

### **3. ARRANGEMENTS FOR DEALING WITH COMPLAINTS AGAINST COUNCILLORS**

#### **Introduction**

- 3.1 The Localism Act 2011 requires the Council to adopt arrangements for dealing with complaints against councillors submitted under the Code of Conduct for Councillors (the Code) set out above at section 2 and complaints submitted against town councillors in the Council's area under the code of conduct applicable to them.
- 3.2 In these Arrangements the term (councillor) means an elected councillor or co-opted member of the Council or any town council in the Council's area. The term (Code) means the code of conduct applicable to that Councillor.
- 3.3 These Arrangements apply to all complaints submitted against councillors under the Code.
- 3.4 The Localism Act 2011 also requires the Council to appoint at least one Independent Person, whose views must be sought before decision is taken to investigate a complaint and whose views can be sought by the Council at any other stage of dealing with a complaint under these Arrangements. A councillor against whom an allegation has been made can also consult an Independent Person. The same Independent Person would not usually assist the Council and the councillor against whom the complaint has been submitted.
- 3.5 The appointment of Independent Persons takes place at a meeting of the Council following an open recruitment process.
- 3.6 The Council's Monitoring Officer is responsible for dealing with complaints submitted under the Code. The Monitoring Officer may nominate another Officer of suitable experience and seniority to carry out any of the functions detailed in these Arrangements, or may appoint an external specialist to do so.
- 3.7 The Code applies to all elected councillors and co-opted members of the Council when they are acting in that capacity. Complaints must be submitted to the Council's Monitoring Officer. The Monitoring Officer can only consider complaints where the councillor is acting in their capacity as a councillor in the circumstances of the complaint. The Code does not apply to the acts or omissions of councillors in the course of their private lives.
- 3.8 If a complaint alleges a failure to comply with the rules about (Disclosable Pecuniary Interests) or other potential criminal offences the Monitoring Officer will consider whether the matter should be directed to the police, if they consider there are reasonable grounds to believe that a criminal offence may have occurred.

## **Stage 1: The Submission of a Complaint and the Initial Assessment**

### **Submitting a Complaint**

- 3.9 The complaint must be:
- (a) Submitted in writing;
  - (b) Include the identity of the person submitting the complaint (the Complainant) unless there are substantial reasons not to do so;
  - (c) Clearly identify those elements of the Code alleged to have been breached;
  - (d) Provide information and evidence that substantiates the allegations made; and
  - (e) Outline the form of resolution the Complainant is seeking.
- 3.10 The Complainant should use the correct Complaint Form which is available from the Council's website or the Monitoring Officer.
- 3.11 If the Monitoring Officer considers that the complaint does not include sufficient information, the Complainant will be asked to provide the additional information required and the complaint may not be accepted until that information is received and may be rejected if the information is not provided as requested.
- 3.12 The Monitoring Officer will consider a request by a Complainant or witness to keep their identity confidential (from the member against whom the complaint has been made and / or others). As a principle of natural justice it is expected that the identity of the Complainant will be made known to the Subject councillor and as such the Monitoring Officer will only grant a request for anonymity in exceptional circumstances where:
- (a) The Complainant has good reason to believe that they are at risk of physical harm if their identify is disclosed;
  - (b) The Complainant is an Officer who works closely with the Subject Member and they are afraid of the consequences to the employment or of losing their job if their identity is disclosed;
  - (c) In such circumstance the matter may be dealt with in accordance with the Council's whistle-blowing policy and / or under the Protocol on Councillor / Officer Relations;
  - (d) The Complainant has a serious health condition and there are medical risks associated with the disclosure of their identify;
  - (e) The Monitoring Officer will notify the Complainant of their decision.
- 3.13 The Monitoring Officer may decline to progress the complaint if the Complainant does not agree to the disclosure of their identity.

## Initial Assessment

- 3.14 In consultation with the Independent Person the Monitoring Officer will consider the complaint and make a decision as to whether it warrants further action, having regard to the following criteria:
- (a) Whether the complaint has been submitted within three months of the alleged misconduct unless there are exceptional circumstance as to why it has been submitted later (eg the complaint concerns allegations of bullying, harassment etc);
  - (b) Whether the complaint is against one or more named serving councillors or co-opted members of the Council;
  - (c) Whether the Subject Councillor was in office at the time of the alleged conduct;
  - (d) Whether the Subject Councillor was acting in their capacity as an elected councillor in the circumstances of the complaint;
  - (e) Whether the alleged misconduct was not a matter of the Subject Councillor's private life;
  - (f) Whether the complaint is trivial or about the Complainant's dissatisfaction with a Council service or a decision of the Council, Cabinet, Committee or Officer;
  - (g) Whether the complaint is malicious, vexatious or politically motivated to 'tit-for-tat';
  - (h) Whether the complaint is the same or similar to a complaint that has already been investigated and there is nothing further to be gained by progressing it;
  - (i) Whether the complaint clearly identifies the elements of the Code the Subject Councillor is alleged to have breached;
  - (j) Whether the information / evidence submitted in support of the complaint is sufficient;
  - (k) Whether, if proven, the complaint would constitute a breach of the Code;
  - (l) Whether the Subject Councillor has already accepted making an error and apologised;
  - (m) Whether, in all the circumstances and in consideration of the resource and cost implications of progressing the complaint, it is in the public interest to progress the complaint.
- 3.15 The Monitoring Officer will notify the Subject Councillor of the complaint and may provide them with a copy of the complaint and seek their initial response as part of the initial assessment.
- 3.16 If the Monitoring Officer determines that the complaint is about an Officer or the provision of a Council service, it will be referred to the relevant service do be dealt with in accordance with corporate complaints procedure and will not be considered under the Arrangements.

- 3.17 The Monitoring Officer will dismiss complaints where there on the face of it there is insufficient evidence of a breach of the Code, or considers that no further action is warranted.
- 3.18 The Complainant will be notified in writing providing reasons for the decision. There is no appeal process for decisions taken by the Monitoring Officer on the initial assessment of complaints.

## **Stage 2: Informal Resolution**

- 3.19 In consultation with the Independent Person if the Monitoring Officer decides that the complaint warrants investigation they will seek to resolve the complaint informally without undertaking an investigation by way of a Local Resolution. This may involve:
- (a) The Subject Councillor accepting that their conduct was unacceptable and providing an explanation and written apology;
  - (b) The Subject Councillor agreeing to undergoing relevant training;
  - (c) Mediation between the Subject Councillor and the Complainant facilitated by the Independent Person; or
  - (d) Any other form of remedial action considered appropriate.
- 3.20 If the Complainant and the Subject Councillor accept Local Resolution, informs no further action will be taken except that the Monitoring Officer:
- (a) Will ensure any actions arising from the Local Resolution are completed; and
  - (b) If so, will inform both the Complainant and Subject Member that no further action will be taken on the complaint and record the outcome and report it to the next meeting of the Standards Committee.
- 3.21 Where a Local Resolution has been rejected or has not been successfully achieved or where the Monitoring Officer considers that it is not appropriate, the Monitoring Officer, in consultation with the Independent Person, will determine whether to proceed to a formal investigation, or whether no further action is warranted having regard to the circumstances of the complaint.

## **Stage 3: Investigation**

### **The Public Interest**

- 3.22 If the Monitoring Officer determines that an Informal Resolution is not appropriate or it is not accepted by the Complainant or the Subject Councillor, or having been accepted it is not successfully achieved, the Monitoring Officer will consider whether or not it is in the public interest to investigate the complaint taking into account and balancing the following factors:
- (a) The seriousness of the alleged breach;

- (b) The level of culpability alleged against the Subject Member, including if it is alleged the Subject Member, or their partner (as defined in the Code), or a relative or close associated benefitted directly or indirectly from the alleged breach;
- (c) What harm if any is alleged to have been caused to the Complainant or others;
- (d) What is the impact on the wider community of the alleged breach;
- (e) Is an investigation and a potential hearing before the Standards Committee a proportionate response to the complaint, taking into consideration the time, resource and cost implication.

### **The Appointment of an Investigating Officer**

3.23 Where the Monitoring Officer determines that an investigation should proceed, they will appoint an Investigating Officer to undertake the investigation. The Investigating Officer may be an appropriately senior and experienced Officer or officer of another local authority, or an external investigator.

### **Notification**

3.24 The Monitoring Officer will notify the Complainant and the Subject Councillor that the complaint has been referred for formal investigation, detailing:

- (a) The identify of the Investigating Officer;
- (b) The investigation procedure;
- (c) That the Complainant and the Subject Councillor should have no contact with each other and should not seek to improperly influence or interfere with the investigation, or the determination of the complaint by any means.

### **The Conduct of the Investigation**

3.25 The Investigating Officer will:

- (a) Collate sufficient information to determine whether there is sufficient evidence upon which a finding may be made that:
- (b) The Code applies in the circumstances of the complaint and if so,
- (c) The Subject Councillor breached the Code as alleged.

3.26 On the completion of the investigation the Investigating Officer will prepare a draft report of their findings for the consideration and comment of the Monitoring Officer, Complainant and the Subject Councillor.

### **Production of Documents, Information and Explanations**

3.27 The Investigating Officer will decide whether or not it is necessary and proportionate to interview the Complainant and / or the Subject Councillor and any witnesses they may have put forward to support their account. The Investigating Officer may also

seek to interview or obtain information from any third parties they consider as being of potential assistance to the investigation.

- 3.28 The Investigating Officer (and any person authorised on their behalf) is authorised to:
- (a) Make such enquiries of any person or organisation and request any person or organisation to provide any document or information which is in their possession or control, or provide any explanation, as the Investigating Officer considers necessary for the purposes of carrying out the investigation;
  - (b) Require the Council to provide any document which is in its possession or control which the Investigating Officer thinks necessary for the purposes of carrying out the investigation;
  - (c) Request any person to meet with them or otherwise provide any information, document or explanation as the Investigating Officer considers necessary for the purposes of carrying out the investigation.

### **Representation**

- 3.29 The Complainant, Subject Councillor or any other person interviewed by the Investigating Officer may arrange to be accompanied at their own expense by a solicitor, trade union representative or friend.

### **Additional Breaches of the Code**

- 3.30 If, in the course of the investigation, the Investigating Officer becomes aware of any other matter which appears to them to be evidence of a different or additional breach of the Code by the Subject Councillor, the Investigating Officer shall inform the Monitoring Officer and provide them with any supporting information.
- 3.31 In consultation with Independent Person, the Monitoring Officer will decide:
- (a) Whether or not the additional matter should be investigated in accordance with these Arrangements;
  - (b) Whether or not an investigation of the additional matter should be undertaken by the same Investigating Officer, or if a different Investigating Officer should be appointed for the purpose;
  - (c) If the additional matter is to be investigated, notify the Subject Member accordingly in accordance with these Arrangements.

### **Termination of the Investigation**

- 3.32 The Investigating Officer may terminate their investigation at any time where they are satisfied that they have sufficient information on which to make their findings and report to the Monitoring Officer.

## **Draft Report**

- 3.33 On completion of the investigation the Investigating Officer will prepare a draft report setting out:
- (a) Details of the allegation;
  - (b) The relevant provisions of the Code;
  - (c) The relevant provisions of any statute or case law (if appropriate);
  - (d) The Subject Member's initial response to notification of the allegation (if any);
  - (e) The relevant evidence obtained during the investigation;
  - (f) A list of any documents relevant to the matter;
  - (g) Details of any persons interviewed and their account and any persons who otherwise provided information and details of any such information;
  - (h) Details of those persons or organisations from whom information was sought but not obtained, or otherwise did not cooperate with the investigation;
  - (i) The Investigating Officer's findings of fact and reasoning as to whether or not the evidence is sufficient for a finding to be made that:
    - (i) The Code applies in the circumstances of the complaint; and if so
    - (ii) The Subject Councillor breached the Code as alleged.
- 3.34 The Investigating Officer will circulate the draft report to the Monitoring Officer, Complainant and the Subject Councillor for their consideration and comment within fourteen days.
- 3.35 Having taken into account any comments on the draft report received from the Complainant and / or Subject Councillor, the Investigating Officer will prepare a final report for submission to the Monitoring Officer.

## **Final Report**

- 3.36 The Monitoring office will consider the Investigating Officer's final report. If the Monitoring Officer is not satisfied with the conduct of the investigation or the report, they may ask the Investigating Officer to consider taking further steps and / or reconsidering their report.
- 3.37 Once the Monitoring Officer is satisfied with the investigation and / or the final report, the Monitoring Officer will determine on the basis of the report whether or not there is sufficient evidence for a finding to be made that:
- (a) The Code applies in the circumstances of the complaint; and if so
  - (b) The Subject Councillor breached the Code as alleged.

## **Actions on the Final Report**

### **No Breach**

- 3.38 In consultation with the Independent Person if the Monitoring Officer determines that there is insufficient evidence for a finding to be made as at paragraph 15.2(a) and / or (b) above, they will write to the Complainant and the Subject Councillor notifying them of the decision and that no further action will be taken and enclosing a copy of the final report.
- 3.39 The Monitoring Officer will record the outcome of the matter and report it to the next meeting of the Standards Committee.
- 3.40 The Monitoring Officer will provide a copy of the decision notice to the Subject Councillors Political Group Leader if the Subject Councillor is a member of a Political Group.
- 3.41 If the complaint concerns a town councillor, the Monitoring Officer will provide a copy of the decision notice to the clerk of the relevant town council.

### **Breach**

- 3.42 In consultation with the Independent Person, if the Monitoring Officer determines that there is sufficient evidence for a finding to be made as at paragraph 15.2(a) and (b) above, they will write to the Complainant and the Subject Councillor notifying them of the decision and will either:
- (a) Seek to resolve the matter informally, through a resolution agreed between the Complainant and the Subject Councillor, taking into account the findings of the Investigating Officer; or
  - (b) Refer the matter to for a hearing of the Hearing Sub-committee of the Standards Committee.

## **Stage 4: Referral to The Hearing Sub-Committee**

- 3.43 Where the Monitoring Officer has referred the matter to the Hearing Sub-committee of the Standards Committee for a hearing to determine the complaint.
- 3.44 Where possible, the hearing shall be convened within three months of the Monitoring Officer's referral.
- 3.45 It is expected that a hearing of the Sub-committee will be heard in public. A hearing or part thereof may be held in private where information which will be disclosed at the hearing is exempt or confidential in accordance with Schedule 12A of the Local Government Act 1972.
- 3.46 The Monitoring Officer will convene a hearing of the Hearing Sub-committee to consider and determine the complaint and will notify the Subject Councillor, the Investigating Officer the complainant and any witness at least fourteen days prior to the hearing of:



- (a) The date, time and location of the hearing;
- (b) The agreed facts of the complaint;
- (c) The disputed facts of the complaint;
- (d) The identify of any representative of the Subject Councillor or Investigating Officer who will attend the hearing;
- (e) The identify of any witnesses who will give evidence at the hearing;
- (f) The decisions of the Hearing Sub-committee made at any pre-hearing meeting;
- (g) Any proposed amendments to the hearing process set out below.

### **Stage 5: The Hearing**

- 3.47 A hearing of the Hearing Sub-committee shall be an inquisitorial process intended to obtain information and clarify facts and issues on which the Hearing Sub-committee may make a determination as to whether or not the Code applied to the Subject Councillor in the circumstances of the complaint and if so, whether the Subject Councillor breached the Code as alleged.
- 3.48 The hearing is not a court or tribunal. The hearing shall be conducted in accordance with the principles of natural justice and Article 6 of the European Convention on Human Rights, but the strict rules of evidence shall not apply and the cross-examination of the Subject Councillor, Investigating Officer or any witness shall not be permitted.
- 3.49 The Hearing Sub-committee shall make findings of fact on the 'balance of probabilities' which means something is more likely than not.
- 3.50 The Hearing Sub-committee shall be advised by the Monitoring Officer or a legal advisor and may seek advice at any time during the hearing process or while considering their decision. Any advice provided to the Hearing Sub-committee shall be shared with the Subject Councillor and the Investigating Officer if they are present at the hearing.
- 3.51 As applicable the provisions of this Stage 5, The Hearing, shall take precedence over the Committee Procedure Rules set out under Part 3 of this Constitution.

### **Preliminary Matters**

- 3.52 The preliminary matters of the hearing shall be:
- (a) Appointment of a chair;
  - (b) Confirmation of quorum;
  - (c) Declarations of interests;
  - (d) Introductions;
  - (e) Whether the hearing or any part of it is to be held in private;

- (f) If applicable, whether to proceed in the absence of the Subject Councillor.

### **Absence of the Subject Councillor, Investigating Officer, Representative or Witness**

- 3.53 The chair shall seek confirmation from the Monitoring Officer as to:
- (a) The notification of the hearing to the Subject Councillor; Investigating Officer, representative or witness;
  - (b) Any indication received from the Subject Councillor, Investigating Officer, representative or witness of their intention to attend or not attend the hearing; and
  - (c) If the Subject Councillor, Investigating Officer, representative or witness indicated their intention to attend the hearing, whether any notification or explanation for their absence has been received and when.
- 3.54 The Hearing Sub-committee will then determine whether in all the circumstances the hearing should be adjourned or should proceed in the absence of the Subject Councillor, the Investigating Officer, representative or witness.

### **The Investigating Officer's Presentation**

- 3.55 The Investigating Officer shall present their report and their findings and with the permission of the Hearing Sub-committee, may call witnesses to give evidence.
- 3.56 The Hearing Sub-committee and / or the Subject Councillor may ask questions of the Investigating Officer or any witness they have called on matters relevant to any dispute of fact.
- 3.57 The Hearing Sub-committee may ask the Investigating Officer clarification questions.

### **The Subject Member's Case**

- 3.58 The Subject Councillor will then be invited to present their case and with the permission of the Hearing Sub-committee may call witnesses to give evidence.
- 3.59 The Hearing Sub-committee and / or the Investigating Officer may ask questions of the Investigating Officer or any witness they have called on matters relevant to any dispute of fact.
- 3.60 The Hearing Sub-committee may ask the Subject Member clarification questions.

### **Final Submissions**

- 3.61 The Hearing Sub-committee will invite the Investigating Officer and the Subject Councillor to submit any final representations.

### **Introduction of New Evidence**

- 3.62 The Investigating Officer, the Subject Councillor and any witnesses shall not be permitted to introduce new arguments or new evidence at the hearing unless the

Hearing Sub-committee is satisfied that in the circumstances in the whole, there are exceptional reasons for doing so.

### **Determination of the Complaint**

- 3.63 The Hearing Sub-committee shall retire with the Independent Person to consider the determination of the complaint. Any advice provided by the Monitoring Officer during to the Hearing Sub-committee's during the private session shall be shared with the Subject Councillor and the Investigating Officer.
- 3.64 The Hearing Sub-committee may reconvene the hearing to ask further questions of the Investigating Officer and / or the Subject Councillor during the course of the deliberations and if they are present, the other party will be afforded the opportunity to respond to the question and the answer given.
- 3.65 The Hearing Sub-committee shall make a finding as to:
- (a) Whether the Code applied to the Subject Councillor in the circumstances of the complaint; and if so
  - (b) Whether the Subject Councillor breached the Code.
- 3.66 The hearing will be reconvened for the chair to announce the Hearing Sub-committee's findings and reasons for the findings. The chair may state that full reasons for the findings will be provided in writing subsequently.

### **Finding of No Breach**

- 3.67 If the Hearing Sub-committee determines that the Code did not apply to the Subject Councillor in the circumstances of the complaint, or it did apply but the Subject Councillor did not breach the Code as alleged, the matter will be concluded and no further action shall be required except as regards those matters set out under paragraphs 15.28 to 15.30 below.

### **Finding of Breach**

- 3.68 If the Hearing Sub-committee determines that the Code applied to the Subject Councillor in the circumstances of the Complaint and that the Subject Councillor breached the Code as alleged, the Hearing Sub-committee shall further determine whether or not to impose a sanction on the Subject Councillor. The Hearing Sub-committee may invite representations from the Investigating Officer and the Subject Councillor as to any sanction, if any, which should be imposed and / or may also take legal advice from the Monitoring Officer or legal advisor.
- 3.69 The Hearing Sub-committee shall retire with the Independent Person to consider and determine whether to impose any sanctions on the Subject Councillor and the form of the sanctions.
- 3.70 The hearing will be reconvened for the chair to announce the sanctions, if any, to be imposed on the Subject Councillor and the reasons.

### **Available Sanctions**

- 3.71 The Hearing Sub-committee may impose one or more of the sanctions listed in para 3.78 below.

### **Recommendations to the Council**

- 3.72 The Hearing Sub-committee shall consider whether or not it should make any recommendations to the Council with a view to the promotion of high standards of conduct and compliance with the Code amongst elected councillors and co-opted members of the Council.

### **Decision Notice**

- 3.73 The Monitoring Officer shall prepare for the approval of the chair a decision notice detailing the complaint, the findings of the Hearing Sub-committee and reasons; any sanctions imposed and the reasons, or that the Hearing Sub-committee determined that no sanctions should be imposed and the reasons.
- 3.74 The decision notice will be sent to the Complainant, the Subject Councillor and the Investigating Officer and will be published in accordance with the Access to Information Procedure Rules set out under Part 1 of this Constitution.

### **Publicity**

- 3.75 If the Hearing Sub-committee decides that the matter should be published, it may do so by placing its findings in one or more newspapers circulating in the Council's area.

### **Reporting to Council**

- 3.76 The matter will be detailed in the annual report of the Standards Committee to Council.

### **Appeal**

- 3.77 There is no right of appeal against the decisions or findings of the Hearing Sub-committee.

### **Sanctions for a Breach of the Code of Conduct for Councillors**

- 3.78 The Hearing Sub-committee may impose upon a councillor found to have breached the Code one or more of the following sanctions:
- (a) Censure or reprimand the Councillor;
  - (b) Publish its findings in respect of the Councillor's conduct;
  - (c) Report its findings to the Council for information;
  - (d) Recommend to the Councillor's Group Leader (or in the case of an ungrouped councillor, recommend to the Council and or a relevant Committee) that the

councillor be removed from any or all Committees or Sub-Committees of the Council;

- (e) Recommend to the Leader of the Council that the councillor be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- (f) Recommend to the Council that the councillor be replaced as Leader;
- (g) Recommend to a Group's secretary or appropriate official that the councillor be replaced as Group Leader;
- (h) Instruct the Monitoring Officer to (or recommend that a parish or town council) arrange training for the Councillor;
- (i) Recommend to the Council that the councillor be removed from all outside appointments to which they have been appointed or nominated by the Council;
- (j) Withdraw (or recommend a parish or town council withdraw), equipment provided to the councillor by the Council such as a computer, or
- (k) Exclude (or recommend that a parish or town council exclude) the councillor from the Council's offices or other premises, for a specified period, with the exception of meeting rooms necessary for attending Council, Cabinet, Committee and Sub-Committee meetings.

3.79 The Hearing Sub-committee has no power to suspend or disqualify the Councillor, or to withdraw basic or special responsibility allowances. Sanctions (with the exception of censure) may start immediately or up to six months after the Hearing Sub-committee's determination if Hearing Sub-committee prefers.