



INFORMATION ITEM

REPORT OF	MEETING	DATE	ITEM NO
RESOURCES DIRECTORATE	AUDIT AND STANDARDS COMMITTEE	19 SEPTEMBER 2019	9
COMMITTEE ON STANDARDS IN PUBLIC LIFE BEST PRACTICE RECOMMENDATIONS			

PUBLIC ITEM

This item is for consideration in the public part of the meeting.

SUMMARY OF INFORMATION

At its meeting on 13th June 2019, the Committee considered the report of the Monitoring Officer on the outcome of the review into ethical standards in local government by the Committee on Standards in Public Life.

Whilst a number of the recommendations would require changes to primary legislation, there were a number of best practice recommendations for local authorities to consider more immediately. The Committee on Standards in Public Life outlined that there was an expectation these would be implemented by 2020.

The Monitoring Officer was requested to review the best practice recommendations, in consultation with the Chairman and Vice-Chairman of the Committee, and bring a further report to members at the September meeting.

The Monitoring Officer has met with the Chairman and Vice-Chairman of the Committee twice over the summer months and a table is attached detailing progress to date. A number of draft documents are also attached as detailed below.

As Fylde Council shares its standards arrangements with Blackpool Council in terms of both the Code of Conduct and Independent Persons Protocol, together with reciprocal investigatory arrangements and shares three independent persons, the draft documents prepared will now be worked through, in consultation with Blackpool Council and the three independent persons, with a view to a further report being brought back before members at the November meeting.

INFORMATION ATTACHED

Best Practice Recommendations ACTION PLAN

Independent Persons Protocol draft

Part 5a Code of Conduct draft

Complaint handling procedure draft

FURTHER INFORMATION

Contact Tracy Manning, tracy.manning@fylde.gov.uk 01253 658521

Best Practice Recommendations ACTION PLAN

	Best Practice	Progress to date
1	Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment supplemented with a list of examples of the sort of behaviour covered by such a definition.	Wording added to the Code of Conduct. Working draft attached
2	Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation, and prohibiting trivial or malicious allegations by councillors.	MO seeking input from other councils regarding their defining of malicious and trivial allegations. Very difficult to define.
3	Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.	To conduct an annual review of the Code of Conduct for Members commencing in 2020 with consultation with others as appropriate
4	An authority's code should be readily accessible to both councillors and the public, in a prominent position on the council's website and available in council premises.	The Code of Conduct should be available on the Council's website. A copy will also be made available on the front reception desks at the Town Hall
5	Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.	Already published on the Council's website and updated in real time against councillors personal records
6	Councils should publish a clear and straightforward public interest test against which allegations are filtered.	Contained within Independent Person Protocol but should be added to complaint handling guidance (see point 10)
7	Local authorities should have access to at least two Independent Persons.	Already have access to three IP's
8	An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation, and should be given the option to review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious, or trivial.	Usually consulted as a matter of course on most misconduct allegations Strengthen the Independent Person Protocol to reflect will be consulted going forward on all complaints and given the opportunity to comment Working draft of the IP Protocol attached
9	Where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any	Decision Notice summary to be published on the website in cases where misconduct has been found summarising the following: Brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the

	sanction applied.	decision-maker, and any sanction applied.
10	A local authority should have straightforward and accessible guidance on its website on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for investigations and outcomes.	Complaint handling guidance drafted. Working draft attached.
11	Formal standards complaints about the conduct of a parish councillor towards a clerk should be made by the chair or by the parish council as a whole, rather than the clerk in all but exceptional circumstances.	Consultation with Town and Parish Councils underway.
12	Monitoring Officers' roles should include providing advice, support and management of investigations and adjudications on alleged breaches to parish councils with the remit of the principal authority. They should be provided with adequate training, corporate support and resources to undertake this work.	Already undertake this role
13	A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.	Reciprocal investigation arrangements already in place supplemented by the use of an external investigator
14	Councils should report on separate bodies they have set up or which they own as part of their annual governance statement, and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness, and publish their board agendas and minutes and annual reports in an accessible place.	This Council has no separate bodies established
15	Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.	Regular meetings held between the Chief Executive and Group Leaders. Periodic discussions take place between the MO and Group Leaders.



Protocol relating to the Independent Person

1. Background to the role

1.1 The role of the Independent Person is a key feature of the standards framework for all local authorities under the Localism Act 2011, in terms of how authorities deal with allegations of member (councillor and co-opted member) misconduct.

1.2 Blackpool Council and Fylde Borough Council have agreed shared arrangements in relation to the standards framework and have appointed a shared pool of three Independent Persons, with a lead for each respective authority.

1.3 This Protocol sets out to identify a shared understanding of the relationships between the Independent Persons and the two authorities in terms of handling complaints of member misconduct and the wider promotion of standards.

2. Considering written allegations

2.1 Under the powers of the Localism Act, the Council's Monitoring Officer will receive allegations of misconduct, initially assess the matter and decide upon the appropriate course of action to be taken.

2.2 ~~With respect to all complaints received, which are believed or be with or without merit, the view of and~~~~The Monitoring Officer may, if he/she considers appropriate, seek the view of~~ an Independent Person ~~will be sought at the initial is stage~~ on any action to be taken or otherwise.~~- A written record will be made by the Monitoring Officer. may be obtained if the Monitoring Officer feels it appropriate and with the consent of the Independent Person.~~

2.3 When deciding on how to progress with a complaint, the Monitoring Officer will firstly consider if there is a potential breach of the Code of Conduct.

Further questions to be considered by the Monitoring Officer and Independent Person include:

- a. Was the member/co-optee acting in their official capacity at the time of the alleged misconduct?
- b. Can the complaint be considered as being of a very minor/trivial nature, repetitious, politically motivated, vexatious or malicious?
- c. Has there been a delay in making the complaint – is this relevant?
- d. Is there public interest in the matter?

e. Is there sufficient information to enable a decision to be made? If not, what information is required?

3. Referring complaints for investigation

3.1 If the Monitoring Officer, in consultation with the Independent Person, considers that an investigation is required, a Decision Notice will be drafted which will include a brief statement of the facts, the provisions of the code engaged by the allegations and the view of the Independent Person. ~~he/she must seek the views of an Independent Person. The Monitoring Officer will produce an Investigation Referral Notice which will include these views.~~

3.2 The Independent Person will receive a copy of the Investigation Referral Notice (in addition to the Investigating Officer, subject member and the alternative Independent Person consulted by the subject member if applicable).

3.3 Where the views of the Independent Person differ as to what course of action should be taken, the Monitoring Officer will record the reasons for following a particular course of action, although the Investigation Referral Notice will be clear that it is the Monitoring Officer that ultimately decides.

4. Arrangements between the subject member and the Independent Person

4.1 The member who is the subject of the complaint may seek the views of an alternative Independent Person and should do so via the Monitoring Officer who will arrange for them to consult.

4.2 It should be remembered that the role of the Independent Person is to give advice but not to the extent where they express a view on the merits of the complaint.

4.3 The Independent Person may provide a brief record of their views to the Monitoring Officer (with a copy to the subject member).

4.4 Direct contact with the subject member without the Monitoring Officer's knowledge is not permitted and the Monitoring Officer should be notified immediately by the Independent Person if direct contact is attempted by the subject member, any of the parties or other persons.

5. Following the investigation

5.1 At the end of the investigation, the Monitoring Officer will produce a Decision Notice on any action to be taken. The Decision Notice will include the report and findings from the Investigating Officer and the written views of the Independent Person(s) as appropriate.

5.2 The Independent Person(s) will receive a copy of the Decision Notice and investigation report in addition to the subject member.

5.3 Where the local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker and any sanction applied. ~~investigation finds evidence of a failure to comply with the Code of Conduct, and the Monitoring Officer wishes to seek informal resolution, the Independent Person will be consulted and may be invited to take part in conciliation (see paragraph 7.3).~~

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5.4 If a hearing is to take place, the Standards Committee will take into account the written views of the Independent Person(s) and may ask them to attend. The Independent Person(s) will be provided with a copy of the outcome of the Standards Committee's determination.

6. Relationship with the Standards Committee

6.1 All Independent Persons will receive agendas and minutes of meetings of the Standards Committees for both Councils (the Audit and Standards Committee with respect to Fylde Council).

6.2 Although they are not part of the formal business and have no formal voting rights, Independent Persons may be invited to speak at Standards Committee meetings. They may also be invited to observe confidential matters on the advice of the Monitoring Officer and with the agreement of the Chairman.

7. Other matters

7.1 Independent Persons will agree to adhere to the Code of Conduct for Members.

7.2 Where an Independent Person is unable to act because of a conflict of interest or because they are otherwise unavailable, their role will be carried out by an alternative Independent Person.

7.3 Independent Persons may be requested by the Monitoring Officer or Standards Committee to attend or assist in training or in mediation or conciliation in order to resolve complaints where that is considered the most appropriate course of action.

7.4 Independent Persons shall not make any comments to the media or other persons on any matters. Any requests for comments shall be referred to in the first instance to the Monitoring Officer and the Independent Person should notify the Monitoring Officer immediately, if any such requests are made.

7.5 Independent Persons have right to raise any concerns about standards/member conduct issues or implementation of the process with the respective authority's Monitoring Officer, Deputy Monitoring Officer or Chief Executive.

7.6 The Council, through the Standards Committee and its Monitoring Officer, is responsible for assisting the Council to meet its duty to promote and maintain high standards. Independent Persons have a key role in this and will be consulted on any proposed changes to the Code of Conduct or procedures for handling allegations.

Fylde Council Code of Conduct for Members	
Effective from 20 May 2015	Approved by Council on 30 March 2015

1. Principles

1.1 These principles underpin the Code of Conduct. Although they do not form part of the Code, it is expected that you will act with:

- Selflessness
- Honesty and integrity
- Objectivity
- Accountability
- Openness
- Respect for others
- Commitment to uphold the law
- Leadership

2. Application

2.1 This Code applies to you whenever you:

- are acting in your capacity as a member or when you claim to act or give the impression you are acting in your capacity as a member
- act as a representative of your authority on another body

NOTE: this code also applies to the Council's Independent Persons

3. Sanctions

3.1 Failure to comply with the provisions of this Code may result in a sanction being imposed:

- either by the Council (if it relates to the Code itself or a personal/personal prejudicial interest)
- through criminal proceedings (if it relates to a Disclosable Pecuniary Interest which may result in a criminal conviction and a fine of up to £5,000 and/or disqualification from office for a period of up to 5 years).

4. General obligations of the Code

You must:

- 4.1 Treat others with respect.
- 4.2 When using or authorising the use by others of the authority's resources, do so in accordance with the authority's requirements and ensure that resources are not used improperly (including for political purposes).
- 4.3 Have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

- 4.4 Have regard, when reaching decisions, to advice provided to you by the authority's Chief Finance Officer or Monitoring Officer when they are acting in accordance with their statutory duties.
- 4.5 Give reasons for all decisions in accordance with any statutory requirements and any additional requirements of the authority.
- 4.6 Not do anything which may cause your authority to breach the Equality Act 2010 (or subsequent legislation)

4.7 You must not bully or harass any person (including specifically any council employee) and you must not intimidate or improperly influence, any person who is involved in any complaint about an alleged breach of this code of conduct. ~~Not bully any person.~~

(note: bullying may be characterised as: offensive, intimidating, malicious or insulting behaviour; or an abuse or misuse of power in a way which intends to undermine, humiliate, criticise unfairly or injure someone. Harassment may also be characterised as unwanted conduct which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for an individual)

4.74.8 Not intimidate or attempt to intimidate any person who is or is likely to be:

- a complainant
- a witness
- involved in the administration of any investigation or proceedings, in relation to an allegation that a member (including yourself) has failed to comply with the code of conduct.

4.84.9 Not do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the authority.

4.94.10 Not disclose confidential information except where:

- you have the consent of a person authorised to give it
- you are required by law to do so
- 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
- the disclosure is reasonable, in the public interest, made in good faith and in compliance with the reasonable requirements of the authority

4.104.11 Not prevent another person from gaining access to information to which they are entitled by law.

4.114.12 Not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

4.124.13 Not use or attempt to use your position as a member improperly to gain for yourself or any other person, an advantage or disadvantage.

5. Disclosable Pecuniary Interests (DPI)

5.1 This part explains the statutory requirements of the Localism Act 2011 (Sections 29- 34) in relation to disclosable pecuniary interests (DPIs). These are enforced by criminal sanction.

5.2 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) of the descriptions set out at Appendix 1.

5.3 You must:

- (i) Notify the Monitoring Officer in writing within 28 days of becoming a member, or within 28 days of any change or becoming aware of any existence of a DPI.
- (ii) Make a verbal declaration (at the beginning or as soon as you become aware of your interest) of the existence and nature of any DPI at any meeting at which you are present where an item of business which affects or relates to the subject matter of the interest is under consideration.
- (iii) Comply with the statutory requirements to withdraw from participating in respect of any matter in which you have a DPI and comply with the Council's Procedure Rules by leaving the room.

6. **Dispensations**

6.1 The Standards Committee may grant you a dispensation, but only in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest.

7. **Offences**

7.1 It is a criminal offence to:

- fail to notify the Monitoring Officer of any disclosable pecuniary interest within 28 days of election, or becoming aware of a disclosable pecuniary interest
- fail to disclose a disclosable pecuniary interest at a meeting if it is not on the Register
- fail to notify the Monitoring Officer within 28 days of a disclosable pecuniary interest that is not on the register that you have disclosed to a meeting
- participate in any discussion or vote on a matter in which you have a disclosable pecuniary interest
- knowingly or recklessly providing information that is false or misleading in notifying the Monitoring Officer of a disclosable pecuniary interest or in disclosing such interest to a meeting.

7.2 The criminal penalties available to a court are to impose a fine not exceeding level 5 on the standard scale and disqualification from being a councillor for up to 5 years.

8. **Personal Interests**

8.1 You have a **personal interest** where:

- (i) 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 member of your family or any person with whom you have a close association
- (ii) Details of 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
- (iii) You are a member of any body (other than another local authority) exercising functions

of a public nature, any body directed to charitable purposes or any body 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.

8.2 You must:

- (i) Notify the Monitoring Officer in writing within 28 days of becoming a member, or within 28 days of any change or becoming aware of any existence of a personal interest set out in paragraph 8.1 (ii) and (iii) above.
- (ii) Make a verbal declaration (at the beginning, or as soon as you become aware of your interest) of the existence and nature of any personal interest at any meeting at which you are present at which an item of business which affects or relates to the subject matter of the interest is under consideration.

9. Prejudicial interests

9.1 Your personal interests would become **prejudicial** in the following instances:

- (i) Where a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgment of the public interest AND where that business:
 - (a) affects your financial position or the financial position of a person or body through whom the interest arises or
 - (b) relates to the determining of any approval, consent, licence, permission or registration in relation to you or any person through whom the interest arises.

9.2 You must:

- (i) Make a verbal declaration (at the beginning, or as soon as you become aware of your interest) of the existence and nature of any prejudicial interest at any meeting at which you are present at which an item of business which affects or relates to the subject matter of the interest is under consideration.
- (ii) Comply with the Council's Procedure Rules by withdrawing from any discussion of the matter at the meeting, and you may not participate in any vote taken on the matter at the meeting.

9.3 Where you have a prejudicial interest you may attend a meeting 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, and provided that you leave the room where the meeting is held immediately after making representations, answering questions or giving evidence.

10. General dispensations

10.1 You may attend a meeting and vote on a matter where you have an interest that relates to the functions of the authority relating to:

- (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease
- (ii) an allowance, payment or indemnity given to members

- (iii) any ceremonial honour given to members
- (iv) setting council tax or a precept under the Local Government Finance Act 1992
- (v) another local authority

11. Registering interests, gifts and hospitality

- 11.1 Any interests notified to the Monitoring Officer will be included in the register of interests. A copy of the register will be available for public inspection and will be published on the Council's website.
- 11.2 You must also register details of any gift or hospitality with an estimated value of at least £25 that you have received in connection with your role as a member of the Council, and details of the donor.

12. Sensitive interests

- 12.1 Where you consider that disclosure of the details of a personal or prejudicial interest could lead to you, or a person connected with you, being subject to violence or intimidation, and the Monitoring Officer agrees, the register will exclude details of the interest, but may state that you have an interest, the details of which are withheld.

Appendix 1 – Categories of Disclosable Pecuniary Interests (DPIs)

Subject	Prescribed 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 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.
Contracts	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 - (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to your knowledge) – (a) the landlord is the relevant authority; and (b) the tenant is a body in which the relevant person has a beneficial interest.
Securities	Any beneficial interest in securities of a body where (a) that body (to your knowledge) has a place of business or land in the area of the relevant authority; and (b) either – (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or (j) if that 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.

ARRANGEMENTS FOR DEALING WITH COMPLAINTS ABOUT THE CONDUCT OF ELECTED MEMBERS

Introduction

- 1, Fylde Council's Monitoring Officer is the Proper Officer to receive complaints of failure to comply with the respective Codes of Conduct for Borough, Town and Parish Councillors and co-opted members.
2. The Monitoring Officer has delegated powers, after consultation with the Independent Person (see para 14 below for an outline of this role) to determine whether a complaint merits for an investigation and to arrange such an investigation.
3. This Protocol sets out the arrangements for dealing with complaints for clarity.
4. No Member or Officer will participate in any stage of the arrangements if he or she has, or may have, any personal conflict of interest in the matter.

5. Making a complaint

A complaint must be made in writing by post or email to: –

The Monitoring Officer
Fylde Council
Town Hall
South Promenade
St Annes
FY8 3JR

OR

tracy.manning@fylde.gov.uk

The Monitoring Officer will acknowledge receipt of the complaint within 5 working days of receiving it and, at the same time, write to the Subject Member (the member subject of the complaint) with details of the allegations and the individual/individuals making the complaint (subject to any representations from the complainant on confidentiality, which are accepted as valid by the Monitoring Officer). The Subject Member may, within 5 working days of receipt, make written representations to the Monitoring Officer which she must take into account when deciding how the complaint will be dealt with. Representations received after this time may be taken into account, at the discretion of the Monitoring Officer, but will in any event not be considered after the Monitoring Officer has issued her Initial Complaint Assessment.

6. Complaint Initial Assessment

The Monitoring Officer will review the complaint and, after consultation with the Independent Person, take a decision (a Complaint Initial Assessment) as to whether it merits formal investigation, or another course of action. This decision will normally be taken within 21 days of receipt of a complaint.

If the complaint fails one or more of the following tests, it will be rejected:

- The complaint must be against one or more named Members or Co-opted Members of the Council or a parish council within its district;
- The Subject Member must have been in office at the time of the alleged conduct and the Code of Conduct was in force at the time;

- The complaint, if proven, would be a breach of the Code of Conduct under which the subject Member was operating at the time of the alleged misconduct.

If appropriate, the Monitoring Officer will then go on to apply the following criteria in deciding whether a complaint should be accepted for investigation, dealt with informally, or rejected:

- Whether a substantially similar allegation has previously been made by the Complainant, or the complaint has been the subject of an investigation by another regulatory authority;
- Was the member/co-optee acting in their official capacity at the time of the alleged misconduct?
- Has there been a delay in making the complaint? If the complaint is about something that happened so long ago that those involved are unlikely to remember it clearly enough to provide credible evidence, or where the lapse of time means there would be little benefit or point in taking action now;
- Whether the allegation is anonymous (anonymous complaints are not accepted);
- Whether the allegation discloses a potential breach of the Code of Conduct, but the complaint is not serious enough to merit any action and:-
 - (i) the resources needed to investigate and determine the complaint are wholly disproportionate to the allegations;
 - (ii) whether, in all the circumstances, there is no overriding public benefit in carrying out an investigation;
- Whether the complaint appears to be malicious, vexatious, politically motivated or tit-for-tat;
- Whether the complaint although in itself minor in nature suggests that there is a wider problem throughout the authority;
- Is there a public interest in the matter:
- Whether it is apparent that the subject of the allegation is relatively inexperienced as a Member, or has admitted making an error and the matter would not warrant a more serious sanction;
- Whether training or conciliation would be the appropriate response;

7. Additional Information

The Monitoring Officer may obtain additional factual information to come to a decision and may request information from the Subject Member. Where the complaint relates to a Town or Parish Councillor, the Monitoring Officer may also inform the Parish Council of the complaint and seek the views of the Council before deciding whether the complaint merits formal investigation or other action. In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for an investigation. Such informal resolution may involve the Subject Member accepting that his/her conduct was unacceptable and offering an apology. Where the Subject Member or the authority (in appropriate cases) make a reasonable offer of local resolution, but it is rejected by the Complainant, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

If the complaint identifies criminal conduct or breach of other regulations by any person, the Monitoring Officer is authorised to report this to the Police or other prosecuting or regulatory authorities. All allegations concerning Disclosable Pecuniary Interest (DPI's) will stand referred to the Police directly by the Monitoring Officer.

8. Confidentiality

If a Complainant has asked for their identity to be withheld, this request will be considered by the Monitoring Officer at the Complaint Initial Assessment stage.

As a matter of fairness and natural justice, the Subject Member should usually be told who has complained about them and receive details of the complaint. However, in exceptional circumstances, the Monitoring Officer may withhold the Complainant's identity if on request from the Complainant, or otherwise, they are satisfied that the Complainant has reasonable grounds for believing that they or any witness relevant to the complainant may be at risk of physical harm, or his or her employment may be jeopardised if their identity is disclosed, or where there are medical risks (supported by medical evidence) associated with the Complainant's identity being disclosed.

If the Monitoring Officer decides to refuse a request by a Complainant for confidentiality, they will offer the Complainant the option to withdraw the complaint, rather than proceed with his or her identity being disclosed. The Monitoring Officer will balance whether the public interest in taking action on a complaint will outweigh the Complainant's wish to have his or her identity withheld from the Subject Member

9. Investigation

If the Monitoring Officer decides that a complaint merits formal investigation, a Referral Notice will be drafted outlining the allegation, a brief statement of facts and the provisions of the Code engaged by the allegations. This will be confidentially shared with the complainant, subject member and independent person. The notice will outline that the subject member should keep the matter confidential but may confer with an Independent Person (a differing IP to the one the Monitoring Officer conferred with).

An Investigating Officer, who may be a Council officer, an officer of another Council, or an external investigator will be appointed to conduct the investigation. They will also be supplied with a copy of the Referral Notice.

The Investigating Officer will follow guidance issued by the Monitoring Officer on the investigation of complaints. The guidance will follow the principles of proportionality and the cost-effective use of Council resources and shall be interpreted in line with these principles.

The Investigating Officer will interview, and prepare statements, from those individuals he feels could assist in the investigation including the Subject Member. The Subject Member will be advised that he/she can be accompanied by an advisor or acquaintance. Any other person interviewed may also be accompanied should they so wish.

At the end of their investigation, the Investigating Officer will produce a draft report and will send copies of that draft report to the Complainant and to the Subject Member, for comments. The Investigating Officer will take such comments into account, before issuing their final report to the Monitoring Officer.

10. Investigating Officer finding of insufficient evidence of failure to comply with the Code of Conduct

The Monitoring Officer will review the Investigating Officer's report and, if they are satisfied that the Investigating Officer's report is satisfactory, will make a Confirmation Decision to confirm the finding of no failure to comply with the Code of Conduct.

The Monitoring Officer will write to the Complainant and the Subject Member (and to the Parish Council, where the complaint relates to a Parish Councillor), with a copy of the Confirmation Decision and the Investigating Officer's final report.

If the Monitoring Officer is not satisfied that the investigation has been conducted satisfactorily, he may ask the Investigating Officer to reconsider their report and conclusion.

The Council's Audit and Standards Committee will also be notified of the matter, and its closure, for information.

11. Investigating Officer finding of sufficient evidence of failure to comply with the Code of Conduct

The Monitoring Officer will review the Investigating Officer's report and in consultation with the Independent Person, will seek to close the matter through local resolution to the satisfaction of the complainant. If this is not possible, the investigation findings will be reported to the Audit and Standards Committee for a local hearing.

12. Local Resolution

If the Monitoring Officer considers that the matter can reasonably be resolved without the need for a hearing, they will consult with the Independent Person and the Complainant and seek to agree a fair resolution. Such resolution may include the Member accepting that their conduct was unacceptable and offering an apology, and/or other remedial action. If the Member accepts the suggested resolution, the Monitoring Officer will report the outcome to the Audit and Standards Committee and the respective Town/Parish Council (if appropriate) for information, but will take no further action. If the Complainant or the Subject Member refuses Local Resolution in principle or to engage with the agreed outcome, the Monitoring Officer will refer the matter for a Local Hearing without further reference to the Complainant or the Subject Member.

13. Local Hearing

Where, in the opinion of the Monitoring Officer, Local Resolution is not appropriate or the Complainant and/or Subject Member refuse to co-operate, then the Monitoring Officer will report the Investigating Officer's report to the Audit and Standards Committee for a local hearing which will determine whether the Member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Member.

A procedure for dealing with local hearings is attached at Appendix A to these arrangements.

14. Who is the Independent Person?

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

¹ A person cannot be "independent" if he/she –

14.1 Is, or has been within the past 5 years, a Member, co-opted Member or officer of the authority;

14.2 Is or has been within the past 5 years, a Member, co-opted Member or officer of a parish council within the authority's area, or

14.3 Is a relative, or close friend, of a person within paragraph 14.1 or 14.2 above. For this purpose, "relative" means –

14.3.1 Spouse or civil partner;

¹ See additional guidance - The Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012

- 14.3.2 Living with the other person as husband and wife or as if they were civil partners;
- 14.3.3 Grandparent of the other person;
- 14.3.4 A lineal descendent of a grandparent of the other person;
- 14.3.5 A parent, sibling or child of a person within paragraphs 14.3.1 or 14.3.2;
- 14.3.6 A spouse or civil partner of a person within paragraphs 14.3.3, 14.3.4 or 11.3.5; or
- 14.3.7 Living with a person within paragraphs 14.3.3, 14.3.4 or 14.3.5 as husband and wife or as if they were civil partners.

15. Action the Audit and Standards Committee may take where a Member has failed to comply with the Code of Conduct

Under its Terms of Reference, the Audit and Standards Committee has delegated authority to determine whether a member for the Council or a member of a Town and Parish council within the district has failed to comply with the relevant Code of Conduct. Where it finds a failure to comply with the Code of Conduct the Committee will determine what action, if any, to take in order to promote and maintain high standards of conduct. Sanctions which may be considered include report its findings to Council (or to the respective Town/Parish Council) for information. The Committee may also:

- 15.1 Publish its findings in respect of the Member's conduct on its own website;
- 15.2 Recommend to the Member's Group Leader (or in the case of un-grouped Members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 15.3 Recommend to the Leader of the Council that the Member be removed from a position of Special Responsibility if relevant;
- 15.4 Instruct the Monitoring Officer to (or recommend that the Town/Parish Council) arrange training for the Member;
- 15.5 Remove (or recommend to the Parish Council that the Member be removed) from all outside body appointments to which they have been appointed or nominated by the Council (or by the Town/Parish Council);
- 15.6 Withdraw (or recommend to the Town/ Parish Council that it withdraws) facilities provided to the Member by the Council, such as a computer, website and/or email and Internet access; or
- 15.7 Exclude (or recommend that the Town/ Parish Council exclude) the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

* (This is not an exhaustive list)

The decision of the Audit and Standards Committee will be recoded in a Decision Notice which will be published as soon as possible on the Council's website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the members and any sanction applied.

16. Appeals

Subject to Judicial Review, or a decision of the Local Government Ombudsman, there is no further right of appeal against a decision of the Monitoring Officer or of the Council's Audit and Standards Committee.

PROCEDURE FOR A STANDARDS HEARING

REPRESENTATION

The Subject Member and the Complainant may be legally represented, or with the permission of the Hearing Panel by another person. It is the responsibility of the Subject Member/Complainant to arrange for their own representation at their cost.

LEGAL ADVICE

The Committee may take legal or procedural advice (from both the Monitoring Officer and the Head of Governance) at any time during the hearing or during the Hearing Panel's deliberations. The substance of any advice given to the Committee will be shared with those present at the hearing.

INTRODUCTIONS AND SETTING THE SCENE

The Hearing Panel shall comprise the full membership of the Audit and Standards Committee or their substitutes.

However, no member should participate the meeting who has an interest of any nature in the matter, e.g. subject member, witness, representative to compliant or subject member. An Independent Person will also be available in an advisory capacity.

HEARING PROCEDURE

1. The chairman opens the meeting.
2. The chair introduces members, the independent person and council officers present.
3. Both the subject member and the complainant are able to attend the meeting which will take place in private subject to the necessary resolution being agreed by the committee to exclude the public.
3. The chairman explains that the hearing will take the form of a discussion and that cross examinations by the parties will not be permitted without the permission of the Hearing Panel.
4. The chairman will ask each party to introduce themselves and their representative (if they have one, for which advance notice is required).
5. New evidence from the parties will not be permitted at this stage.
6. The Investigating Officer will present the report and detail the findings.
7. The Committee Members who comprise the Panel will have the opportunity to ask questions for clarification of the Investigating Officer.
8. The Complainant will have the opportunity to present their case (10 minutes will be allocated, an extension will be at the discretion of the chair).
9. The Hearing Panel will have the opportunity to ask questions for clarification of the Complainant.
10. The Subject Member will have the opportunity to present their case (10 minutes will be allocated, an extension will be at the discretion of the chair).

11. The Hearing Panel will have the opportunity to ask questions for clarification of the Subject Member.
12. Before the Investigating Officer, Complainant and Subject Member are asked to leave the room whilst the Hearing Panel deliberate, the Hearing Panel have the opportunity to ask any additional questions for clarification.
13. All parties will be asked to leave the room whilst the Hearing Panel deliberate and consult with the Independent Person, Monitoring Officer and Legal Advisor, if required.
14. All parties will be asked to return whilst the chair informs all parties of the Hearing Panel's decision. This Hearing panel's decision will be final.

The following sanctions for failing to comply with the Code can include (but are not restricted to):

- a) Censure or reprimanding the member;
- b) Reporting its findings to Council (or Town /Parish Council) for information;
- c) Recommending to the member's Group Leader (or in the case of ungrouped members, recommend Council or to committees) that he/she be removed from any committees or sub-committees of the Council;
- d) Recommending to Council that the members be removed from Special Responsibility positions is applicable;
- e) Instructing the Monitoring Officer to (or recommend that the Parish Council) arrange training for the member;
- f) Removing (or recommend to the Town/Parish Council that the member be removed) from all outside appointments to which he/she has been appointed or nominated by the authority (or by the Parish Council);
- g) Withdrawing (or recommend to the Town/Parish Council that it withdraws) facilities provided to the member by the Council, such as email/internet access or equipment etc.;
- h) Excluding (or recommend that the Town/Parish Council exclude) the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, committees and sub-committee meetings.