

# Crawley Borough Council

## Report to Audit & Governance Committee 12 March 2014



### Update on the Operation of the Standards Regime under the Localism Act 2011

Report of the Head of Legal and Democratic Services, Monitoring Officer  
Report No LDS/078

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#### **1. Purpose**

- 1.1 Following the implementation of the Council's Standards Regime since it was adopted by the Authority in July 2012 in response to the requirements of the Localism Act 2011, the Committee is invited to note what has happened since its operation and to consider whether any proposed changes are required to the Councillors' Code of Conduct following revisions to the seven principles of public life by the Committee on Standards in Public Life.

#### **2. Recommendations**

- 2.1 That the Audit and Governance Committee notes the Report and is invited to consider whether to make any changes to the Councillors' Code of Conduct in light of the revisions made to the seven principles of public life.
- 2.2 That in view of the fact that the Code forms part of the Council's Constitution, if the Committee propose to make any changes to the Code, then the Full Council be requested to agree those changes for inclusion in the Code.

#### **3. Reasons for the Recommendations**

- 3.1 The Authority has a duty to promote and maintain high standards of conduct for its elected and co-opted Members and to review its adopted Code of Conduct and Arrangements for dealing with any allegations regarding a breach of the adopted Code.

#### **4. Background**

- 4.1 Under the provisions of the Localism Act 2011, the Council was required to approve its own Code of Conduct and Arrangements for dealing with any allegations regarding a breach of the adopted Code.
- 4.2 With effect from 18 July 2012, the Council adopted a new Councillors' Code of Conduct (the Code) and Arrangements for Dealing with Complaints alleging a breach of the Code of Conduct (the Arrangements).
- 4.3 The Audit and Governance Committee is responsible for advising the Council on the adoption and revision of the Code and the Arrangements for Dealing with the Code of Conduct Complaints.
- 4.4 Under these arrangements the Monitoring Officer should report periodically to the Audit and Governance Committee on complaints, the outcomes and lessons learnt.

## **5. Description of Issue to be resolved**

5.1 The Localism Act 2011 made fundamental changes to the system of regulation of standards of conduct for elected and co-opted Members. During 2011 and 2012 the Standards Committee considered a series of reports to establish how the Authority would respond to the changes. On 20 June 2012 the Standards Committee considered a number of recommendations to implement these changes. Those recommendations were approved by the Council on 18 July 2012 and included:

- The adoption of a new Code of Conduct
- New Terms of Reference and delegations on standard functions to the Audit and Governance Committee.
- The adoption of new Arrangements to deal with Code of Conduct complaints.
- The appointment of Independent Persons and specific delegations to the Monitoring Officer concerning applications for Dispensations.

As the date for implementation of these changes was 18 July 2012, the new Arrangements have been in place for over 18 months so it is appropriate for Members to consider how those Arrangements have worked in practice.

## **6. Information & Analysis Supporting Recommendation**

6.1 In considering the new Arrangements, one of the decisions made by the Council was to discharge its functions in relations to the new Standards regime through the Audit and Governance Committee rather than establishing a separate Standards Committee.

6.2 The terms of reference on Standards functions delegated to the Committee and Monitoring Officer are set out in the Constitution on pages 137 to 139.

### The Code of Conduct

6.3 Under the new arrangements the Authority was given greater discretion as to what it included within its new Code of Conduct provided that it was consistent with the seven principles of:

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership.

6.4 The Code of Conduct presented and approved by the Council was based on paragraphs 3 to 7 of the Code which was previously in force as well as incorporating provisions to require the registration /disclosure of personal and/or prejudicial interests as well as Disclosable Pecuniary Interests.

- 6.5 The Council adopted a Code of Conduct which was based on the Model agreed by a number of other Authorities in both East and West Sussex including West Sussex County Council. A copy of the Code of Conduct is attached at Appendix 1. The current Code of Conduct is working well and it is therefore not proposed to make any amendments to the main Code.
- 6.6 The current Code of Conduct contains the seven principles of public life drawn up by the Committee on Standards in Public Life in 1995. In 2013 the Committee published a report, "Standards Matter - A review of best practice in promoting good behaviour in public life". As part of its review of Standards, CSPL revisited the seven principles. Whilst the principles themselves remain, the descriptions have been revised. These changes are set out below:

<p><b>Selflessness</b> Holders of public office should act solely in terms of the public interest.</p>	<p><b>Openness</b> Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.</p>
<p><b>Integrity</b> Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.</p>	<p><b>Honesty</b> Holders of public office should be truthful.</p>
<p><b>Objectivity</b> Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.</p>	<p><b>Leadership</b> Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.</p>
<p><b>Accountability</b> Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.</p>	

- 6.7 The Committee is invited to consider whether to replace the current principles which are set out in the Code of Conduct with the new principles.

Register of Interests

- 6.8 The Monitoring Officer is obliged under the Act to maintain a register of interests which must be available for inspection and available on the Council's web site.
- 6.9 The act abolished the concept of personal and prejudicial interests but introduced "Disclosable Pecuniary Interests" (DPIs) defined in regulations and extended, the requirement for registration to also cover the interests of the Member's spouse or civil partner or someone living with the Member in a similar capacity. The Act also required an Authority's Code to contain appropriate requirements for the registration (and disclosure) of other non-pecuniary interests.
- 6.10 The Register of Interests form was amended to take into account the introduction of Disclosable Pecuniary Interests (DPIs) as well as the registration of non-pecuniary interests. Since the introduction of the Code of Conduct in July 2012, the Monitoring Officer has prepared and maintained a new register and new registration form in accordance with requirements of the Act. The interests of all Members have been published on the Authority's website and updated as and when required.
- 6.11 One of the main benefits of the system is that the Register of Interests is updated on the Council's website as soon as Members submit their forms and indicate to the Monitoring Officer changes in their interests.
- 6.12 Members were given 28 days from the new Code being adopted to submit an interest form. Following the Annual Meeting, the Monitoring Officer carries out an annual review which involves all Members being sent their current forms and asked to confirm whether they are up-to-date or to identify where revisions are needed.
- 6.13 These arrangements have been effective in making sure Members are made aware of their duty to register their interests and many Members are proactive in keeping their register entries up-to-date.
- 6.14 In November 2013 Members were supplied with a Guide for Councillors on "Openness and Transparency on Personal Interests" issued by the DCLG.

#### Probity in Planning

- 6.15 In April 2013, the Local Government Association published a Guide reflecting the changes in the Localism Act 2011, to help Councillors understand their roles and responsibilities and avoid 'probity' difficulties. The Guide has been written for Officers and Councillors involved in planning and clarifies how Councillors can be involved in planning discussions on plan making and on applications, on behalf of their communities in a fair, impartial and transparent manner.
- 6.16 The Guide refers to requirement for local Codes, the Nolan Principles, the Register of Interests and Disclosure of Interests. The Guide also discusses Predisposition, Predetermination and Bias, lobbying and the Planning process generally and includes a flowchart for Councillors to assess whether they hold a Disclosable Pecuniary Interest, which is specific to Planning Committee only.
- 6.17 As a result of this Guide, the Code of Conduct on Planning matters has been updated.

#### Sensitive Interests

- 6.18 Where a Member is concerned that disclosure of the detail of an interest (either a DPI or any other interest which he/she would be required to disclose at a meeting or on the register of Members' interests would lead to the Member or a person connected with him/her being subject to violence or intimidation he/she may request

the Monitoring Officer to agree that the interest is a “sensitive interest”. If the Monitoring Officer agrees, the Member then merely has to disclose the existence of an interest rather than the detail of it at the meeting and the Monitoring Officer can exclude the detail of the interest from the published version of the register of Members’ interests.

6.19 The Monitoring Officer has received a limited number of requests for interests to be treated as “sensitive interests”.

6.20 Dispensations

In agreeing the arrangements, the Council has delegated to the Monitoring Officer to grant dispensations pursuant to the provisions in Section 33 of the Localism Act 2011 but there is a discretion to refer applications for dispensations to the Audit and Governance Committee if considered appropriate following consultation with the Independent Person. To date following a request the Monitoring Officer has granted a dispensation to all Members to enable them to participate in matters concerning:

- An allowance payment or indemnity given to Members
- Any ceremonial honour given to Members
- Setting the Council’s budget, Council Tax or Precept under the Local Government Finance Act 1992.

Independent Person

6.21 Through a process of public advertisement, application and interviews, the Council formally appointed:

Andrew Timms. Barry Jones and Peter Nicolson

Arrangements for Code of Conduct Complaints

6.22 The Council introduced new Arrangements for Dealing with Code of Conduct Complaints under the Localism Act 2011.

6.23 The Councillors’ Code of Conduct and the Arrangements for Dealing with Code of Conduct Complaints are on the Council’s website. A copy of the current Arrangements are set out at Appendix 2.

6.24 Since the introduction of the new Arrangements for Dealing with Code of Conduct Complaints, there has been nine written complaints, details of which are set out in the table at Appendix 3.

6.25 The Monitoring Officer’s consultation with the Independent Person has taken place face-to-face at meetings, by telephone or by written communication. The Independent Person provides a comment and steer to the Monitoring Officer before any decision is issued on a complaint. Again, these arrangements have worked well in practice. There is no proposal to change them at this stage.

## **7. Implications**

7.1 There are no significant implications arising from this report.

## **8. Background Papers**

8.1 None

**CRAWLEY BOROUGH COUNCIL  
CODE OF CONDUCT FOR COUNCILLORS**

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**CRAWLEY BOROUGH COUNCIL**  
**CODE OF CONDUCT FOR MEMBERS**

**Part 1 – General Provisions**

**1. Introduction and Interpretation**

- (1) This Code applies to **you** as a member of the authority, when acting in that capacity.
- (2) This Code is based upon the general principles fundamental to public life which are set out in **Part 4**. You should have regard to these principles as they will help you to comply with the Code.
- (3) It is your personal responsibility to comply with the provisions of this Code. If you need guidance on any matter under this Code you should seek it from the Monitoring Officer or Deputy Monitoring Officer.
- (4) It is a criminal offence to fail to notify the Monitoring Officer of a disclosable pecuniary interest, to take part in discussions or votes at meetings, or to take a decision where you have a disclosable pecuniary interest, without reasonable excuse. It is also an offence to knowingly or recklessly provide false or misleading information to the authority's Monitoring Officer.
- (5) Any written allegation received by the authority that you have failed to comply with this Code will be dealt with by the authority under the arrangements which it has adopted for such purposes. If it is found that you have failed to comply with the Code, the authority has the right to have regard to this failure in deciding -
  - a. whether to take action in relation to you and
  - b. what action to take.

(6) In this Code

“authority” means Crawley Borough Council

“Code” means this Code of Conduct

"member" includes a co-opted member and an appointed member

“co-opted member” means a person who is not a member of the authority but who:

- (a) is a member of any committee or sub-committee of the authority, or
- (b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority,

and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee.

"meeting" means any meeting of:

- (a) the authority; the executive, any committees, sub-committees, joint committees or area or local committees

- (b) Members in formal or informal meetings with other members and/or officers relating to the business of the authority

“register of members’ interests” means the authority's register of members' pecuniary and other interests established and maintained by the Monitoring Officer under section 29 of the Localism Act 2011.

## **2. Scope**

- (1) Subject to sub-paragraphs (2) and (3), you must comply with this Code whenever you act or appear to act in your official capacity namely when you:
  - (a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or
  - (b) act, claim to act or give the impression you are acting as a representative of your authority,

and references to your official capacity are construed accordingly.

- (2) This Code does not have effect in relation to your conduct other than where it is in your official capacity.
- (3) Where you act as a representative of your authority:
  - (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's Code of Conduct; or
  - (b) on any other body, you must, when acting for that other body, comply with your authority's Code of Conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

## **3. General Obligations**

- (1) You must treat others with respect.
- (2) You must not do anything which may cause your authority to breach any of the equality duties (as set out in the Equality Act 2010);
- (3) You must not bully any person;
- (4) You must not intimidate or attempt to intimidate any person who is or is likely to be a complainant, a witness, or involved in any investigation or proceedings about a complaint that a member (including yourself) has failed to comply with his or her Authority's Code of Conduct
- (5) You must not do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.
- (6) You must not
  - (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where



- i. you have the consent of a person authorised to give it;
  - ii. you are required by law to do so;
  - iii. the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person;
  - iv. the disclosure is—
    - (a) reasonable and in the public interest; and
    - (b) made in good faith and in compliance with the reasonable requirements of the authority <sup>1</sup> or
- (b) prevent another person from gaining access to information to which that person is entitled by law.
- (7) You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.
- (8) You must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage;
- (9) You must, when using or authorising the use by others of the resources of your authority:
- (i) act in accordance with your authority's reasonable requirements;
  - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes);
- (10) You must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
- (11) When reaching decisions on any matter you must have regard to any relevant advice provided to you by the authority's Chief Finance Officer; or your authority's Monitoring Officer, where that officer is acting pursuant to his or her statutory duties.
- (12) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

<sup>1</sup> Note "In compliance with the reasonable requirement of the Authority" means that a Member should consult the Chief Executive as Head of the Paid Service, the Head of Legal and Democratic Service (as Monitoring Officer) or The Head of Finance and Benefits (as Chief Finance Officer) before taking a decision on whether or not to disclose confidential information.

## **Part 2 – Interests**

### **4. Personal Interests**

- (1) You have a personal interest in any business of your authority where either:
- (a) it relates to or is likely to affect:

(i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;

(ii) any body

(aa) exercising functions of a public nature;

(bb) directed to charitable purposes; or

(cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),

of which you are a member or in a position of general control or management;

(iii) the interests of any person or body other than the authority from whom you have received a gift, benefit or hospitality as a Member with an estimated value of at least £50;

OR

(b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;

(2) In sub-paragraph (1)(b), a relevant person is:

(a) a member of your family or any person with whom you have a close association; or

(b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;

(c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or

(d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

## **5. Disclosure of Personal Interests**

(1) Subject to sub-paragraphs (2) to (7) below, where you have a personal interest in any business of your authority and you attend a meeting of your authority at which any matter relating to the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

(2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 4(1)(a)(i) or 4(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.

- (3) Where you have a personal interest in any business of the authority or the type mentioned in paragraph 4(1)(a)(iii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.
- (4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.
- (5) Where you have a personal interest but, by virtue of paragraph 11, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest and, if also applicable, that it is a disclosable pecuniary interest, but need not disclose the sensitive information to the meeting.
- (6) Where you have a personal interest in any business of your authority and you have made an executive decision on any matter in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.
- (7) In this paragraph, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

## **6. Prejudicial Interests Generally**

- (1) Subject to sub-paragraph (2) below, where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.
- (2) You do not have a prejudicial interest in any business of the authority where that business:
  - (a) does not affect your financial position or the financial position of a person or body described in paragraph 4;
  - (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 4; or
  - (c) relates to the functions of your authority in respect of
    - (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
    - (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
    - (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
    - (iv) an allowance, payment or indemnity given to members;

- (v) any ceremonial honour given to members; and
  - (vi) setting council tax or a precept under the Local Government Finance Act 1992.
- (3) The determining of any approval, consent, licence, permission or registration as referred to in paragraph 6(2)(b) shall include the amendment, modification, or variation of any such approval, consent, licence, permission or registration.

## **7. Prejudicial Interests Arising in Relation to Overview and Scrutiny Committees**

You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where:

- (a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and
- (b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

## **8. Effect of Prejudicial Interests on Participation**

1. Subject to sub-paragraph (2), where you have a prejudicial interest in any business of the authority:
  - (a) you must withdraw from the room or chamber where a meeting considering the business is being held;
    - (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;
    - (ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting:

unless you have obtained a dispensation from the Monitoring Officer;
  - (b) you must not exercise executive functions in relation to that business; and
  - (c) you must not seek improperly to influence a decision about that business
2. Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

## **9. Disclosable Pecuniary Interests**

- (1) Subject to sub-paragraphs (2) and (3), you have a Disclosable Pecuniary Interest in any business of your Authority where you or your partner have any interest of a description specified as a Disclosable Pecuniary Interest in Regulations made by the Secretary of State pursuant to Section 30 of the Localism Act 2011. (The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. SI 2012/1464).

**Disclosable Pecuniary Interests are:**

(i) any employment, office, trade, profession or vocation carried on for profit or gain;

(ii) any payment or provision of any other financial benefit (other than from the authority) made or provided within the preceding 12 months in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992(a);

(iii) any contract which is made between the relevant person (or body in which the relevant person has a beneficial interest) and the authority under which goods or services are to be provided or works are to be executed and which has not been fully discharged.

(iv) any beneficial interest in land which is within the area of the authority;

(vi) any licence (alone or jointly with others) to occupy land in the area of the authority for a month or longer;

(vii) any beneficial interest in securities of a body where that body (to your knowledge) has a place of business or land in the area of the relevant authority; and

either

(a) the total nominal value of the securities exceeds (25,000 or one hundredth of the total issued share capital of that body; or

(b) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class

*(certain words and expressions used in this list are defined in Regulations)*

- (2) In sub-paragraph (1), your partner means:

(a) Your spouse or civil partner

(b) A person with whom you are living as husband and wife, or

(c) A person with whom you are living as if you were civil partners.

- (3) In sub-paragraph (2), any interest which your partner may have is only treated as your interest if you are aware that your partner has the interest.

## **Disclosure of Disclosable Pecuniary Interests**

(4) (1) Subject to sub-paragraph (2) where you have a Disclosable Pecuniary Interest in any business of your authority and you attend a meeting of your authority at which the business is considered you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration or when the interest becomes apparent.

(2) Where you have a Disclosable Pecuniary Interest in any business of your authority you need only disclose to the meeting the existence and nature of the interest if the interest is not already registered on your register of member's interests.

(3) If the Disclosable Pecuniary Interest is not already on your register of member's interests or the subject of a pending notification to the Monitoring Officer and is disclosed to the meeting you must notify the Monitoring Officer of the interest within 28 days of disclosure to the meeting.

### **Effect of Disclosable Pecuniary Interests on Participation**

(5) Where you have a Disclosable Pecuniary Interest in any business of your authority;

(a) you must not participate or participate further in any discussions of the matter at a meeting; or

(b) participate in any vote or further vote taken on the matter at the meeting; and

(c) by virtue of a Standing Order must withdraw from the room or chamber where the meeting considering the matter is being held.

## **Part 3 – Registration of Members' Interests**

### **10. Registration of Members' Interests**

(1) Subject to paragraph 11, you must, within 28 days of:

(a) This Code being adopted or applied by the authority; or

(b) your election or appointment to office (where that is later), register in your authority's register of members' interests details of:

(i) your personal interests where they fall within a category mentioned in paragraph 4(1)(a) by providing written notification to your authority's Monitoring Officer and

(ii) Disclosable Pecuniary Interests as defined in paragraph 9.

(2) You must within 28 days of becoming aware of any new personal or pecuniary interest or change to any such interest registered under paragraph (1), register details of that new interest or change by written notification to your authority's Monitoring Officer.

## 11. Sensitive Information

- (1) Where you consider that the information relating to any of your Interests is sensitive information, and your authority's Monitoring Officer agrees, the Monitoring Officer shall not include details of the interest on any copies of the register of members' interests which are made available for inspection or any published version of the register, but may include a statement that you have an interest, the details of which are withheld under this paragraph.
- (2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's Monitoring Officer asking that the information be included in the register of members' interests.
- (3) In this Code, "sensitive information" means information, the details of which, if disclosed, could lead to you or a person connected with you being subject to violence or intimidation.

## 12. Dispensations

- (1) On a written request made to the Monitoring Officer by a Member for a dispensation the Monitoring Officer or a Committee may grant a dispensation relieving the member from either or both of the restrictions in paragraphs 8(1)(a) and 9(5)(a) and (b) (restrictions on participating in discussions and in voting), in cases described in the dispensation.
- (2) A dispensation may be granted only if, after having had regard to all relevant circumstances, the Monitoring Officer or the Audit and Governance Committee if appropriate:
  - (a) considers that without the dispensation the number of persons prohibited by paragraphs 8(1) and 9(5) from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business,
  - (b) considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business,
  - (c) considers that granting the dispensation is in the interests of persons living in the authority's area,
  - (d) if it is an authority to which Part 1A of the Local Government Act 2000 applies and is operating executive arrangements, considers that without the dispensation each member of the authority's executive would be prohibited by paragraphs 8 and 9 from participating in any particular business to be transacted by the authority's executive, or
  - (e) considers that it is otherwise appropriate to grant a dispensation.
- (3) A dispensation must specify the period for which it has effect, and the period specified may not exceed four years.
- (4) Paragraphs 8(1) and 9(5) does not apply in relation to anything done for the purpose of deciding whether to grant a dispensation under this paragraph.

## Part 4 – The General Principles of Public Life

### *Selflessness*

1. Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person organisation, or group or any third party.

### *Integrity*

2. Members should not place themselves in situations where their integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour. Members should show integrity by consistently treating other people with respect, regardless of their race, age, religion, gender, sexual orientation, disability or position, for example as an officer or employee of the authority.

### *Objectivity*

3. Members should make decisions in accordance with the law and on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

### *Accountability*

4. Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

### *Openness*

5. Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

### *Honesty*

6. Members should not place themselves in situations where their honesty may be questioned, should not behave dishonestly and should on all occasions avoid the appearance of such behaviour. Members should declare any private interests relating to their public duties and take steps to resolve any conflicts arising in a way that protects the public interest.

### *Leadership*

7. Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

## **Part 5 – The Categories of Disclosable Pecuniary Interests under The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 SI 2012/1464**

A 'disclosable pecuniary interest' is an interest of yourself or your partner (which means spouse or civil partner, a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners) within the following descriptions:

Interest	Description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the



Interest	Description
Contracts	<p>election expenses of M.  This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.</p> <p>Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority—</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
Land	<p>Any beneficial interest in land which is within the area of the relevant authority.</p>
Licences	<p>Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.</p>

**ARRANGEMENTS  
FOR DEALING  
WITH CODE OF  
CONDUCT  
COMPLAINTS  
UNDER THE  
LOCALISM ACT  
2011**

## **ARRANGEMENTS FOR DEALING WITH CODE OF CONDUCT COMPLAINTS UNDER THE LOCALISM ACT 2011**

- a. Complaints in writing are to be made to the Monitoring Officer who will be responsible for the management of complaints, liaising with the Complainant, Members, those requiring to be informed and consulted and providing support services to the Independent Person. The Monitoring Officer should report periodically to the Council's Audit and Governance Committee on the complaints, the outcomes and lessons learned.
- b. The Monitoring Officer will consider the complaint, seek sufficient information to enable her to form a judgement as to whether there is a case to answer in accordance with the criteria set out in Appendix A and to make such a judgement.
- c. Three Independent Persons should be appointed to act alone or, in exceptional cases, particularly in relation to hearings, together. The role of the Independent Person is set out in Appendix B.
- d. The Monitoring Officer will inform the Member of the complaint.
- e. Whether or not there is a case to answer, the Monitoring Officer will seek to resolve the complaint informally, informing and consulting as appropriate the Chief Executive, the Leader of the Council, the Group Leader(s), and the Independent Person.
- f. If the Monitoring Officer considers that there is a case to answer then they will consider what action to take. If they deem informal steps have failed, or would fail or the apparent breach is too serious to warrant informal steps, then the Monitoring Officer should investigate the matter formally (having consulted the Independent Person and having informed and consulted the Chief Executive, the Leader, and/or the Group Leader(s)) in accordance with any directions of the Independent Person.
- g. Once an Investigation is complete, the Monitoring Officer will report to the Independent Person together with any representations from the Complainant and the Member.
- h. Upon receipt of the Final Report and any representations, the Independent Person will consider how the matter is to proceed further. If the report reveals breaches of the Code of Members' Conduct, the Independent Person will determine whether the matter can be disposed of without a hearing or, alternatively, to hold an oral hearing at which the parties would have the right to be heard.
- i. If the Independent Person considers that a breach is established and considers that action other than informal steps should be taken he or she may make recommendations to:
  - A Panel of Members drawn from the Appointments and Investigating Committee
- j. The recommendations may include any of those set out in Appendix C. They are neither exclusive nor exhaustive.

- k. The ultimate decision on the Independent Person's recommendations is for:-
  - A Panel of Members drawn from the Appointments and Investigating Committee
- l. Publicity for council proceedings and minutes should afford sufficient publicity of decisions taken by Council on the Independent Person's recommendations unless exceptionally the Council considers that wider media publicity is warranted.
- m. Formal notice of the Council's decision must be given to the Complainant and the Member.
- n. At all stages of the proceedings, informal resolution should be encouraged. It will be open to the complainant to withdraw his or her Complaint at any time and for the Complainant and the Member with the agreement of the Monitoring Officer or, depending upon the stage reached, the Independent Person to settle the complaint.
- o. Complaints should be handled sensitively and fairly. Anonymous complaints should not normally be allowed and complainants should expect to be identified, subject to the Data Protection Act 1998, unless there are exceptional circumstances relating to the protection of children or vulnerable adults, an obligation of confidence or the possibility of violence or intimidation. Until the Monitoring Officer has considered the complaint initially, publicity should not normally be given to the receipt of a complaint. The informal resolution of a complaint should be undertaken in private. If informal resolution cannot be achieved and an investigation carried out, then the fact of an investigation's being undertaken may be made a public although the investigation itself will be carried out in private. A Final Investigation report will be a public document subject to the rules on exempt business. The Independent Person's oral hearing will be in public as will the consideration by
  - A Panel of Members drawn from the Appointments and Investigating Committeeof the Independent Person's recommendations, subject to the rules on confidential exempt information.
- p. A flow chart explaining these arrangements is set out in Appendix D.

**ROLE OF THE MONITORING OFFICER**

Upon receipt of a complaint the Monitoring Officer must consider:

1. whether the subject matter of the allegation is within the Code of Members' Conduct;
2. whether the allegation appears to disclose a failure to comply with the Code of Members' Conduct because it comprises
  - a. a failure to treat others with respect;
  - b. acting in a way that may cause the authority to breach an equality enactment;
  - c. bullying of any person;
  - d. an intimidation or attempt at intimidation of a person involved in an allegation against the Member;
  - e. a compromise the impartiality of those who work for, or on behalf of, the authority;
  - f. a disclosure of confidential information;
  - g. the bringing of an office or authority into disrepute;
  - h. the using or attempt at using of the Member's position as a Member improperly to confer or secure an advantage or disadvantage;
  - i. the using of the resources of the authority not in accordance with its requirements;
  - j. the disregarding of relevant advice when reaching decisions;
  - k. a failure to give reasons for decisions;
  - l. a failure to declare a disclosable pecuniary interest;
  - m. a failure to declare an other type of disclosable interest;
  - n. the having of an interest and the failure to act appropriately;
  - o. a failure to register interests.
3. If the allegation appears to disclose a failure to comply with the Code of Members' Conduct, the Monitoring Officer is to consider:
  - a. the extent to which the Member is alleged to have failed to treat others with respect;
  - b. the extent to which the Member is alleged to have acted in a way that may cause the authority to breach an equality enactment;
  - c. whether the allegation relates to bullying, intimidating, or attempting to intimidate a person involved in an allegation against the Member;
  - d. whether in disclosing confidential information, the Member failed to take or to heed advice;
  - e. the implications for public perception or the reputation of the Council;
  - f. the implications for staff relations;
  - g. the seniority or position of influence of the Member, and public trust and confidence;

- h. the consequences or the likely consequences of the Member's alleged actions;
  - i. the extent to which the Member is alleged to have used his or her position as a Member improperly to confer or secure an advantage or disadvantage;
  - j. the extent to which the Member is alleged to have misused or abused the resources of the Council;
  - k. the detriment caused by acting against advice when reaching decisions;
  - l. the extent to which a failure to register or to declare interests resulted from a failure or refusal to seek or to follow advice;
  - m. whether the matter of complaint has already been the subject of a previous complaint, a previous investigation or of an investigation by another regulator, eg the Local Government Ombudsman or the council's auditor, or the subject of proceedings in court;
  - n. whether the complaint is about something that happened so long ago that there would be little public benefit in taking action now;
  - o. whether the complaint is too trivial to warrant further action;
  - p. whether the complaint appears to be simply malicious, vexatious, politically motivated or tit-for-tat;
  - q. the public benefit in directing an investigation or other steps;
  - r. the costs and officer and Member time which could be incurred on an investigation or other steps.
4. The Monitoring Officer considers that a Code of Members' Conduct may have been committed they must decide whether:
- a. the complaint can be resolved by informal means e.g. a telephone call, a meeting between the complainant and the Member or a meeting between the complainant, the Member, the Independent Person or a third party e.g. Group Leader, the Leader of the Council or the Chief Executive, or an apology;
  - b. to recommend steps to the complainant and the Member other than investigation and, if so, what steps;
  - c. to investigate the complaint;
  - d. to refer the allegation to the Independent Person for action;
  - e. to refer the case to be dealt with as part of the Council's corporate complaints procedure; or
  - f. to take no further action because:
    - i. the subject matter of the allegation is outside the Code of Members' Conduct;
    - ii. the allegation does not appear to disclose a failure to comply with the Code of Members' Conduct;
    - iii. the information submitted is insufficient to enable him or her to reach a decision;
    - iv. the matter of complaint has already been the subject of a previous investigation or of an investigation by another regulator, or the subject of proceedings in court;
    - v. the complaint is about something that happened so long ago that there would be little public benefit in taking action now;
    - vi. the complaint is too trivial to warrant further action;

- vii. the complaint appears to be simply malicious, vexatious, politically motivated or tit-for-tat; or
  - viii. It would not be expedient in the public interest for the matter to be pursued further.
- 5. The Monitoring Officer must consider the reasons for making this decision.
- 6. If the Monitoring Officer proposes to take steps 4b to 4f they shall inform the Chief Executive, the Group Leader and the Independent Person.
- 7. If the Monitoring Officer proposes to take steps 4c or 4d they shall consult the Independent Person.

## ROLE OF THE INDEPENDENT PERSON

1. To consider any reference from the Monitoring Officer and to give directions accordingly
2. To give directions regarding any Investigation
3. To give advice to the complainant, the Member, the Monitoring Officer or the Council or any of its Committees or Sub-Committees that have responsibility for Standards
4. To receive and consider any Investigation Report from the Monitoring Officer
5. To receive and consider any representations from the complainant and the Member
6. To hold a Hearing either orally or on the papers following an Investigation
7. Upon a reference by the Monitoring Officer and/or after a hearing to make recommendations to:
  - A Panel of Members drawn from the Appointments and Investigating Committee
8. In reaching any decision the Independent Person is to consider:
  - a) whether the subject matter of the allegation is within the Code of Members' Conduct;
  - b) whether the allegation appears to disclose a failure to comply with the Code of Members' Conduct because it comprises:
    - i) a failure to treat others with respect;
    - ii) acting in a way that may cause the authority to breach an equality enactment;
    - iii) bullying of any person;
    - iv) an intimidation or attempt at intimidation of a person involved in an allegation against the Member;
    - v) a compromise the impartiality of those who work for, or on behalf of, the authority;
    - vi) a disclosure of confidential information;
    - vii) the bringing of an office or authority into disrepute;
    - viii) the using or attempt at using of the Member's position as a Member improperly to confer or secure an advantage or disadvantage;
    - ix) the using of the resources of the authority not in accordance with its requirements;
    - x) the disregarding of relevant advice when reaching decisions;
    - xi) a failure to give reasons for decisions;
    - xii) a failure to declare a disclosable pecuniary interest;
    - xiii) A failure to declare an other type of disclosable interest;
    - xiv) the having of an interest and the failure to act appropriately;
    - xv) a failure to register interests.
  - c) If the allegation appears to disclose a failure to comply with the Code of Members' Conduct, the Independent Person to consider
    - i) the extent to which the Member is alleged to have failed to treat others with respect;
    - ii) the extent to which the Member is alleged to have acted in a way that may cause the authority to breach an equality enactment;
    - iii) whether the allegation relates to bullying, intimidating, or attempting to intimidate a person involved in an allegation against the Member;



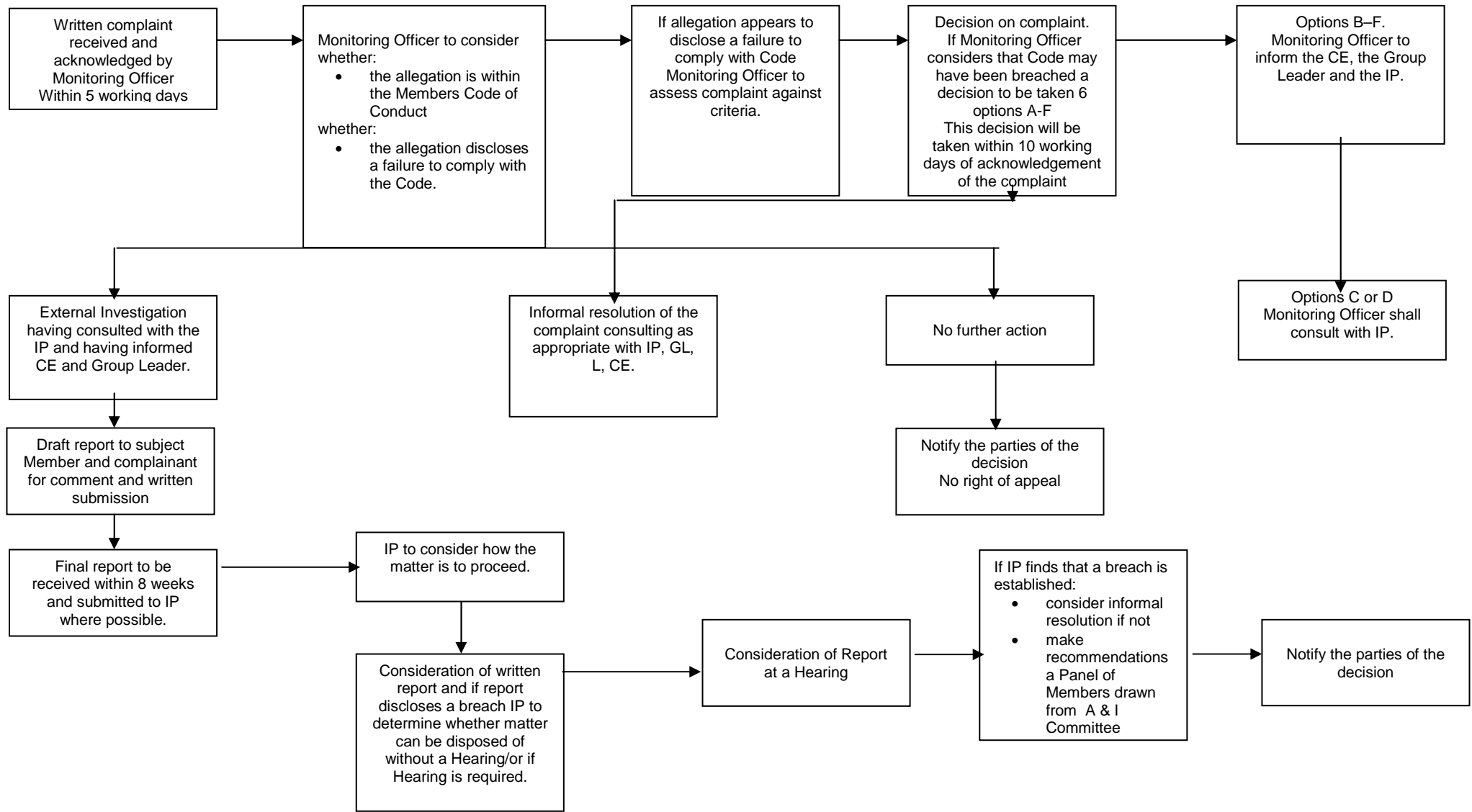
- iv) whether in disclosing confidential information, the Member failed to take or to heed advice;
  - v) the implications for public perception or the reputation of the Council;
  - vi) the implications for staff relations;
  - vii) the seniority or position of influence of the Member, and public trust and confidence;
  - viii) the consequences or the likely consequences of the Member's alleged actions;
  - ix) the extent to which the Member is alleged to have used his or her position as a Member improperly to confer or secure an advantage or disadvantage;
  - x) the extent to which the Member is alleged to have misused or abused the resources of the Council;
  - xi) the detriment caused by acting against advice when reaching decisions;
  - xii) the extent to which a failure to register or to declare interests resulted from a failure or refusal to seek or to follow advice;
  - xiii) whether the matter of complaint has already been the subject of a previous investigation or of an investigation by another regulator, eg the Local Government Ombudsman or the council's auditor, or the subject of proceedings in court;
  - xiv) whether the complaint is about something that happened so long ago that there would be little public benefit in taking action now;
  - xv) whether the complaint is too trivial to warrant further action;
  - xvi) whether the complaint appears to be simply malicious, vexatious, politically motivated or tit-for-tat;
  - xvii) the public benefit in directing an investigation or other steps;
  - xviii) the costs and officer and Member time which could be incurred on an investigation or other steps.
- d) If the Independent Person considers that a breach of the Code of Members' Conduct may have been committed he or she must decide whether:
- i) the complaint can be resolved by informal means e.g. a telephone call, a meeting between the complainant and the Member or a meeting between the complainant, the Member, the Independent Person or a third party e.g. Group Leader, the Leader of the Council or the Chief Executive, or an apology;
  - ii) to recommend steps to the complainant and the Member other than Investigation and, if so, what steps;
  - iii) to recommend action to:
  - iv) A Panel of Members drawn from the Appointments and Investigating Committee
  - v) to take no further action because
    - (1) the subject matter of the allegation is outside the Code of Members' Conduct;
    - (2) the allegation does not appear to disclose a failure to comply with the Code of Members' Conduct;
    - (3) the information submitted is insufficient to enable him or her to reach a decision;
    - (4) the matter of complaint has already been the subject of a previous investigation or of an investigation by another regulator, or the subject of proceedings in court;
    - (5) the complaint is about something that happened so long ago that there would be little public benefit in taking action now;
    - (6) the complaint is too trivial to warrant further action;
    - (7) the complaint appears to be simply malicious, vexatious, politically motivated or tit-for-tat; or
    - (8) It would not be expedient in the public interest for the matter to be pursued further.

9. The Independent Person must consider the reasons for making this decision.
10. If the Independent Person makes a decision he or she shall inform the Monitoring Officer, the Chief Executive, the Group Leader, the complainant and the Member.
11. The actions the Independent Person may recommend to:
  - A Panel of Members drawn from the Appointments and Investigating Committee are set out at Appendix C.

**RECOMMENDATIONS WHICH THE INDEPENDENT PERSON MAY MAKE TO A  
PANEL OF MEMBERS DRAWN FROM THE APPOINTMENTS AND INVESTIGATING  
COMMITTEE)**

1. That the Member should be censured.
2. That the Member should apologise to the complainant or other affected person.
3. That the Member should for a specified period of time be excluded from a building, office or offices, from contact with a particular member of staff or members of staff or required to conduct his or her business through a named senior member of staff.
4. That the Member should for a specified period of time be prohibited from using specific resources of the Council.
5. That the Member should give an undertaking to refrain from certain conduct or to carry out his or her business in a particular fashion.
6. That the Member and/or other or all Members should undergo training in a particular area or areas of his or her or their Council business.
7. That the Member should be suspended or removed from membership of the executive, a committee or sub-committee.
8. That a breach of the interest provisions should be referred to the Police.
9. That a breach potentially exhibits criminal conduct which should be referred to the Police.
10. That the Member's conduct be referred to another regulator.
11. That it would not be expedient in the public interest for the matter to be pursued further.
12. That improvements might be made in the conduct of business to promote or maintain high standards of conduct among Members.

**ARRANGEMENTS FOR DEALING WITH COMPLAINTS FOR BREACHES OF THE CODE OF CONDUCT UNDER THE LOCALISM ACT 2011 (FLOWCHART)**



# INVESTIGATIONS PROCEDURE

## Introduction

This document sets out the procedure which will be followed once a decision has been taken that an allegation of a breach of the Code of Conduct by a member should be investigated.

It should be read in conjunction with the document “Arrangements for dealing with Code of Conduct Complaints under the Localism Act 2011” ([link](#)).

## The Appointment of the Investigating Officer

Upon deciding to refer an allegation for investigation, the Monitoring Officer will appoint an Investigating Officer and instruct him/her to conduct an investigation of the alleged breach of Code of Conduct and report on it. The Monitoring Officer may appoint a replacement if the Investigating Officer is unable to complete the investigation. The Investigating Officer may be an Officer of the authority or another authority or an external Investigating Officer.

## The Role of the Investigating Officer

The role of the Investigating Officer is to ensure, as far as possible, that all the information which is relevant to the allegation is identified and presented in their report.

Subject to the agreement of the Monitoring Officer, the Investigating Officer may appoint a person(s) to assist him/her in the conduct of his/her functions and may obtain such professional advice as may be necessary for the conduct of the investigation.

## Notification Requirements

Once they have appointed an Investigating Officer, the Monitoring Officer will notify the Subject Member against whom the allegation has been made that the matter is being referred for investigation and inform them who is conducting the investigation.

The Monitoring Officer will notify the Complainant that an investigation will take place and that they may be contacted in relation to that investigation.

## Conduct of the Investigation

The Investigating Officer shall have a broad discretion as to how they conduct the investigation.

They may require the Subject Member and the Complainant to provide them with information and/or documents which are relevant to the investigation. They may require them to provide details of other people who may be able to assist with the investigation.

It may assist the Investigating Officer to set out a plan for how they are going to conduct the investigation and they may consult the Monitoring Officer at any stage of the investigation.

The Investigating Officer may request any person to attend an interview with them and/or provide them with documents and/or information.

Any person who is interviewed may arrange to have a friend or solicitor with them (provided they are not connected to any matter under investigation).

The Investigating Officer will take a note of any interviews that they conduct.

The Monitoring Officer may agree that the authority will pay such reasonable expenses or costs to any persons providing documents, information, advice or explanation, in order to facilitate the conduct of the investigation as they consider appropriate.

### **Referral to the Monitoring Officer**

The Investigating Officer may refer the matter back to the Monitoring Officer if it appears to them appropriate to do so. For example, if the Member is seriously ill or the decision to investigate should be reconsidered in the light of new evidence.

### **Deferral of Investigation**

The Monitoring Officer has discretion to defer the investigation if it appears appropriate to do so. For example, if there is a criminal investigation taking place.

### **Confidentiality**

The Investigating Officer shall request that anyone contacted in relation to the investigation maintain confidentiality in order to maintain the integrity of the process.

### **Draft Report**

When the Investigating Officer is satisfied that he/she has sufficient information, or has obtained as much information as is reasonably practicable to obtain, he/she shall prepare a confidential draft report setting out the details of the allegation, the relevant sections of the code, a summary of the allegation, the response of the Subject Member, the information, documents and evidence taken during the course of the investigation, a statement of his/her draft findings, and the Investigating Officer's conclusion as to whether the member has breached the Code.

The draft report should be sent to the Monitoring Officer, the Complainant and the Subject Member for their comments. The Investigating Officer may wish to conduct further investigations once he/she has received those comments, before producing their final report.

### **Final Report**

The final report should include the same sections as the draft report and a final conclusion as to whether there has been a breach of the Code.

It may be helpful to include a chronology, summary of disputed facts and/or to append witness statements or other documents.

The Monitoring Officer will supply a copy of the final report to the Independent Person.

### **Action on Receipt of Report**

If the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct, the Monitoring Officer will review the report and, if satisfied that the report is sufficient will write to the Complainant and the Subject Member notifying them that no further action is required and enclosing a copy of the report.

If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider his/her report.

If the report concludes that there is evidence of a failure to comply with the Code of Conduct the Independent Person will determine how the matter is to proceed further. The Independent Person may seek local resolution of the complaint or will deal with the matter at a Hearing.

The Hearings process is the subject of a separate procedure.

### **Modification of this Procedure**

The Monitoring Officer may for the purposes of an investigation vary this procedure where the Monitoring Officer is of the opinion that such a variation is necessary in the interests of fairness.

## HEARINGS PROCEDURE

The following process will be followed when a report of an Investigating Officer reveals a breach of the Code of Conduct and the Independent Person has taken a decision that a Hearing is required.

The Hearing will comprise of the Independent Person acting alone or in exceptional cases sitting together as a panel of three.

### **Pre-Hearing Process**

The Monitoring Officer will liaise with the Independent Person in establishing a Hearing to hear the complaint the subject of the Investigating Officer's Report. They should aim to find a date which the witnesses, the Investigating Officer, the Complainant and the Subject Member (the member against whom the complaint has been made) can attend. They should give all those involved, particularly the Subject Member, sufficient notice of the Hearing. The Monitoring Officer should aim to arrange a Hearing which can take place in one day or consecutive days without the need to have gaps between sittings or lengthy days.

The Monitoring Officer will require the Subject Member to give his/her response to the Investigating Officer's report in order to identify what is likely to be agreed and what is likely to be in contention at the Hearing.

If the Subject Member wishes to rely on evidence at the Hearing, they should provide it to the Monitoring Officer as soon as possible. The Investigating Officer may have taken a witness statement from them or set out their comments in their report but if the Subject Member wishes to add to what the Investigating Officer has written they should provide a witness statement to the Monitoring Officer as soon as possible.

New arguments or new evidence will not be allowed to be presented at the Hearing.

The Monitoring Officer will decide what evidence will need to be heard, and what written evidence can be read at the Hearing. The Monitoring Officer should take account of the views of the witnesses and the Subject Member in reaching such decisions.

The Monitoring Officer can consult with the Independent Person(s) if he/she feels their guidance would assist and ask the Independent Person(s) to issue directions in relation to the pre-Hearing process.

The Monitoring Officer may wish to offer to cover the expenses of witnesses associated with their attendance at the Hearing.

The Monitoring Officer will consider whether it is appropriate to hear two complaints together, for example if they relate to the same member, or relate to the same incident or occasion.

The Subject Member should be provided with the Investigating Officer's report and any evidence which will be heard at the Hearing.

The Monitoring Officer should provide the Independent Person(s) with the evidence in advance of the Hearing so that they can read it to identify any potential conflicts of interest.

The Monitoring Officer will provide the Independent Person(s) with a report which summarises the allegation. This should include a list of agreed facts and disputed issues and outline the proposed procedure for the Hearing.



The Monitoring Officer will act as a point of contact for the Subject Member, the Complainant, the Independent Person(s) and any witnesses who will give evidence.

### **The Hearing**

There is a clear public interest in promoting probity (integrity and honesty) of public authorities and public confidence in them. For these reasons the Hearing will be held in public unless the Independent Person determines that protecting the privacy of anyone involved is more important than the need for the public Hearing. The press and the public may be excluded if there is a likelihood that confidential or exempt information will be disclosed.

If the Subject Member does not attend the Hearing, the Independent Person(s) may adjourn the Hearing or may continue to reach a decision on the basis of the Investigating Officer's report and any evidence they hear, if they decide to hear evidence.

The Hearing by the Independent Person(s) is not a court of law. The Independent Person(s) does not hear evidence under oath. The rules of natural justice should nevertheless be carefully followed and the Independent Person(s) will have due regard to the seriousness of the proceedings for those involved, the Council and the public.

The Independent Person(s) will decide disputed issues and whether the Subject Member has breached the Code of Conduct on the balance of probabilities.

### **Representation**

The Subject Member may choose to be represented by a Barrister, Solicitor or any other person they wish. They will have to bear the cost of being represented. The Independent Person(s) may refuse to allow a representative to remain at the Hearing if they are disruptive. The Independent Person will have the discretion to hear opening or closing arguments from the Subject Member and the Investigating Officer if they feel it would assist them in reaching a decision.

### **Evidence**

The Independent Person(s) will control the procedure and evidence presented at a Hearing, including the number of witnesses and the way they are questioned. All matters relating to the evidence and procedure are within their discretion.

Generally the Subject Member is entitled to present their case as they see fit.

The Independent Person(s) will usually have regard to submissions from the Subject Member if they are considering whether to hear particular evidence.

Witnesses of facts that are disputed would normally be expected to attend to be questioned. Character witnesses will normally provide written evidence which can be read at the Hearing.

Witnesses should be treated with courtesy throughout the pre-Hearing stage and at the Hearing.

Witnesses may be questioned by the Independent Person(s), the Monitoring Officer and the Subject Member. This discretion should generally be unfettered unless there is good reason to do so.

The onus is on the Subject Member to ensure the attendance of witnesses who they would like to give evidence to assist them. The Independent Person(s) can limit the number of witnesses or the issues which can be covered by them.

Neither the Independent Person(s) nor the Subject Member will have any power to compel witnesses to give evidence.

### **At the Hearing**

At the Hearing, the Investigating Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the member has failed to comply with the Code of Conduct. The Investigating Officer is likely to ask the Complainant to attend and give evidence to the Independent Person(s). The Investigating Officer may be asked about their report or any matters relating to their involvement.

### **Role of Monitoring Officer**

References to the Monitoring Officer should be read to include any representative of the Monitoring Officer including a Deputy Monitoring Officer.

The Monitoring Officer has a key role in ensuring the smooth running of the pre-Hearing and Hearing process. They will remain neutral throughout and will provide advice to the Independent Person(s).

### **Role of the Complainant**

The role of the Complainant will usually be limited to being a witness and they are not a party to the proceedings. However, the Independent Person(s) may wish to consult them at any stage in the Hearing if they feel their comments would assist them.

### **Decision**

The Independent Person(s) may wish to retire to consider their decision. The Monitoring Officer may assist them in constructing the reasons for their decision. The Monitoring Officer should not express any view on the evidence heard or the decision to be reached.

The Independent Person(s) will reach a decision as to whether the Subject Member has breached the Code of Conduct. If they decide that the Subject Member has not breached the Code of Conduct they will take no further action. If they decide that the Subject Member has breached the Code of Conduct they should go on to decide what sanction, if any, is appropriate and to recommend to the Appointments and Investigating Committee what action to take. The Independent Person(s) will have regard to the factors set out in the remainder of this document when considering the imposition of a sanction.

## **Sanctions**

A Panel of members from the Appointments and Investigating Committee must consult with and take into account the views of the Independent Person(s) before it makes a decision on a complaint that has been referred for an Investigation and what sanction to impose.

The Panel should consider all the mitigating and aggravating circumstances that appear to them to be relevant. For example, they may wish to consider:

- What were the actual and potential consequences of the breach?
- How serious was the breach?
- What is the attitude of the Subject Member now? Have they apologised?
- Has the Subject Member previously been dealt with for a breach of the Code?

The following are examples of mitigating and aggravating factors but these lists should not be regarded as exhaustive.

### **Mitigating Factors**

- An honest but mistaken belief that the action was not a breach of the Code.
- A previous record of good service.
- Evidence that they were suffering from ill health at the time of the breach.

### **Aggravating Factors**

- Dishonesty.
- Continuing to deny the facts or blaming other people.
- Evidence of a failure to follow advice or warnings.

The priority of the Panel should be to ensure that there are no further breaches of the Code and that public confidence is maintained.

## **Sanctions**

The sanctions available to the Panel are:

1. That the Member should be censured.
2. That the Member should apologise to the Complainant or other affected person.
3. That the Member should for a specified period of time be excluded from a building, office or offices, from contact with a particular member of staff or members of staff or required to conduct his or her business through a named senior member of staff.
4. That the Member should for a specified period of time be prohibited from using specific resources of the Council.
5. That the Member should give an undertaking to refrain from certain conduct or to carry out his or her business in a particular fashion.
6. That the Member and/or other or all Members should undergo training in a particular area or areas of his or her or their Council business.
7. That the Member should be suspended or removed from membership of the Executive, a Committee or Sub-Committee.
8. That a breach of the interest provisions should be referred to the Police.

9. That a breach potentially exhibits criminal conduct which should be referred to the Police.
10. That the Member's conduct be referred to another regulator.
11. That it would not be expedient in the public interest for the matter to be pursued further.
12. That improvements might be made in the conduct of business to promote or maintain high standards of conduct among Members.

**Note of decision**

As soon as is reasonably practicable after the Hearing, the Monitoring Officer shall prepare a formal decision notice in consultation with the Independent Person(s), and send a copy to the Complainant, the Subject Member, make that decision notice available for public inspection and report the decision to the next convenient meeting of the Panel of members from the Appointments and Investigating Committee

**APPENDIX 3**

<b>Complaint No. Date</b>	<b>Status of Person Making Complaint</b>	<b>Code Allegation</b>	<b>Outcome</b>
2012/1 December 2012	Member Complaint	3(1), 3(3), 3(4), 3(5), 3(8)	No further action on complaint. Monitoring Officer provided explanation on process of appointments to major project boards. Independent Person informed and consulted with. Independent Person support decision.
2013/1 January 2013	Member Complaint	3(4), 3(5), 3(6)	Informal action. Monitoring Officer to meet with the subject Member of the complaint, so that the Member can consider their position in terms of whether they have a declarable interest and that the subject Member speaks to the complainant to outline their position.
2013/2 March 2013	3 x Members	3(1)	Informal resolution of complaint failed. No public benefit in taking any other steps on this complaint.
2013/3/1-13 July 2013 Complaint against 13 x Councillors	Member of the Public	3(1), 3(3), 3(9) (i & ii)	Code of Conduct not engaged. No further action on the complaint. Monitoring Officer issued all Members with Guidance Note on use of Council resources, particularly with reference to the use of a Councillor's official email address and also issued a Guide on Blogging and Social Media.
2013/4/1-13 July 2013 Complaint against 1 x Member. Complaint against 12 other Members.	Member Complaint	3(3), 3(7)  3(3), 3(4)	Code of Conduct not engaged. No further action.

2013/5 July 2013	Member of the Public	No provisions of Code were identified. Complaint looked at whether Code was engaged.	Code of Conduct not engaged. Monitoring Officer issued guidance to Members on the use of a Councillor's official email address and the disclosure of confidential information.
2013/6 July 2013	Member Complaint	3(9)(I & ii)	Informal complaint : no further action. Code of Conduct not engaged.
2013/7 September 2013 Complaint against 2 x Members	Member of the Public	3(1), 3(7)	No breach of the Code of Conduct, no further action.
2013/8 December 2013	Member Complaint	3(1), 3(3), 3(4), 3(7)	Complaint in process of determination.