the Council's Communications Strategy set out at Appendix 1 to these Arrangements

### **7 How the Monitoring Officer will assess your Complaint**

- 7.1 The Monitoring Officer has responsibility for considering written complaints by way of allegations against a Subject Member for breach of the relevant Code of Conduct. This is known as assessment. The purpose of assessment is to determine whether or not on the basis of information supplied by the Complainant, if the matter were proven, it could or would amount to a breach of the Code of Conduct. No investigation or hearings are conducted at this stage. The Monitoring Officer will put the complaint through a number of tests.
- 7.2 The complaint will be assessed by the Monitoring Officer against an Initial Jurisdiction Test as follows:
- (a) Did the alleged conduct occur before the adoption of the Code of Conduct?
  - (b) Was the Subject Member a member of the Borough or Parish Council at the time of the alleged conduct?
  - (c) Was the Subject Member acting in an official capacity as a councillor at the time of the alleged conduct? (The case law and legislative position is that Code of Conduct matters can only be dealt with when the allegation is about something that a Councillor did in his or her role as a councillor when acting in an official capacity.)
  - (d) Did the alleged conduct occur when the Subject Member was acting as a member of another authority?
  - (e) If the facts, could be established, as a matter of evidence, could or would the alleged conduct be capable of a breach of the Code of Conduct?
  - (f) Is the complaint limited to dissatisfaction with the Borough or Parish Council's decisions, policies and priorities, etc.?
- 7.3 If the complaint fails one or more of the initial jurisdiction tests, no further action will be taken by the Monitoring Officer and the complaint will be rejected. The Complainant will be notified accordingly with reasons. There is no internal right of appeal against the Monitoring Officer's decision.
- 7.4 If the complaint satisfies the initial Jurisdiction Test the Monitoring Officer will notify the Subject Member and if applicable, the Parish Clerk of the complaint. The Monitoring Officer will invite the Subject Member to submit a right of reply to the complaint and such information will be taken into account by the Monitoring Officer when deciding how to deal with the complaint.
- 7.5 Upon receipt of the Subject Member's response, the Monitoring Officer will obtain the views of the Independent Person. If the complaint concerns a parish councillor, the Monitoring Officer will also obtain the views of the Parish Member.
- 7.6 The Monitoring Officer will then proceed to assess the complaint. The Assessment Test aids the Monitoring Officer in reaching a decision on the complaint by enabling the Monitoring Officer to consider the following criteria, whilst taking into account the nature of the complaint and the need to adopt a proportionate response:

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### The Assessment Test:

#### *General*

- (1) Has the Complainant submitted enough information as regards the allegation and alleged misconduct to sustain a potential breach of the Code of Conduct?
- (2) Is an investigation likely to prove on the balance of probability whether or not a breach took place?
- (3) Does the complaint appear to be too trivial to warrant further action?
- (4) Is the evidence sufficiently reliable i.e. is it first-hand evidence or hearsay evidence?
- (5) Is the evidence relevant to the alleged breach?
- (6) Could any further evidence be revealed by an investigation?
- (7) Would an investigation serve any useful purpose?
- (8) Is the allegation serious enough to warrant further action?

#### *Mitigating factors (tending to make further action less likely)*

- (9) The substance of the complaint has already been the subject of an investigation or other action relating to the Code of Conduct;
- (10) The allegation took place more than 28 days prior to receipt of the complaint and there would be little benefit in taking action now;
- (11) The Subject Member took appropriate advice on the matter and followed that advice;
- (12) The complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter, e.g. where there is no firm evidence on the matter;
- (13) It is likely that an investigation will prove only a technical or inadvertent breach;
- (14) The complaint appears to be malicious, vexatious, politically motivated or tit-for-tat;
- (15) The Complainant has involved the press in relation to the alleged complaint;
- (16) The member has already provided (or tried to provide) a suitable remedy (such as apologising);
- (17) The breach occurred in all innocence i.e. without knowledge;
- (18) There was unreasonable provocation;
- (19) The complaint involves a Subject Member who is seriously ill and it would not be in the public interest to pursue;
- (20) The complaint is about a deceased person;
- (21) The complaint is about a person who is no longer a borough or parish councillor.

#### *Aggravating factors (tending to make further action more likely)*

- (22) The complaint involves allegations of bullying or intimidation of a Complainant;
- (23) The allegation if proven could have a serious effect upon the reputation of the Council or parish council, upon staff relations or upon public trust and confidence;
- (24) The Subject Member holds a position of seniority and/or a position of influence;
- (25) There is a pattern of individual acts of minor misconduct which appear to be part of a continuing pattern of behaviour that is unreasonably disruptive to the business of the Council or parish council;
- (26) The Subject Member took appropriate advice on the matter but did not follow that advice;
- (27) The complaint involves an allegation that the behaviour may cause the Council or parish council to breach an equality enactment;

7.7 The criteria set out in the Assessment Test is not an exhaustive or prescriptive list and the Monitoring Officer can take into account other criteria dependent on the circumstances of the complaint. The existence of such criteria does not fetter the discretion of the Monitoring

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Officer. A written record of the assessment decision will be provided aiding robust and transparent decision-making.

- 7.8 The Monitoring Officer has a reserve power to refer a complaint to a Sub-Committee of the Corporate Governance and Standards Committee (Assessment Sub-Committee) for assessment. The referral power is at the absolute discretion of the Monitoring Officer. Examples of when a referral may take place are as follows:
- It is an allegation where there is a perceived or actual conflict of interest e.g. the Monitoring Officer has previously advised the Subject Member on the matter;
  - It involves the Leadership of the Council or the Opposition;
  - It involves the Mayor or Deputy Mayor of the Council;
  - It involves a member of the Executive;
  - It involves a Chairman or Vice Chairman of a Council Committee or Sub-Committee
  - The Complaint is from a Statutory Officer of the Council (the Head of Paid Service, Section 151 Officer, or the Monitoring Officer).
- 7.9 The Assessment Sub-Committee will be set up in the same way as other Sub-Committees of the Corporate Governance and Standards Committee. The Assessment Sub-Committee has all the powers of the Monitoring Officer.
- 7.10 Decisions of the Assessment Sub-Committee are usually made in private. Neither the Complainant nor the Subject Member will usually be permitted to attend where such meetings contain confidential personal information. In such cases, meetings will not be open to the press or public. The rules covering the exclusion of the press and public are set out in Part 1 of Schedule 12A to the Local Government Act 1972, as amended. If the press and public are to be excluded from a committee or sub-committee, a formal resolution of the meeting is required. This must specify the legal grounds for exclusion.
- 7.11 The members of any Assessment Sub-Committee will be selected by the Monitoring Officer after having consulted the Chairman of the Corporate Governance and Standards Committee.

### **8 Will your complaint be investigated?**

- 8.1 The Monitoring Officer will assess every complaint received and, after consultation with the Independent Person, make a decision on the most appropriate action to be taken in relation to the complaint. If the complaint is about a parish councillor, the Monitoring Officer will also consult a Parish Member. The Monitoring Officer may ask the Complainant or the Subject Member for more information before making a decision. This decision will normally be taken within 20 working days of receipt of the complaint. Matters will be progressed as promptly as circumstances allow with realistic time limits being set for the receipt of information.
- 8.2 The following decisions can be taken by the Monitoring Officer in consultation with the Independent Person:
- No further action;
  - Attempt informal resolution;
  - Recommend formal investigation;
  - Referral to the Police or other regulatory agency if the complaint identifies criminal conduct or breach of other regulations.
- 8.3 When making a decision, the Monitoring Officer will take a proportionate approach and the decision will depend upon the extent and seriousness of the allegation. The Assessment

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Test is not exhaustive and does not restrict the discretion of the Monitoring Officer although any additional factors that are taken into account by the Monitoring Officer should be recorded when the assessment takes place to evidence a robust and transparent decision making process.

- 8.4 If the Subject Member makes a reasonable offer of resolution, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.
- 8.5 Where the Monitoring Officer has taken a decision, the Complainant, the Subject Member and the relevant Parish Clerk, if the complaint relates to a parish councillor, will be informed of the decision and the reasons for that decision.

### **9 Decision to take no further action**

- 9.1 The reasons for making a decision to take no further action will be identified via the Assessment Test with a written record being made to verify the decision. There is no review after the decision has been made by the Monitoring Officer or the Assessment Sub-Committee.

### **10 Informal Resolution**

- 10.1 In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the councillor or co-opted member accepting that their conduct was unacceptable or unfortunate in the circumstances and offering an apology or other remedial action such as training or agreeing to mediation.
- 10.2 A decision to attempt informal resolution precludes an investigation or other disciplinary action.

### **11 How is the investigation conducted?**

- 11.1 If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an investigating officer, who may be another senior officer of the Council, an officer of another council or an external investigator to undertake an investigation. Investigations are conducted in private. Separate guidance on how the investigator will be appointed and the investigation process is available at Appendix 2 entitled "Procedure for Local Investigations of Assessed Complaint".

### **12 Local Hearing**

- 12.1 The outcome of an investigation may result in a disciplinary hearing before the Hearings Sub-Committee. Separate guidance on the conduct of such a hearing and the possible outcomes is available at Appendix 3 entitled "Local Determination of Complaints about Members – Guidance for Members".

### **13 Referral to the Police**

- 13.1 If a valid complaint or subsequent investigation identifies possible criminal conduct by the Subject Member, the Monitoring Officer may or may be obliged to refer the matter to the Police.

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### **14 Who is the Independent Person?**

The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the members of Council.

A person cannot be “independent” if he/she –

- 14.1 is, or has been within the past five years, a member, co-opted member or officer of the Council; or
- 14.2 is, or has been within the past five years, a member, co-opted member or officer of a parish council within the borough; or
- 14.3 is a relative, or close friend, of a person within paragraph 14.1 or 14.2 above. For this purpose, “relative” means:
  - 14.3.1 Spouse or civil partner;
  - 14.3.2 Living with the other person as husband and wife or as if they were civil partners;
  - 14.3.3 Grandparent of the other person;
  - 14.3.4 A lineal descendent of a grandparent of the other person;
  - 14.3.5 A parent, sibling or child of a person within sub-paragraphs 14.3.1 or 14.3.2;
  - 14.3.6 A spouse or civil partner of a person within sub-paragraphs 14.3.3, 14.3.4 or 14.3.5; or
  - 14.3.7 Living with a person within sub-paragraphs 14.3.3, 14.3.4 or 14.3.5 as husband and wife or as if they were civil partners.

The functions of the Independent Person are as defined in s. 28(7) of the Localism Act 2011 as follows:

- They must be consulted by the Council before it makes a decision on all allegations of misconduct by a councillor/co-opted member that it has decided to investigate or before it decides on action to be taken in respect of that councillor/co-opted member (this means on a decision to take no action where the investigation finds no evidence of breach or, where the investigation finds evidence that there has been a breach, on any local resolution of the complaint, or on any finding of breach and on any decision on action as a result of that finding);
- They may be consulted by the authority in respect of a standards complaint at any stage; and
- They may be consulted by a councillor or co-opted member of the Council or of a parish council against whom a complaint has been made.



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### **15 Revision of these arrangements**

The Council may by resolution agree to amend these arrangements, and has delegated to the Corporate Governance and Standards Committee the right to depart from these arrangements where the Sub-Committee considers it expedient to do so in order to secure the effective and fair consideration of any matter.

### **16 Appeals**

There is no internal right of appeal either for the Complainant or for the Subject Member against a decision of the Monitoring Officer or of the Corporate Governance and Standards Committee.

If the Complainant feels that the authority has failed to deal with their complaint properly, they may make a complaint to the Local Government Ombudsman.

Adopted by the Council on: 8 May 2012

Implemented on: 1 July 2012

Amended by the Council on: 9 December 2014

Amended further by the Corporate Governance and Standards Committee (acting through the Working Group) on 24 November 2016 acting under delegated authority from the Council given on 12 April 2016

**Communications Strategy in relation to Member Complaints**

1 This Strategy aims to set out guidelines on what can be communicated during any ongoing complaint. This covers both public statements to the media and communications with the Subject Member and Complainant and if appropriate the Parish Council.

Statements to the Media

2 This part of the Strategy acts as a simple reference tool for any councillors or staff who engage with the media. It also helps to manage expectations.

3 The aim of the Strategy is to ensure that the Council is seen to communicate in a professional and objective manner. In all cases, the Council's approach to the media should be:

- open and honest whilst respecting the human rights of those parties involved, and
- responsive and timely

4 All media communications will be made by the Council's PR and Marketing Manager in consultation with the Monitoring Officer and the Chairman of the Corporate Governance and Standards Committee.

5 At the first stage of the process when a complaint is being assessed it is not usual to make any public statement about a case. However, some matters may be in the public domain at an early stage. Where the Council is asked to comment on an allegation at this stage, which has not been assessed, the Council should simply confirm or where appropriate deny the fact that an allegation has been received and is being assessed.

6 Where, following assessment, no action is to be taken on a case, the Council should not proactively draw public attention to an allegation which is not being pursued. However, where a public statement is necessary, the Council should give the reasons why no further action is being pursued.

7 Where following assessment some further action is being taken, either the matter is being investigated or some other resolution is being pursued or has occurred, a more pro-active stance may be necessary such as a short statement being made available to confirm the fact e.g. that an investigation is now underway, and that no further comments will be made until the conclusion of the case. Councillors and officers should not make any comments one way or the other while an investigation is ongoing. All information gathered in the course of an investigation will be regarded as confidential. All parties that are interviewed will be requested to maintain confidentiality and councillors will be reminded of their obligation under paragraph 3 of the Code of Conduct not to disclose information that they have received in confidence. Any report issued by an Investigating Officer will be marked "Confidential" to preserve the integrity of any further investigation the Investigating Officer may need to carry out. Release of confidential information to the media may lead to an investigation being terminated.

8 Where some other resolution has been reached, this could be made available with the consent of the Subject Member.

9 Where an investigation has been completed and this results in a local hearing the Corporate Governance and Standards Committee will arrange for a summary of the

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decision and reasons for that decision to be published on the Council's website with the following detail:

- 9.1 If the Hearings Sub-Committee finds that a Subject Member did not fail to follow the Council's Code of Conduct, the public summary must say this and give reasons for this finding.
  - 9.2 If the Hearings Sub-Committee finds that a Subject Member failed to follow the Code of Conduct but that no action is needed, the public summary must say that the Subject Member failed to follow the Code of Conduct, outline what happened and give reasons for the Hearings Sub-Committee's decision not to take any action.
  - 9.4 If the Hearings Sub-Committee finds that a Subject Member failed to follow the Code of Conduct and it sets a sanction, the public summary must say that the Member failed to follow the Code of Conduct, outline what happened, explain what sanction has been set and give reasons for the decision made by the Hearings Sub-Committee.
- 10 The Corporate Governance and Standards Committee may also make available the minutes and reports of the Hearings Sub-Committee.

### Step by Step Guide for the Complainant and Subject Member on the Complaint Process

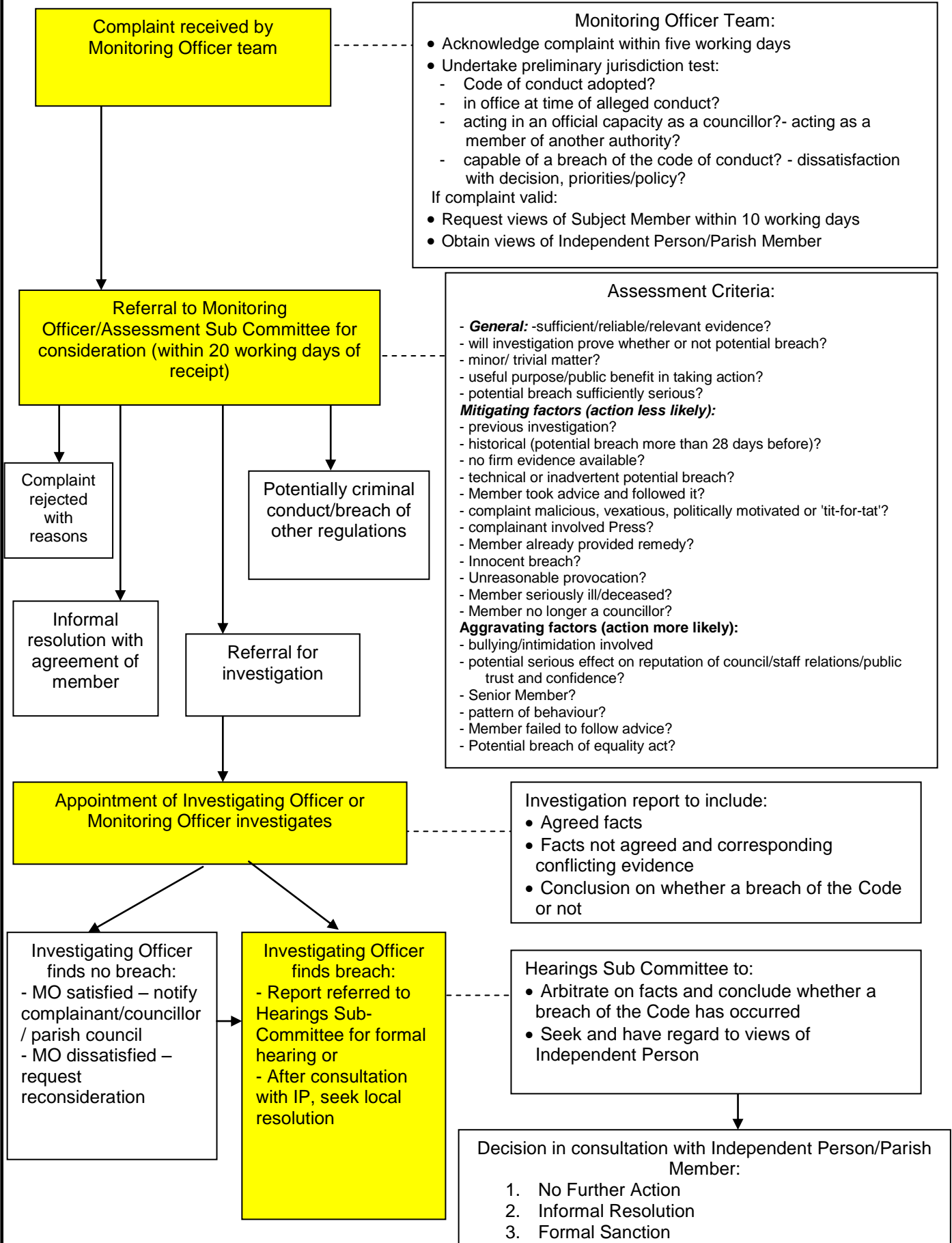
- (1) Complaint Form received with supporting evidence in writing by the Monitoring Officer who acknowledges the complaint within 5 working days and may seek additional information/supporting evidence if required.
- (2) Initial Jurisdiction Test is then undertaken within a further 5 working days, once all requested additional information is received.
- (3) If the complaint does not pass the Initial Jurisdiction Test this is the end of the matter and the Complainant will be notified within 5 working days of the Initial Jurisdiction Test being completed.
- (4) If the matter passes the Initial Jurisdiction Test, the Subject Member is contacted regarding the Complaint and is given a right of reply to the Complaint. The Subject Member will be given 10 working days to respond or longer if, in the opinion of the Monitoring Officer, circumstances warrant it.
- (5) The Monitoring Officer will consult and obtain the views of the Independent Person. If the complaint concerns a parish councillor, the Monitoring Officer will also consult and obtain the views of the Parish Member. The Monitoring Officer will then assess the complaint using the Assessment Test criteria and make a decision in relation to the complaint. The decision will be evidenced in writing showing how the complaint was assessed. If a decision is made that there is no action to be taken in relation to the complaint, the reasons for this will be clearly set out on the decision notice and the parties will be informed accordingly. The decision taken by the Monitoring Officer can usually be made within 20 working days of receipt of the original complaint. This time limit will be exceeded if the complaint needs to be referred for a decision to the Assessment Sub-Committee of the Corporate Governance and Standards Committee. The result of the assessment will be sent to the Complainant and Subject Member and if relevant the clerk to the Parish Council.
- (6) The Monitoring Officer may attempt an informal resolution to the case such as mediation, apology, training or even referral to the Parish Council for a possible local resolution if the complaint is about a parish councillor.

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- (7) If there is potentially criminal conduct or a breach of other regulations the complaint could be referred to the Police or other regulator and no further action will be taken on the case until the Police or other regulator have concluded their investigations and made a decision on whether matters will be pursued further.
- (8) Alternatively, the Monitoring Officer may decide that the case merits an investigation, necessitating the appointment of an Investigating Officer. A realistic time frame will be set for the appointment of an Investigating Officer and how long the investigation will take, depending on the nature of the case.
- (9) The Investigating Officer issues a draft report, which will need to be finalised taking account of comments received from the Complainant, Subject Member and Monitoring Officer who may wish to liaise with the Independent Person and the Parish Member as appropriate.
- (10) Once the Investigating Officer's report achieves final report status the Monitoring Officer in consultation with the Independent Person has to decide whether there will be no further action on the Complaint, to propose informal resolution or to refer the matter for determination via the Hearings Sub-Committee
- (11) The Hearings Sub-Committee will decide whether there has been a breach of the Code of Conduct and if so whether any sanctions should be applied. In the case of a complaint regarding a parish councillor, the Hearings Sub-Committee can only make a recommendation to the Parish Council on their findings and a recommendation on any sanctions they believe should be implemented. The decision of the Hearings Sub-Committee takes place in consultation with the Independent Person and if a complaint regarding a parish councillor the co-opted Parish Member of the Corporate Governance and Standards Committee.
- (12) The decision of the Hearings Sub-Committee will be issued within 10 working days and published on the Council's web site.

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**CODE OF CONDUCT COMPLAINTS  
FLOWCHART**



Complaint received by Monitoring Officer team

**Monitoring Officer Team:**

- Acknowledge complaint within five working days
- Undertake preliminary jurisdiction test:
  - Code of conduct adopted?
  - in office at time of alleged conduct?
  - acting in an official capacity as a councillor? - acting as a member of another authority?
  - capable of a breach of the code of conduct? - dissatisfaction with decision, priorities/policy?

If complaint valid:

- Request views of Subject Member within 10 working days
- Obtain views of Independent Person/Parish Member

Referral to Monitoring Officer/Assessment Sub Committee for consideration (within 20 working days of receipt)

**Assessment Criteria:**

- **General:** -sufficient/reliable/relevant evidence?
- will investigation prove whether or not potential breach?
- minor/ trivial matter?
- useful purpose/public benefit in taking action?
- potential breach sufficiently serious?

**Mitigating factors (action less likely):**

- previous investigation?
- historical (potential breach more than 28 days before)?
- no firm evidence available?
- technical or inadvertent potential breach?
- Member took advice and followed it?
- complaint malicious, vexatious, politically motivated or 'tit-for-tat'?
- complainant involved Press?
- Member already provided remedy?
- Innocent breach?
- Unreasonable provocation?
- Member seriously ill/deceased?
- Member no longer a councillor?

**Aggravating factors (action more likely):**

- bullying/intimidation involved
- potential serious effect on reputation of council/staff relations/public trust and confidence?
- Senior Member?
- pattern of behaviour?
- Member failed to follow advice?
- Potential breach of equality act?

Complaint rejected with reasons

Potentially criminal conduct/breach of other regulations

Informal resolution with agreement of member

Referral for investigation

Appointment of Investigating Officer or Monitoring Officer investigates

**Investigation report to include:**

- Agreed facts
- Facts not agreed and corresponding conflicting evidence
- Conclusion on whether a breach of the Code or not

Investigating Officer finds no breach:  
- MO satisfied – notify complainant/councillor / parish council  
- MO dissatisfied – request reconsideration

Investigating Officer finds breach:  
- Report referred to Hearings Sub-Committee for formal hearing or  
- After consultation with IP, seek local resolution

**Hearings Sub Committee to:**

- Arbitrate on facts and conclude whether a breach of the Code has occurred
- Seek and have regard to views of Independent Person

**Decision in consultation with Independent Person/Parish Member:**

1. No Further Action
2. Informal Resolution
3. Formal Sanction

## Procedure for Local Investigation of Assessed Complaint

### Appointment of Investigating Officer

- 1 Following the decision of the Monitoring Officer to investigate the allegation or upon receipt of the referral to the Monitoring Officer from the Assessment Sub-Committee for an investigation, the Monitoring Officer will appoint an Investigating Officer in respect of the allegation and instruct him or her to conduct an investigation of the allegation and to report thereon to the Monitoring Officer. The Investigating Officer may be an officer of the Council, an officer of another local authority, or an external Investigating Officer.
- 2 There are two distinct roles: that of the Investigating Officer and that of legal advisor to any Hearings Sub-Committee. The Monitoring Officer may him or herself take on the role of Investigating Officer but where he or she does so the role of the legal advisor will need to be re-allocated.
- 3 The Monitoring Officer may appoint an external investigator (including an officer from another council) where for example:
  - (a) The complaint looks likely to raise particularly complex or sensitive issues;
  - (b) There is insufficient expertise within the Council to carry out the investigation;
  - (c) There is insufficient capacity within the Council to carry out the investigation;
  - (d) A conflict has or may be perceived to have arisen.
- 4 The decision whether to use an external investigator is at the discretion of the Monitoring Officer and will be made following consultation with the Independent Person and where appropriate, a Parish Member from the Corporate Governance and Standards Committee.
- 5 External Investigators will be appointed in accordance with the Council's Procurement Procedure Rules set out in Part 4 of the Constitution. The procurement process will include the establishment of an agreed investigation methodology, which will be fair and auditable.

### Notification of Investigation to the Subject Member

- 6 The Monitoring Officer will notify in writing the Subject Member:
  - 6.1 that the allegation has been referred for local investigation and possible hearing;
  - 6.2 remind the Subject Member of the identity of the person making the allegation (unless identification of the Complainant might prejudice the investigation or put the Complainant at risk);
  - 6.3 remind the Subject Member of the conduct which is the subject of the allegation;
  - 6.4 remind the Subject Member of the paragraph(s) of the Code of Conduct which appear to be relevant to the allegation(s);
  - 6.5 of the procedure which will be followed in respect of the investigation;

- 6.6 of the identity of the Investigating Officer;
  - 6.7 of the identity of the Independent Person whose views may be sought by the Subject Member; and
  - 6.8 of the identity of the Parish Member whose views may be sought by the Subject Member if the Subject Member is a parish councillor.
- 7 The Monitoring Officer shall provide the Subject Member with a copy of the complaint.
- 8 In very exceptional cases, where the Monitoring Officer has reason to believe that there is a serious risk of intimidation of witnesses or destruction of evidence, the Monitoring Officer may initiate an investigation before notifying the Subject Member.

#### **Notification to the Complainant**

- 9 At the same time as notifying the Subject Member, the Monitoring Officer will notify the Complainant in writing of the matters set out above.

#### **Notification to the Corporate Governance and Standards Committee**

- 10 At the same time as notifying the Subject Member, the Monitoring Officer will notify the Chairman of the Corporate Governance and Standards Committee in writing of the matters set out above.

#### **Notification to the Parish Council Clerk**

- 11 Where the allegation relates to the conduct of a Subject Member of a Parish Council in his or her capacity as such, at the same time as notifying the Subject Member, the Monitoring Officer will notify the Clerk of the Parish Council concerned in writing of the matters set out above.

#### **Investigation Process**

- 12 The agreed process may be the standard procedure used by the external investigator. As a minimum, the Investigating Officer will interview the Complainant, the Subject Member and, where possible, any witnesses to the event or events that are the substance of the complaint. The Investigating Officer will produce notes of these meetings that will be signed by the interviewees as fair records of what was said in the interviews. If the complaint is complex or serious, the Investigating Officer will produce formal, signed statements.
- 13 Interviews may be recorded where the Investigating Officer in consultation with the Monitoring Officer considers this appropriate.
- 14 The Monitoring Officer will agree with the Investigating Officer the scope and parameters of the investigation before an investigation starts. However, these may change during the course of an investigation depending on the findings of that investigation. Any changes will be agreed with the Monitoring Officer by the Investigating Officer and this agreement will be documented.

### **Initial Response of the Subject Member**

- 15 The Monitoring Officer should request the Subject Member to respond to the Investigating Officer in writing within 14 days of notification as follows:
- (a) advising the Investigating Officer whether the Member admits or denies the breach of the Code of Conduct which is the subject of the allegation;
  - (b) listing any documents which the Subject Member would wish the Investigating Officer to take into account in any investigation of the allegation, where possible providing copies of these documents and informing the Investigating Officer of where the original documents may be inspected;
  - (c) providing the Investigating Officer with the name, address and telephone number (or other appropriate contact details) of any person or organisation whom the Subject Member would wish the Investigating Officer to interview in the course of any investigation of the allegation; and
  - (d) providing the Investigating Officer with any information which the Subject Member would wish the Investigating Officer to seek from any person or organisation.

### **Supporting information from the Complainant**

- 16 In notifying the Complainant as above, the Monitoring Officer will request the Complainant to respond to the Investigating Officer within 14 days of notification as follows:
- (a) listing any document which the Complainant would wish the Investigating Officer to take into account in any investigation of the allegation, where possible providing copies of these documents, and informing the Investigating Officer of where the original documents may be inspected;
  - (b) providing the Investigating Officer with the name, address and telephone number (or other appropriate contact details) of any person or organisation whom the Complainant would wish the Investigating Officer to interview in the course of any investigation; and
  - (c) providing the Investigating Officer with any information which the Complainant would wish the Investigating Officer to seek from any person or organisation.
- 17 The Subject Member has a duty to cooperate with any investigation and to respond promptly and to comply with any reasonable requests from the Investigating Officer for such things as interviews, comments on draft meeting notes or the provision of information necessary for the conduct of an investigation.

### **Confidentiality**

- 18 It is important that confidentiality is maintained throughout the investigation and that details of the complaint are not disclosed to any third party, unless disclosure is to a representative, witness, immediate family members, or otherwise as may be required by law or regulation. However, the fact that an investigation is being conducted does not need to remain confidential.



## **Termination of an Investigation**

- 19 In exceptional circumstances, the Monitoring Officer may stop an investigation before it is finished, for example where confidential information has been released to the media, if the Subject Member dies, has a long term or serious illness, loses his or her seat or stands down and it is deemed no longer in the public interest to pursue the matter further. If the Monitoring Officer stops the Investigation early, he/she will give their reasons to the Subject Member and the Complainant.
- 20 The Investigating Officer may terminate their investigation at any point, where they are satisfied that they have sufficient information to enable them to report to the Monitoring Officer or Hearings Sub-Committee.

## **Reference to Police or other regulatory agencies**

- 21 At any point in the course of the investigation, if the Investigating Officer is of the opinion the complaint identifies criminal conduct or breach of other regulation by any person he or she should, after consulting the Monitoring Officer, suspend his or her investigation, and the Monitoring Officer shall then request the police or other regulatory agency to investigate the matter.
- 22 Where the police or other agency does investigate the matter, the Monitoring Officer shall ensure that the Subject Member, the Complainant, the Chairman of the Corporate Governance and Standards Committee and if appropriate the clerk to the Parish Council are informed at the appropriate time. Where the police or other regulatory agency declines to undertake the investigation, the Monitoring Officer shall instruct the Investigating Officer to resume his or her investigation.

## **The Draft Report**

- 23 When the Investigating Officer is satisfied that he or she has sufficient information or has obtained as much information as is likely to be reasonably capable of being obtained, he or she shall prepare a draft report setting out:
  - 23.1 the details of the allegation;
  - 23.2 the relevant provisions of the Code of Conduct;
  - 23.3 the Subject Member's initial response to the allegation(s) (if any);
  - 23.4 the relevant information, advice and explanations which he or she has obtained in the course of the investigation;
  - 23.5 a list of any documents relevant to the matter;
  - 23.6 a list of those persons whom he or she has interviewed and those organisations from whom he or she has sought information;
  - 23.7 a note of any person or organisation who has failed to co-operate with the investigation and the manner in which they have failed to co-operate;
  - 23.8 a statement of his or her draft findings of fact;
  - 23.9 his or her conclusion as to whether the Subject Member has or has not failed to comply with the Code of Conduct;
  - 23.10 any recommendations which the Investigating Officer is minded to make to the Hearings Sub-Committee. Where the allegation relates to a parish councillor, such recommendations would be recommendations which the Investigating Officer would recommend the Hearings Sub-Committee make to the relevant Parish Council.
- 24 The draft report should also state that the report does not necessarily represent the Investigating Officer's final finding and that the Investigating Officer will be in a

position to present a final report to the Hearings Sub-Committee once he or she has considered any comments received on the draft report.

- 25 The Investigating Officer shall then send a copy of his or her draft report to the Subject Member and the Complainant and request that they send any comments thereon to him or her within 14 days. The draft report will be clearly labelled 'DRAFT' and 'CONFIDENTIAL'.

### **The Final Report**

- 26 After the expiry of that period (or such extended period as the Investigating Officer may allow), the Investigating Officer shall reconsider and amend his or her draft report in the light of any comments received and produce and send to the Monitoring Officer his or her final report. The report will be clearly labelled 'FINAL' and 'CONFIDENTIAL'.

### **What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?**

- 27 The Monitoring Officer will review the Investigating Officer's report and, if he or she is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to the Complainant and the Subject Member and to the relevant Parish Clerk, where the complaint relates to a parish councillor. The Monitoring Officer will notify them that he or she is satisfied that no further action is required. The Monitoring Officer will give both the Complainant and the Subject Member a copy of the Investigating Officer's final report. The Monitoring Officer will also notify the Chairman of the Corporate Governance and Standards Committee of his or her decision and include the matter in the regular update to the Committee in relation to all Code of Conduct decision. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he or she may ask the Investigating Officer to reconsider his or her report.

### **What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?**

- 28 The Monitoring Officer will review the Investigating Officer's report and will then either send the matter for local hearing before the Hearings Sub-Committee or, after consulting the Independent Person, seek local resolution.

#### **28.1 Local Resolution**

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he or she will consult with the Independent Person and with the Complainant and seek to agree a fair resolution that also helps to ensure higher standards of conduct for the future.

If the Complainant will not agree with the Monitoring Officer's proposed resolution and the Monitoring Officer considers that the failure to agree is unreasonable, he or she may impose the resolution if he or she believes that it is not in the public interest to pursue the matter further (assuming that it is accepted by the Subject Member).

Such resolution may include the Subject Member accepting that their conduct was unacceptable and offering an apology, and/or other remedial action. If

the Subject Member complies with the suggested resolution, the Monitoring Officer will notify the Chairman of the Corporate Governance and Standards Committee of the fact (and the relevant Parish Council where the complaint refers to a Parish Councillor) for information, but will take no further action. The Monitoring Officer will include the matter in the regular update to the Committee in relation to all Code of Conduct matters. If the Complainant did not agree with the informal resolution, the Monitoring Officer will record that disagreement in his report to the Corporate Governance and Standards Committee along with his or her reasons for imposing the resolution.

## 28.2 Local Hearing

If the Monitoring Officer considers that a local resolution is not appropriate, or the Subject Member concerned is not prepared to undertake any proposed remedial action, then the Monitoring Officer will take the Investigating Officer's report to the Hearings Sub-Committee. The Hearings Sub-Committee will conduct a local hearing before deciding whether the Subject Member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Subject Member.

The Monitoring Officer is able to continue to attempt local resolution up to the time the Hearings Sub-Committee takes place after consulting with the Independent Person.

### **Notification of the Hearing**

29 The Monitoring Officer shall ensure that, when the agenda for the Hearings Sub-Committee is sent out to members of the Hearings Sub-Committee, including the final report, the agenda and the report are also sent at the same time to:

29.1 the Subject Member

29.2 the Complainant; and

29.3 the Clerk to the Parish Council if the Subject Member is a parish councillor.

30 The Hearings Sub-Committee will be convened to determine the outcome of the Complaint in accordance with the document entitled "Local Determination of Complaints About Members – Guidance for Members" (Appendix 3 to these Arrangements).

## LOCAL DETERMINATION OF COMPLAINTS ABOUT MEMBERS

### Guidance for Members

#### The Corporate Governance and Standards Committee's responsibilities

##### *The need for a hearing*

1. The Corporate Governance and Standards Committee will seek to hold a hearing in relation to an allegation within three months of receiving the Investigation Report. The hearing will be conducted by a Sub-Committee of the Corporate Governance and Standards Committee known as the Hearings Sub-Committee.

#### Before the hearing

##### *The pre-hearing process*

2. The Corporate Governance and Standards Committee will use a written pre-hearing process in order to allow the hearing to proceed fairly and efficiently.
3. The Subject Member will be asked to provide the following information to the Monitoring Officer:
  - 3.1 to identify those paragraphs in the Investigating Officer's Report which the Subject Member agrees with and those paragraphs in the Report that the Subject Member disagrees with and the reasons for such disagreement;
  - 3.2 to identify any further documentary evidence which the Subject Member would like to rely upon at the hearing;
  - 3.3 to ascertain if they are going to attend the hearing and if they are going to represent themselves or whether they are going to employ someone to represent them in which case they should provide the details of their representative prior to the hearing;
  - 3.4 to give reasons whether the whole or any part of the hearing should be held in private and whether any of the documentation supplied to the Hearings Sub-Committee should be withheld from the public.
4. The Investigating Officer will also be asked to comment on the Subject Member's response within a set time to say whether or not he or she:
  - 4.1 will be represented at the hearing;
  - 4.2 wants to call witnesses to give evidence to the sub-committee;
  - 4.3 wants any part of the hearing conducted in private and why;
  - 4.4 wants any part of the Investigating Officer's report or other relevant documents to be withheld from the public and why.

5. The Monitoring Officer will endeavour to accommodate the availability of the parties attending the hearing before notifying the parties of the date, time and place for the hearing.

## **The Hearing**

### ***Preliminary***

6. The members of the sub-committee will be selected by the Monitoring Officer after having consulted the Chairman of the Corporate Governance and Standards Committee.

### ***The Order of Business***

7. The order of business will be as follows, subject to the Chairman exercising discretion and amending the order of business where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter:
  - 7.1 Election of a Chairman.
  - 7.2 Apologies for absence.
  - 7.3 Declarations of interests.
  - 7.4 The Chairman shall confirm that the Hearings Sub-Committee is quorate.
  - 7.5 In the absence of the Subject Member, consideration as to whether to adjourn or to proceed with the hearing.
  - 7.6 Introduction by the Chairman, of Members of the Hearings Sub-Committee, the Independent Person, the Parish Member (if the complaint involves a parish councillor) , the Monitoring Officer or Legal Advisor to the Sub-Committee, Investigating Officer, Complainant(s) and the Subject Member and their representative (if appointed).
  - 7.7 To receive representations from the Monitoring Officer, the Investigating Officer and Subject Member as to whether any part of the hearing should be held in private and/or whether any documents (or parts thereof) should be withheld from the public/press (subject to Part 1 of Schedule 12A Local Government Act 1972 (as amended)).
  - 7.8 To determine whether the public/press are to be excluded from any part of the meeting and/or whether any documents (or parts thereof) should be withheld from the public/press.
  - 7.9 Conduct of the Hearing. The Hearings Sub-Committee may adjourn the hearing at any time.

### ***Presentation of the Complaint***

8. The Investigating Officer presents their report including any documentary evidence or other material and calls any complainant witnesses.

9. The Hearings Sub-Committee will give the Subject Member the opportunity to ask any questions regarding the evidence presented through the Chairman.
10. The Hearings Sub-Committee may question the Investigating Officer upon the content of his or her report and any complainant witnesses.

#### ***Presentation of the Subject Member's case***

11. The Subject Member or their representative presents their case and calls their witnesses.
12. The Hearings Sub-Committee will give the Investigating Officer the opportunity to ask any questions regarding the evidence presented through the Chairman.
13. The Hearings Sub-Committee may question the Subject Member upon the contents of their case and any Subject Member witnesses.

#### ***Summing up***

14. The Investigating Officer sums up the complaint.
15. The Subject Member or their representative sums up their case.

#### ***Views/Submissions of the Independent Person/Parish Member***

16. The Chairman will invite the Independent Person and the Parish Member, if the Subject Member is a parish councillor, to express their view on whether they consider that on the facts presented to the Hearings Sub-Committee there has been a breach of the Code of Conduct or no breach as the case may be.

#### ***Deliberations of the Hearings Sub-Committee***

17. The Hearings Sub-Committee will adjourn the hearing and deliberate in private (assisted on matters of law by a legal advisor) to consider whether on the facts found, the Subject Member has failed to comply with the Code of Conduct. Where the legal adviser assists on matters of law an explanation of this will be provided when the Hearings Sub-committee reconvenes in public.
18. The Hearings Sub-Committee may, at any time, come out of private session and reconvene the hearing in public, in order to seek additional evidence from the Investigating Officer, the Subject Member or the witnesses. If further information to assist the Hearings Sub-Committee cannot be presented, then the Hearings Sub-Committee may adjourn the hearing and issue directions as to the additional evidence required and by whom.
19. The Hearings Sub-Committee will make its decision on the balance of probability, based on the evidence before it during the hearing.
20. Where the complaint has a number of aspects, the Hearings Sub-Committee may reach a finding, apply a sanction and /or make a recommendation on each aspect separately.
21. Having deliberated on its decision the Hearings Sub-Committee will reconvene the hearing in public and the Chairman will announce that, on the facts presented, the

Hearings Sub-Committee considers that there has been a breach of the Code of Conduct, or no breach, as the case may be.

- 22 If the Hearings Sub-Committee considers that there has been **no breach of the Code of Conduct**, the Sub-Committee will set out the principal reasons for the decision. The Chairman will also announce that the Sub-Committee's full decision and reasons will be issued by the Monitoring Officer, in writing, within approximately 10 working days following the close of the hearing.
- 23 If the Hearings Sub-Committee decides that there has been **a breach of the Code of Conduct**, the Chairman will announce the principal reasons for the decision.
- 24 The Chairman will then invite the Investigating Officer and the Subject Member, to make their representations as to whether any sanction(s) or recommendations should be applied and what form any sanction(s) or recommendation(s) should take. In reaching its decision, the Hearings Sub-Committee may make any recommendations it considers may facilitate and enhance ethical standards within the relevant authority. The Independent Person and the Parish Member (if appropriate) will then be invited to express their view on any sanction(s) or recommendation(s) to the Borough or Parish Council or Monitoring Officer.
- 25 Having heard the representation/views, the Hearings Sub-Committee will adjourn and deliberate in private.
- 26 Having deliberated on the suggested sanctions and/or recommendations(s) and the application of any sanctions(s), and having taken into account the Independent Person's views and those of the Parish Member if the complaint relates to a parish councillor, the Hearings Sub-Committee will reconvene the hearing in public and the Chairman will announce:
  - whether any sanctions are to be applied (sanctions can only be recommended if a parish councillor matter).
  - Whether any recommendations will be made to the Borough or Parish Council or the Monitoring Officer.
  - That the Sub-Committee's full decision and reasons will be issued by the Monitoring Officer, in writing, within approximately 10 working days following the close of the hearing.
  - That the decision will be published on the Borough Council's website; and
  - That there is no internal right of appeal against the Hearings Sub-Committee's decision(s) and/or recommendations(s).

#### ***Range of Possible Sanctions***

- 27 The Corporate Governance and Standards Committee has delegated to the Hearings Sub-Committee such of its powers to take action in respect of the Subject Member as may be necessary to promote and maintain high standards of conduct. Accordingly, the Hearings Sub-Committee may:
  - 27.1 Publish and report its findings in respect of the Subject Member's conduct to a meeting of the full Council (or recommend to the relevant Parish Council that it does so);

- 27.2 Recommend to Council (or the relevant Parish Council) that the Subject Member be requested to apologise;
- 27.3 Recommend to the Subject Member's political group leader (or in the case of an un-grouped Subject Member, recommend to Council or to Committees) that they be removed from any or all Committees or Sub-Committees of the Council for a specified period;
- 27.4 Recommend to the Leader of the Council, in the case of an Executive Subject Member, that the Subject Member be removed from the Executive, or removed from particular portfolio responsibilities;
- 27.5 Recommend to Council or to the relevant Parish Council that the Subject Member be requested to participate in appropriate training or participation in conciliation or mediation;
- 27.6 Recommend to Council or the relevant Parish Council that the Subject Member be removed from all outside appointments to which they have been appointed or nominated by the Council or by the Parish Council for a specified period;
- 27.7 Withdraw or recommend to the relevant Parish Council that it withdraws facilities provided to the Subject Member by the Council, such as a computer, website and/or e-mail and internet access for a specified period;
- 27.8 Exclude or recommend that the relevant Parish Council excludes the Subject Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings;
- 27.9 Issue a formal letter to the Subject Member;
- 27.10 Issue a formal reprimand to the Subject Member.

The Hearings Sub-Committee cannot suspend a Subject Member, withdraw a Subject Member's allowance, impose financial penalties, award compensation or make an award of costs.

***Matters to Consider when Applying a Sanction***

- 28 When deciding whether to apply one or more sanctions referred to above, the Hearings Sub-Committee will ensure that the application of any sanction is reasonable and proportionate to the Subject Member's behaviour and that any sanction does not unduly restrict the Subject Member's ability to perform the functions of a councillor. The Hearings Sub-Committee will consider the following questions along with any other relevant circumstances raised at the hearing:
  - (a) What was the Subject Member's intention and did they know that they were failing to follow the Borough or Parish Council's Code of Conduct?
  - (b) Did the Subject Member receive relevant advice from officers before the incident and was that advice acted on in good faith?
  - (c) Has there been a relevant breach of trust?



- (d) Has there been financial impropriety, e.g. improper expense claims or procedural irregularities?
- (e) What was the result/impact of failing to follow the Borough or Parish Council's Code of Conduct?
- (f) How serious was the incident?
- (g) Does the Subject Member accept that they were at fault?
- (h) Did the Subject Member apologise to the relevant persons?
- (i) Has the Subject Member previously been warned or reprimanded for similar misconduct?
- (j) Has there been a relevant previous breach by the Subject Member of the Borough or Parish Council's Code of Conduct?
- (k) Is there likely to be a repetition of the incident?
- (l) Was it a deliberate breach of the code or was it inadvertent (i.e. the Member thought that he/she was acting in a private capacity)? If capacity is an issue, the Hearings Sub-Committee will need to give reasons for its decision that the Subject Member was or was not acting publicly.

***The written decision***

- 29 The Chairman will announce its decision on the day. The Monitoring Officer will issue a full written decision approximately 10 working days after the end of the hearing to:
- 29.1 The Subject Member;
  - 29.2 The Complainant; and
  - 29.3 The clerk to any Parish Council concerned.

***Making the findings public***

- 30 The Corporate Governance and Standards Committee will also arrange for a summary of the decision and reasons for that decision to be published on the Council's website.
- 31 If the Hearings Sub-Committee finds that a Subject Member did not fail to follow the relevant authority's Code of Conduct, the public summary must say this, and give reasons for this finding.
- 32 If the Hearings Sub-Committee finds that a Subject Member failed to follow the Code of Conduct, but that no action is needed, the public summary must say that the Subject Member failed to follow the Code of Conduct, outline what happened and give reasons for the Hearings Sub-Committee's decision not to take any action.
- 33 If the Hearings Sub-Committee finds that a Subject Member failed to follow the Code of Conduct and it sets a sanction, the public summary must say that the Member

failed to follow the Code of Conduct, outline what happened, explain what sanction has been set and give reasons for the decision made by the Hearings Sub-Committee.

### **Costs**

- 34 Subject Members are responsible for meeting the cost of any representation at a Hearings Sub-Committee meeting. The Hearings Sub-Committee cannot make orders as to costs. Neither the Borough Council nor a Parish Council can contribute to the Subject Member's costs or the Complainant's costs or indemnify a Subject Member or Complainant against costs which he or she may incur.

### **Appeals**

- 35 There is no internal right of appeal for a Member against a finding by the Hearings Sub-Committee following a hearing.

### **Variation**

- 36 The Monitoring Officer or the Hearings Sub-Committee may vary this procedure in any particular instance where he or she or they is/are of the opinion that such a variation is desirable and does not conflict with statutory requirements.

### **Note: Human Rights**

The Human Rights Act 1998 incorporates the European Convention on Human Rights and makes it unlawful for a local authority to act in a way which is incompatible with a convention right. The Hearings Sub-Committee will have regard to the Human Rights Act when exercising its hearing functions, with particular reference to the following provisions:

- Article 6 – in the determination of civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law;
- Article 8 – everyone has the right to respect for his/her home and private and family life;
- Article 1 – of the first protocol – every person is entitled to the peaceful enjoyment of his/her possessions.