

## PROCEDURE FOR DEALING WITH CODE OF CONDUCT COMPLAINTS

1. Complaints in writing are to be made to the Monitoring Officer who will be responsible for the management of complaints, liaising with the complainant(s), Councillors, 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 Governance Committee that has responsibility for the discharge of standards functions on the complaints, the outcomes and lessons learned.
2. The Monitoring Officer will acknowledge receipt of the complaint within 10 working days of receipt of the prescribed form and inform the Councillor of the complaint which has been made against him / her.
3. A decision on the initial assessment of the complaint will normally be made within 20 working days of acknowledgement of the complaint.
4. The Monitoring Officer will review the complaint and, if necessary, undertake basic enquiries before deciding whether it should be rejected, merits further consideration or requires another course of action. A complaint will be rejected if:
  - (a) The Councillor is no longer a Councillor.
  - (b) The behaviour complained of occurred more than 3 months ago\*.
  - (c) The conduct complained of is not covered by the Code of Conduct.
  - (d) The complaint appears to be politically motivated, malicious, vexatious, tit for tat, trivial or otherwise not in the public interest to warrant further action.
  - (e) The conduct complained of is the same or substantially the same as a complaint that has previously been dealt with.
  - (f) There is no prima facie evidence that the Code has been breached or there is not enough information to take the matter forward.
  - (g) The complaint is anonymous.
  - (h) The complaint should be dealt with by some other process or other body or agency.

\*The Monitoring Officer shall have the discretion to consider the extension to this time frame in consultation with the Independent Person should it be considered necessary to do so.

The Monitoring Officer will seek the views of and consult with the Independent Person when a complaint is to be rejected.

5. If the complaint is not rejected, the Monitoring Officer will consider the complaint, based on the information provided and seek any clarifications where required. Thereafter the Monitoring Officer will make a judgement as to whether there is a case to answer in accordance with the criteria set out in Appendix A and then decide on whether the complaint should be dealt with informally or by referral for a formal investigation.

The role of the Independent Person in the complaints process is set out in Appendix B.

6. 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.

7. If the Monitoring Officer considers that there is a case to answer then they will consider what action to take. This will either be by informal resolution or by referring the complaint for an investigation. 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 refer the matter for an investigation (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.
8. Types of informal resolution of a complaint may include:
  - (a) An explanation by the Councillor of the circumstances surrounding the complaint.
  - (b) An apology from the Councillor.
  - (c) Arranging training for the Councillor.
  - (d) Arranging a mediation or conciliation session between the complainant and the Councillor.
  - (e) Any other action capable of resolving the complaint.

The Monitoring Officer will seek confirmation that the suggested informal resolution of the complaint has been complied with.

9. Once an Investigation is complete, the Monitoring Officer will report to the Independent Person together with any representations from the complainant and the Councillor.
10. If a decision is made that the complaint be investigated then the matter will follow the Investigations Procedure set out at [Appendix E](#). Upon receipt of the Final Report, if the report reveals breaches of the Code of Conduct for Councillors, 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.
11. If the Independent Person considers that a breach is established and considers that action other than informal steps should be taken the Independent person may make recommendations to:
  - A Panel of Councillors drawn from the Employment Panel.
12. The recommendations of the Independent Person may include any of those set out in [Appendix C](#). They are neither exclusive nor exhaustive.
13. The ultimate decision on the Independent Person's recommendations is for:
  - A Panel of Councillors drawn from the Employment Panel.
14. Publicity will be given to Code of Conduct Complaints which are determined as upheld either at the informal stage or following an investigation.
15. Formal notice of the Council's decision must be given to the complainant and the Councillor.
16. At all stages of the proceedings, informal resolution should be encouraged. It will be open to the complainant to withdraw their complaint at any time and for the complainant and the Councillor with the agreement of the Monitoring Officer or, depending upon the stage reached, the Independent Person to settle the complaint.
17. Complaints should be handled sensitively and fairly. Anonymous complaints should not normally be allowed and complainants should expect to be identified, 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. 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 being undertaken may be made 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 Councillors drawn from the Employment Panel.

of the Independent Person's recommendations, subject to the rules on confidential/exempt information.

18. A flow chart explaining these arrangements is set out in Appendix D.

**ROLE OF THE MONITORING OFFICER**

1. Upon receipt of a complaint the Monitoring Officer must consider:
  - a) Whether the subject matter of the allegation is within the Code of Conduct for Councillors.
  - b) Whether the allegation appears to disclose a failure to comply with the Code of Conduct for Councillors because it comprises:
    - A failure to treat others with respect.
    - Acting in a way that may cause the authority to breach an equality enactment.
    - Bullying of any person.
    - An intimidation or attempt at intimidation of a person involved in an allegation against the Councillor.
    - A compromise of the impartiality of those who work for, or on behalf of, the authority.
    - A disclosure of confidential information.
    - The bringing of an office or authority into disrepute.
    - The using or attempted use of the Councillor's position as a Councillor improperly to confer or secure an advantage or disadvantage.
    - The using of the resources of the authority not in accordance with its requirements.
    - The disregarding of relevant advice when reaching decisions.
    - A failure to give reasons for decisions.
    - A failure to declare a disclosable pecuniary interest.
    - A failure to declare another type of disclosable interest.
    - Having an interest and failing to act appropriately.
    - A failure to register interests.
  
2. If the allegation appears to disclose a failure to comply with the Code of Conduct for Councillors, the Monitoring Officer is to consider:
  - a) The extent to which the Councillor is alleged to have failed to treat others with respect.
  - b) The extent to which the Councillor 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 Councillor.
  - d) Whether in disclosing confidential information, the Councillor 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 Councillor, and public trust and confidence.
  - h) The consequences or the likely consequences of the Councillor's alleged actions.
  - i) The extent to which the Councillor is alleged to have used their position as a Councillor improperly to confer or secure an advantage or disadvantage.
  - j) The extent to which the Councillor 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, e.g. 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 frivolous, 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 Councillor time which could be incurred on an investigation or other steps.

3. If the Monitoring Officer considers that a breach of the Code of Conduct for Councillors 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 Councillor or a meeting between the complainant, the Councillor, 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 Councillor 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 some other body or agency if relevant.
- f) To take no further action because:
  - The subject matter of the allegation is outside the Code of Conduct for Councillors.
  - The allegation does not appear to disclose a failure to comply with the Code of Conduct for Councillors.
  - The information submitted is insufficient to enable them to reach a decision.
  - 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.
  - The complaint is about something that happened so long ago that there would be little public benefit in taking action now.
  - The complaint is too trivial to warrant further action.
  - The complaint appears to be simply frivolous, malicious, vexatious, politically motivated or tit-for-tat \*.
  - It would not be expedient in the public interest for the matter to be pursued further.

\* A frivolous or vexatious complaint is described as:

- Repeated complaints making the same or similar complaints against the same Councillor or about the same alleged incident.
- Repeated complaints that disclose no potential breach of the Code.
- complaints that are designed to cause disruption or annoyance.
- Demands for redress which lack any serious purpose or value.
- complaints that are pursuing unrealistic outcomes.
- Insistence upon pursuing complaints which lack merit.

The Monitoring Officer must consider the reasons for making this decision.

4. If the Monitoring Officer proposes to take steps 3b to 3f they shall inform the Chief Executive, the Group Leader and the Independent Person.
5. If the Monitoring Officer proposes to take steps 3c or 3d 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 Councillor, 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 Councillor.
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 Councillors drawn from the Employment Panel.
8. In reaching any decision the Independent Person is to consider:
  - a) Whether the subject matter of the allegation is within the Code of Conduct for Councillors.
  - b) Whether the allegation appears to disclose a failure to comply with the Code of Conduct for Councillors because it comprises:
    - A failure to treat others with respect.
    - Acting in a way that may cause the authority to breach an equality enactment.
    - Bullying of any person.
    - An intimidation or attempt at intimidation of a person involved in an allegation against the Councillor.
    - A compromise of the impartiality of those who work for, or on behalf of, the authority.
    - A disclosure of confidential information.
    - The bringing of an office or authority into disrepute.
    - The using or attempted use of the Councillor's position as a Councillor improperly to confer or secure an advantage or disadvantage.
    - The using of the resources of the authority not in accordance with its requirements.
    - The disregarding of relevant advice when reaching decisions.
    - A failure to give reasons for decisions.
    - A failure to declare a disclosable pecuniary interest.
    - A failure to declare another type of disclosable interest.
    - Having an interest and failing to act appropriately.
    - A failure to register interests.

9. If the allegation appears to disclose a failure to comply with the Code of Conduct for Councillors, the Independent Person is to consider:
- a) The extent to which the Councillor is alleged to have failed to treat others with respect.
  - b) The extent to which the Councillor 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 Councillor.
  - d) Whether in disclosing confidential information, the Councillor 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 Councillor, and public trust and confidence.
  - h) The consequences or the likely consequences of the Councillor's alleged actions.
  - i) The extent to which the Councillor is alleged to have used their position as a Councillor improperly to confer or secure an advantage or disadvantage.
  - j) The extent to which the Councillor 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 investigation or of an investigation by another regulator, e.g. 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 frivolous, 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 Councillor time which could be incurred on an investigation or other steps.
10. If the Independent Person considers that a breach of the Code of Conduct for Councillors 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 Councillor or a meeting between the complainant, the Councillor, 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 Councillor other than investigation and, if so, what steps.
  - c) To recommend action to:
    - A Panel of Councillors drawn from the Employment Panel.
  - d) To take no further action because:

- The subject matter of the allegation is outside the Code of Conduct for Councillors.
- The allegation does not appear to disclose a failure to comply with the Code of Conduct for Councillors.
- The information submitted is insufficient to enable them to reach a decision.
- 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.
- The complaint is about something that happened so long ago that there would be little public benefit in taking action now.
- The complaint is too trivial to warrant further action.
- The complaint appears to be simply frivolous, malicious, vexatious, politically motivated or tit-for-tat \*.
- It would not be expedient in the public interest for the matter to be pursued further.

\* A frivolous or vexatious complaint is described as:

- Repeated complaints making the same or similar complaints against the same Councillor or about the same alleged incident.
- Repeated complaints that disclose no potential breach of the Code.
- Complaints that are designed to cause disruption or annoyance.
- Demands for redress which lack any serious purpose or value.
- Complaints that are pursuing unrealistic outcomes.
- Insistence upon pursuing complaints which lack merit.

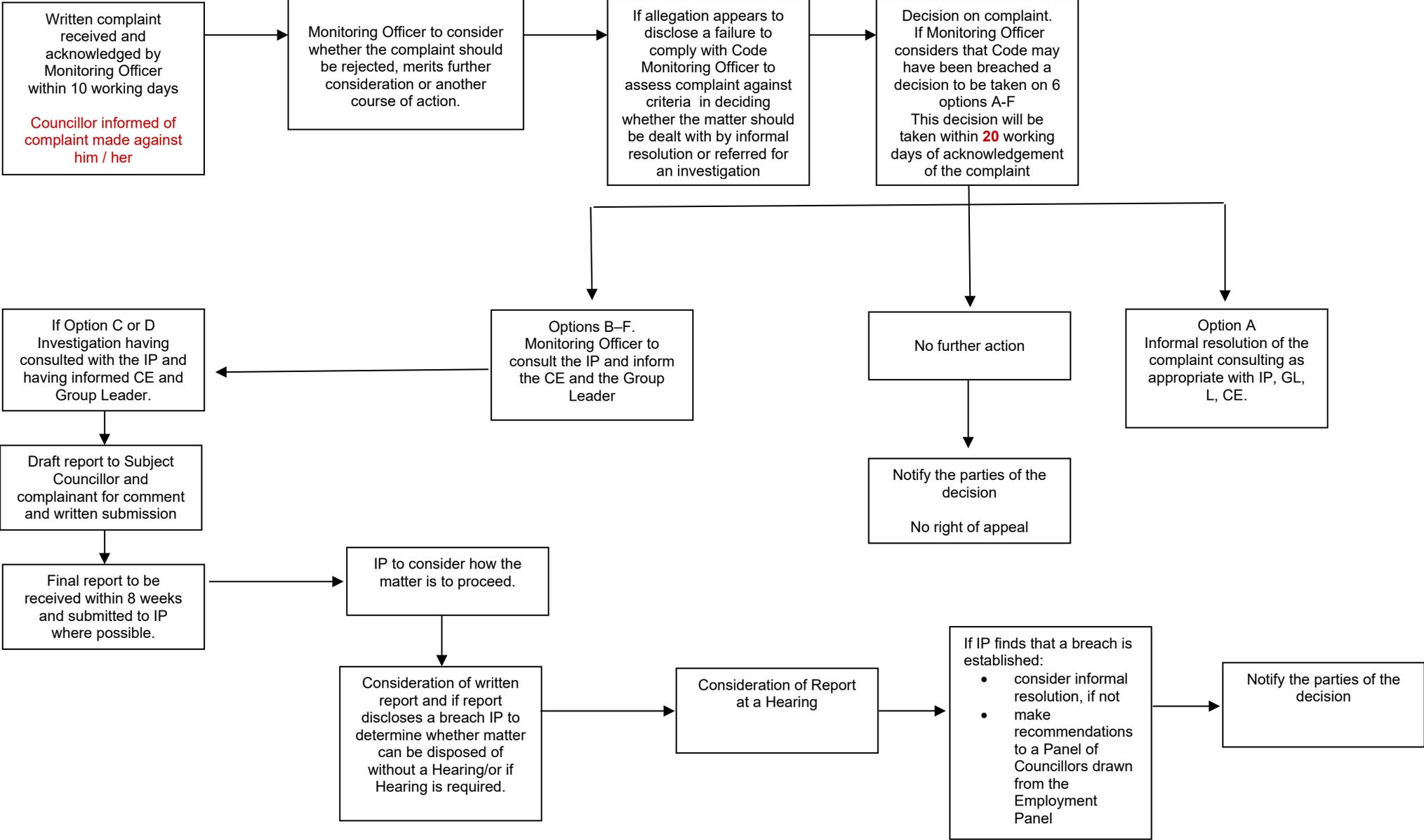
The Independent Person must consider the reasons for making this decision.

11. If the Independent Person makes a decision they shall inform the Monitoring Officer, the Chief Executive, the Group Leader, the complainant and the Councillor.
12. The actions the Independent Person may recommend to:
  - A Panel of Councillors drawn from the Employment Panel are set out at Appendix C.

**RECOMMENDATIONS WHICH THE INDEPENDENT PERSON MAY MAKE TO A  
PANEL OF COUNCILLORS (DRAWN FROM THE EMPLOYMENT PANEL)**

1. That the Councillor should be censured.
2. That the Councillor should apologise to the complainant or other affected person.
3. That the Councillor should for a specified period of time be excluded from a building, office or offices, from contact with a particular officer or officers or required to conduct their business through a named senior officer.
4. That the Councillor should for a specified period of time be prohibited from using specific resources of the Council.
5. That the Councillor should give an undertaking to refrain from certain conduct or to carry out their business in a particular fashion.
6. That the Councillor and/or other or all Councillors should undergo training in a particular area or areas of their Council business.
7. That the Councillor should be suspended or removed from membership of the Cabinet, 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 Councillor'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 Councillors.

CODE OF CONDUCT COMPLAINTS PROCEDURE (FLOWCHART)



## **INVESTIGATION AND HEARINGS PROCEDURE**

### **1. INTRODUCTION**

- 1.1. 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 Councillor should be investigated.
- 1.2. This document also sets out the process which 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.

### **2. THE APPOINTMENT OF THE INVESTIGATING OFFICER**

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

### **3. THE ROLE OF THE INVESTIGATING OFFICER**

- 3.1. 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.
- 3.2. Subject to the agreement of the Monitoring Officer, the Investigating Officer may appoint a person(s) to assist them in the conduct of their functions and may obtain such professional advice as may be necessary for the conduct of the investigation.

### **4. NOTIFICATION REQUIREMENTS**

- 4.1. Once they have appointed an Investigating Officer, the Monitoring Officer will notify the Subject Councillor against whom the allegation has been made that the matter is being referred for investigation and inform them who is conducting the investigation.
- 4.2. The Monitoring Officer will notify the complainant that an investigation will take place and that they may be contacted in relation to that investigation.

### **5. CONDUCT OF THE INVESTIGATION**

- 5.1. The Investigating Officer shall have a broad discretion as to how they conduct the investigation.
- 5.2. They may require the Subject Councillor 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. There will be an obligation placed on the Councillor to co-operate with the investigation.

- 5.3. 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.
- 5.4. The Investigating Officer may request any person to attend an interview with them and/or provide them with documents and/or information.
- 5.5. 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).
- 5.6. The Investigating Officer will take a note of any interviews that they conduct.
- 5.7. 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.

## **6. REFERRAL TO THE MONITORING OFFICER**

- 6.1. 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 Councillor is seriously ill or the decision to investigate should be reconsidered in the light of new evidence.

## **7. DEFERRAL OF INVESTIGATION**

- 7.1. 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.

## **8. CONFIDENTIALITY**

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

## **9. DRAFT REPORT**

- 9.1. When the Investigating Officer is satisfied that they have sufficient information, or has obtained as much information as is reasonably practicable to obtain, they 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 Councillor, the information, documents and evidence taken during the course of the investigation, a statement of their draft findings, and the Investigating Officer's conclusion as to whether the Councillor has breached the Code.
- 9.2. The draft report should be sent to the Monitoring Officer, the complainant and the Subject Councillor for their comments. The Investigating Officer may wish to conduct further investigations once they have received those comments, before producing their final report.

## **10. FINAL REPORT**

- 10.1. 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.
- 10.2. It may be helpful to include a chronology, summary of disputed facts and/or to append witness statements or other documents.
- 10.3. The Monitoring Officer will supply a copy of the final report to the Independent Person.

## **11. ACTION ON RECEIPT OF REPORT**

- 11.1. 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 Councillor notifying them that no further action is required and enclosing a copy of the report.
- 11.2. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, they may ask the Investigating Officer to reconsider their report.
- 11.3. 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.

## **12. MODIFICATION OF THE INVESTIGATION PROCEDURE**

- 12.1. 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.

## **13. PRE-HEARING PROCESS**

- 13.1. 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 Councillor can attend. They should give all those involved, particularly the Subject Councillor, 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.
- 13.2. The Hearing will comprise of the Independent Person acting alone or in exceptional cases sitting together with another Independent Person.
- 13.3. The Monitoring Officer will require the Subject Councillor to give their 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.
- 13.4. If the Subject Councillor 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 Councillor wishes to add to what the Investigating Officer has

written they should provide a witness statement to the Monitoring Officer as soon as possible.

- 13.5. New arguments or new evidence will not be allowed to be presented at the Hearing.
- 13.6. 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 Councillor in reaching such decisions.
- 13.7. The Monitoring Officer can consult with the Independent Person(s) if they feel their guidance would assist and ask the Independent Person(s) to issue directions in relation to the pre-Hearing process.
- 13.8. The Monitoring Officer may wish to offer to cover the expenses of witnesses associated with their attendance at the Hearing.
- 13.9. The Monitoring Officer will consider whether it is appropriate to hear two complaints together, for example if they relate to the same Councillor, or relate to the same incident or occasion.
- 13.10. The Subject Councillor should be provided with the Investigating Officer's report and any evidence which will be heard at the Hearing.
- 13.11. 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.
- 13.12. 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.
- 13.13. The Monitoring Officer will act as a point of contact for the Subject Councillor, the complainant, the Independent Person(s) and any witnesses who will give evidence.

#### **14. THE HEARING**

- 14.1. 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.
- 14.2. If the Subject Councillor 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.
- 14.3. 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.

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

## **15. REPRESENTATION**

- 15.1. The Subject Councillor 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 Councillor and the Investigating Officer if they feel it would assist them in reaching a decision.

## **16. EVIDENCE**

- 16.1. 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.
- 16.2. Generally the Subject Councillor is entitled to present their case as they see fit.
- 16.3. The Independent Person(s) will usually have regard to submissions from the Subject Councillor if they are considering whether to hear particular evidence.
- 16.4. 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.
- 16.5. Witnesses should be treated with courtesy throughout the pre-Hearing stage and at the Hearing.
- 16.6. Witnesses may be questioned by the Independent Person(s), the Monitoring Officer and the Subject Councillor. This discretion should generally be unfettered unless there is good reason to do so.
- 16.7. The onus is on the Subject Councillor 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.
- 16.8. Neither the Independent Person(s) nor the Subject Councillor will have any power to compel witnesses to give evidence.

## **17. AT THE HEARING**

- 17.1. At the Hearing, the Investigating Officer will present their report, call such witnesses as they consider necessary and make representations to substantiate their conclusion that the Councillor 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.

## **18. ROLE OF THE MONITORING OFFICER**

- 18.1. References to the Monitoring Officer should be read to include any representative of the Monitoring Officer including a Deputy Monitoring Officer.
- 18.2. 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).

## **19. ROLE OF THE COMPLAINANT**

- 19.1. 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.

## **20. DECISION**

- 20.1. 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.
- 20.2. The Independent Person(s) will reach a decision as to whether the Subject Councillor has breached the Code of Conduct. If they decide that the Subject Councillor has not breached the Code of Conduct they will take no further action. If they decide that the Subject Councillor has breached the Code of Conduct they should go on to decide what sanction, if any, is appropriate and to recommend to the Employment Panel 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.

## **21. SANCTIONS**

- 21.1. A Panel of Councillors from the Employment Panel 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.
- 21.2. 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 Councillor now? Have they apologised?
  - Has the Subject Councillor previously been dealt with for a breach of the Code?
- 21.3. The following are examples of mitigating and aggravating factors but these lists should not be regarded as exhaustive.
  - a) **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.

b) **Aggravating Factors**

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

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

**22. SANCTIONS AVAILABLE**

22.1. The sanctions available to the Panel are:

- a) That the Councillor should be censured.
- b) That the Councillor should apologise to the complainant or other affected person.
- c) That the Councillor should for a specified period of time be excluded from a building, office or offices, from contact with a particular officer or officers or required to conduct their business through a named senior officer.
- d) That the Councillor should for a specified period of time be prohibited from using specific resources of the Council.
- e) That the Councillor should give an undertaking to refrain from certain conduct or to carry out their business in a particular fashion.
- f) That the Councillor and/or other or all Councillors should undergo training in a particular area or areas of their Council business.
- g) That the Councillor should be suspended or removed from membership of the Cabinet, a Committee or Sub-Committee.
- h) That a breach of the interest provisions should be referred to the Police.
- i) That a breach potentially exhibits criminal conduct which should be referred to the Police.
- j) That the Councillor's conduct be referred to another regulator.
- k) That it would not be expedient in the public interest for the matter to be pursued further.
- l) That improvements might be made in the conduct of business to promote or maintain high standards of conduct among Councillors.

**23. NOTE OF DECISION**

23.1. 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 Councillor, make that decision notice available for public inspection and report the decision to the next convenient meeting of the Panel of Councillors from the Employment Panel.