



## **HERTSMERE BOROUGH COUNCIL**

# **ARRANGEMENTS FOR DEALING WITH COMPLAINTS ALLEGING A FAILURE TO COMPLY WITH THE REQUIREMENTS OF THE CODE OF CONDUCT FOR ELECTED AND CO-OPTED MEMBERS OF HERTSMERE BOROUGH COUNCIL**

### **1. Context**

- 1.1 These Arrangements are made under section 28 of the Localism Act 2011. They set out the process that Hertsmere Borough Council has adopted for dealing with complaints that an elected or co-opted member of Hertsmere Borough Council or a Town or Parish Council established in Hertsmere has failed to comply with the requirements of the Members Code of Conduct adopted by their Council.

### **2. Interpretation**

- 2.1 'the Borough Council' means Hertsmere Borough Council.
- 2.2 'the Clerk' means in relation to a Parish Council the officer of the Council duly appointed to conduct the executive functions of the Council in accordance with Section 112 of the Local Government Act 1972
- 2.3 'Complainant' means a person who has submitted a complaint in accordance with these Arrangements alleging that a Subject Member has breached the Members Code of Conduct and the term 'complaint' shall be construed accordingly.
- 2.4 'Disclosable Pecuniary Interest' means those disclosable pecuniary interests that meet the definition prescribed by regulations (as amended from time to time) as set out in Annex 2 to the Members Code of Conduct.
- 2.5 'Group Leader' means such member of Hertsmere Borough Council who has been identified as Leader of a political group in accordance with a notification given to the proper officer of the Council in accordance with Regulation 8(3)(c) or 8(5)(b) of the Local Government (Committees and Political Groups) Regulations 1990 (as amended).
- 2.6 'Independent Person' means a person or persons appointed by the Borough Council under section 28(7) of the Localism Act 2011:
- (a) whose views must be sought and taken into account by the Borough Council before a decision is made on any complaint alleging a breach of the Code of Conduct by a Subject Member; and

- (b) who may be consulted by the Subject Member about the complaint.
- 2.7 'Investigating Officer' means the person appointed by the Monitoring Officer to undertake a formal investigation of a complaint alleging a breach of the Members Code of Conduct by a Subject Member. The Investigating Officer may be another senior officer of the Borough Council, an officer of another authority or an external investigator.
- 2.8 'Members Code of Conduct' means the Code of Conduct, which (as the case may be) the Borough Council or a Parish Council has adopted under section 27(2) of the Localism Act 2011.
- 2.9 'Monitoring Officer' is a senior officer of the Borough Council appointed to this role by full Council who has statutory responsibility for maintaining the Register of Members' Interests and who is responsible for administering the arrangements for dealing with any complaint alleging a breach of the Members Code of Conduct by a Subject Member. It includes any other officer of the Borough Council nominated by the Monitoring Officer to act on their behalf in the administration of these arrangements.
- 2.10 'Parish Council' means the relevant Town or Parish Council established within the administrative area of the Borough of Hertsmere
- 2.11 'Parties' means the Complainant, the Subject Member and the Investigating Officer, as appropriate.
- 2.12 'Standards Assessment Panel' means the Panel established by the Standards Committee and comprising of the Chair of the Standards Committee, the Independent Person and the Monitoring with responsibility for determining whether in relation to a complaint alleging a failure by a Subject Member to comply with the requirements of the Members Code of Conduct no further action should be taken in respect of the complaint or whether the informal disputes resolution procedure should be instigated or whether the complaint should be the subject of an investigation.
- 2.13 'Standards Committee' means the Committee established by the Council pursuant to Section 101 of the Local Government Act 1972 to promote and maintain high standards of ethical conduct by elected and co-opted members of the Borough Council, to provide advice and guidance to such members on the application of the Members Code of Conduct and to conduct hearings in respect of complaints referred to it by the Monitoring Officer under these Arrangement, including, at the conclusion of the hearing and having regard to the opinion of the Independent Person, to determine whether there has been a failure by a Subject Member to comply with the Members Code of Conduct and if so, to further recommend what action (if any) should be taken in relation to such failure.
- 2.14 'Subject Member' means an elected member or co-opted member of the Borough Council or Parish Council against whom a complaint has been made in writing alleging a failure to comply with the requirements of the Members Code of Conduct.

### **3. Independent Person**

- 3.1 The Council will appoint the Independent Person (and any substitute) in accordance with the requirements of section 27 of the Localism Act 2011 upon

such terms as to remuneration and expenses as may be determined by the Council from time to time. The Independent Person (and any substitute) shall be treated as if he were a Member of the Authority for the purposes of the Council's arrangements for indemnifying and insuring Members.

#### **4 Making a complaint**

- 4.1 A complaint alleging a breach of the Code of Conduct by a Subject Member must be made in writing and addressed to the Monitoring Officer using the Complaint Form set out in Schedule 1 to these Arrangements. Complainants who find difficulty in making their complaint in writing (e.g. because of a disability), will be offered assistance.
- 4.2 The Subject Member will normally be informed of the identity of the Complainant and details of the complaint made against them, but the Complainant's identity and/or details of their complaint may be withheld at the Complainant's request if it appears to the Monitoring Officer that there are good and sound reasons for granting such a request (refer to Paragraph 5 of Schedule 2 to these Arrangements).
- 4.3 The Monitoring Officer will normally acknowledge receipt of a complaint within 5 working days of receipt of a completed complaints form. At the same time (and subject to para. 4.2 above), the Monitoring Officer will send a copy of the complaint to the Subject Member in accordance with Paragraph 2 of Schedule 2 to these Arrangements.

#### **5. Criminal conduct**

- 5.1 In accordance with section 34 of the Localism Act 2011, it is a criminal offence if, without reasonable excuse, an elected or co-opted member:
- (a) fails to notify the Monitoring Officer of a Disclosable Pecuniary Interest within 28 days beginning with the day you become, or are re-elected or re-appointed, a Member or Co-opted Member of the Authority;
  - (b) fails to notify the Monitoring Officer of a Disclosable Pecuniary Interest within 28 days beginning with the day you become aware of it, where you are acting alone in the course of discharging a function of the Authority (including making a decision in relation to the matter) and the interest is not already registered or is not the subject of a pending notification to the Monitoring Officer;
  - (c) fails to disclose a Disclosable Pecuniary Interest at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;
  - (d) fails to notify the Monitoring Officer of a Disclosable Pecuniary Interest within 28 days beginning with the day you disclose it at a meeting, where such interest has not already been registered or notified to the Monitoring Officer;
  - (e) takes part in discussions or votes at meetings that relate to the Disclosable Pecuniary Interest, unless a dispensation has been granted;
  - (f) knowingly or recklessly provides false or misleading information in any of the above disclosures or notifications.

5.2 Where a complaint against a Subject Member relates to conduct of a criminal nature referred to above, the Monitoring Officer will deal with the complaint in accordance with Paragraph 4.6 of Schedule 2 to these Arrangements.

## **6. Anonymous complaints**

6.1 Complainants must provide their full name and address. An anonymous complaint will only be accepted by the Monitoring Officer if accompanied by supporting evidence that indicates to the Monitoring Officer that it is in the public interest to accept the complaint. More detailed information on how requests for anonymity will be dealt with is set out in Paragraph 5 of Annex 2 to these Arrangements.

## **7. Role of Independent Person**

7.1 The Independent Person must be consulted and have their views taken into account before the Authority makes a finding as to whether a Member has failed to comply with the Code or decides on action to be taken in respect of that Member. At any other stage of the complaints process under these Arrangements, the Independent Person may be consulted by the Monitoring Officer and/or the Subject Member.

## **8. Preliminary Tests - Jurisdiction**

8.1 Once receipt of a complaint has been acknowledged the Monitoring Officer will apply the legal jurisdiction tests in accordance with Paragraph 1.2 of Schedule 2 to these Arrangements. The Monitoring Officer will reject a complaint that in his opinion fails any of these tests and notify the Complainant in writing accordingly. There will be no right of appeal against this decision.

8.2 Any complaint not rejected by the Monitoring Officer on the application of the jurisdiction test will be referred to the Standards Assessment Panel for consideration.

## **9. Standards Assessment Panel - Local Assessment Criteria**

9.1 In all cases referred to it by the Monitoring Officer the Standards Assessment Panel will consider the complaint by applying the Local Assessment Criteria tests in accordance with Paragraph 1.4 of Schedule 2 to these Arrangements. The Panel consider and determine a complaint made to it and reach one of the following decisions: -

- (a) That No Further Action be taken in respect of the complaint; or
- (b) That the complaint be referred to the Monitoring Officer to instigate the Informal Disputes Resolution Procedure; or
- (c) That the complaint be referred to the Monitoring Officer to procure an investigation of the complaint.

9.2 Within five working days of the date of meeting, the Standards Assessment Panel will record its decision in writing giving summary reasons. A copy of the decision will be sent to:

- (a) The Complainant;

- (b) The Subject Member;
- (c) If the Subject Member is a Borough Councillor and a member of a recognised Political Group, the Group Leader of that Political Group; and
- (d) If the Subject Member is a Town or Parish Councillor, the Clerk of the Town or Parish Council in question.

9.3 There will be no right of appeal against the decision of the Standards Assessment Panel.

## **10 Informal resolution**

10.1 If the Standards Assessment Panel decides that a complaint is capable informal resolution, the Monitoring Officer will instigate the Informal Disputes Resolution Procedure in accordance with Paragraph 6 of Schedule 2 to these Arrangements.

## **11. Investigation**

11.1 If the Standards Assessment Panel refers a complaint to the Monitoring Officer for formal investigation, the Monitoring Officer will, within 10 working days of the formal written decision appoint an Investigating Officer to undertake the investigation and inform the Complainant and the Subject Member of the appointment.

11.2 The Investigating Officer will investigate the complaint in accordance with Schedule 3 to these Arrangements.

## **12 Investigating Officer's Opinion - 'No Breach'**

12.1 If the Investigating Officer is of the opinion that the Subject Member has **not** failed to comply with the requirements of the Members Code of Conduct the Monitoring Officer will consult with the Independent Person and unless the Independent Person considers that the complaint should be referred to the Standards Committee to conduct a hearing the Monitoring Officer will resolve to take No Further Action in respect of the complaint and notify all those persons notified in accordance with Paragraph 9.2 above.

12.2 The Monitoring Officer will report his decision to take No Further Action to the next ordinary meeting of the Standards Committee as an information item.

## **13. Investigating Officer's Opinion - 'Breach'**

13.1 If the Investigating Officer is of the opinion that the Subject Member has failed to comply with the requirements of the Members Code of Conduct the Monitoring Officer will convene an extraordinary meeting of the Standards Committee to conduct a hearing into the complaint. The hearing will be conducted in accordance with the procedure set out at Schedule 4 to these Arrangements

#### **14. Decision on a Complaint**

- 14.1 At the conclusion of a hearing and, taking into account the opinion of the Independent Person, the Standards Committee will determine whether the Subject Member has failed to comply with the requirements of the Members Code of Conduct. In the event that the Standards Committee is of the opinion that there has been a failure to comply with the requirements of the Members Code of Conduct, it shall determine what action to take (if any) in respect of such failure.

#### **15 Sanctions**

- 15.1 In the event of a determination that the Subject Member has failed to comply with the requirements of the Members Code of Conduct the Standards Committee may impose, individually or in combination, any of the sanctions set out in Paragraph 4 of Schedule 4 to these Arrangements.

#### **16 Appeal**

- 16.1 There is no right of appeal for the Complainant or the Subject Member against the decisions of the Standards Committee under these Arrangements.

#### **17. Publicity**

- 17.1 Where the Standards Committee determines that the Subject Member has failed to comply with the requirements of the Code of Conduct and whether or not it determines to impose any sanctions, it shall arrange for the publication of such decision in the manner set out at Paragraph 5 of Schedule 4 to these Arrangements

#### **18 Revision of these Arrangements**

- 18.1 The Borough Council may by resolution agree to amend these Arrangements and has delegated to the Standards Committee the right to depart from these Arrangements, where they consider it expedient to do so in order to secure the effective and fair consideration of any complaint.

### **Schedules**

- Schedule 1 - Complaint Form
- Schedule 2 - Initial Assessment Procedures
- Schedule 3 - Investigation Procedures
- Schedule 4 - Hearings Procedures



Working with you, for you

## STANDARDS COMPLAINT FORM

### Your details

1. Please provide us with your name and contact details

<b>Title:</b>	
<b>First name:</b>	
<b>Last name:</b>	
<b>Address:</b>	
<b>Daytime telephone:</b>	
<b>Evening telephone:</b>	
<b>Mobile telephone:</b>	
<b>Email address:</b>	

Your address and contact details will not usually be released unless necessary or to deal with your complaint.

However, we will tell the following people that you have made this complaint:

- the Member(s) you are complaining about
- the Monitoring Officer of the Authority
- the Chair of the Standards Committee
- the Parish or Town Clerk (if applicable)

We will tell them your name and give them details of your complaint. If you have serious concerns about your name or details of your complaint being released, please complete Section 6 of this form.

**2. Please tell us which complainant type best describes you:**

- Member of the public
- An elected or co-opted member of an authority
- An independent member of the standards committee
- Member of Parliament
- Local authority monitoring officer
- Other council officer or authority employee
- Other ( )

**3. Please provide us with the name of the member(s) you believe have breached the Code of Conduct and the name of their authority:**

Title	First name	Last name	Council or authority name

**4. Please explain in this section (or on separate sheets) what the member has done that you believe breaches the Code of Conduct. If you are complaining about more than one member you should clearly explain what each individual person has done that you believe breaches the Code of Conduct.**

It is important that you provide all the information you wish to have taken into account by the assessment sub-committee when it considers your complaint in order to make recommendations to the Monitoring Officer on what action to take. For example:

- You should be specific, wherever possible, about exactly what you are alleging the member said or did. For instance, instead of writing that the member insulted you, you should state what it was they said.



- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide any relevant background information.

Please provide us with the details of your complaint. (Continue on a separate sheet if there is not enough space on this form).

**Only complete this next section if you are requesting that your identity is kept confidential**

5. In the interests of fairness and natural justice, we believe members who are complained about have a right to know who has made the complaint. We also believe they have a right to be provided with details of the complaint unless you have good reason.

Please note that requests for confidentiality or requests for suppression of complaint details will not automatically be granted. The Monitoring Officer will consider the request alongside the substance of your complaint. We will then contact you with the decision. If your request for confidentiality is not granted, we will usually allow you the option of withdrawing your complaint.

However, it is important to understand that in certain exceptional circumstances where the matter complained about is very serious, we can proceed with an investigation or other action and disclose your name even if you have expressly asked us not to.

Finally, even if the Monitoring Officer agrees to withhold your name or the details of your complaint, that information will be disclosed to the subject Member no later than the date of the decision on how the Council intends to deal with your complaint.

Please provide us with details of why you believe we should withhold your name and/or the details of your complaint:

**Additional Help**

6. Complaints must be submitted in writing. This includes fax and electronic submissions. However, in line with the requirements of the Equalities Act 2012 we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing. We can also help if English is not your first language.

If you need any support in completing this form, please let us know as soon as possible.

If you have a disability which prevents you from making your complaint in writing we will arrange for someone to meet with you to discuss your

complaint and make notes which can be submitted on your behalf. We can also provide a signer to explain your complaint to us, if you need one. Our documents can be made available in large print, Braille, or easy to read formats if you wish.

We can also help if English is not your first language by providing some documents in other languages, or by providing an interpreter if required.

Signed:

.....

Date:

.....

Please return the form to:-

**Harvey Patterson:  
The Monitoring Officer  
FAO: Chairman of the Standards Committee  
Hertsmere Borough Council  
Civic Offices  
Elstree Way  
Borehamwood  
Herts WD6 1WA**

Further information on making a complaint can be found at:

<https://www.hertsmere.gov.uk/Your-Council/Councillors-MPs--MEPs/Councillors-conduct-and-standards-of-behaviour.aspx>

## Schedule 2

### PROCEDURE ON RECEIPT OF A COMPLAINT

#### 1. Preliminary tests

1.1 The complaint will be assessed by the Monitoring Officer against the legal jurisdiction test in paragraph 1.2 below.

#### 1.2 Legal jurisdiction criteria test:

(a) Did the alleged conduct occur before the adoption of the Code of Conduct?

(b) Was the person complained of an elected or co-opted member of the District or Parish Council at the time of the alleged conduct?

(c) If the facts could be established as a matter of evidence, could the alleged conduct be capable of a breach of the Code of Conduct?

(d) The complaint is about dissatisfaction with the District or Parish Council's decisions, policies and priorities, etc.

1.3 If the complaint fails one or more of the jurisdiction tests, no further action will be taken by the Monitoring Officer and the complaint will be rejected. The Complainant will be notified accordingly within 10 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision.

#### 1.4 Local Assessment Criteria and Standards Assessment Panel

If the complaint satisfies the jurisdiction test, the Monitoring Officer will refer the complaint to the Standards Assessment Panel who will make one the decisions referred to in paragraph 9.1 of these Arrangements having due regard to the following local assessment criteria. any of which, if satisfied, will create a presumption that it may not be in the public interest to investigate the complaint (save that where the Panel is satisfied that (a) or (b) below applies, it will recommend to the Monitoring Officer that No Further Action be taken in respect of the complaint). The local assessment criteria are:- :

- (a) The person complained of was not acting in an official capacity at the time of the alleged conduct;
- (b) The alleged conduct occurred when the person complained of was acting as a member of another authority;
- (c) The complaint is a 'repeat complaint', unless supported by new or further evidence substantiating or indicating that the complaint is exceptionally serious or significant;
- (d) The complaint is anonymous, unless supported by independent documentary evidence substantiating or indicating that the complaint is exceptionally serious or significant;
- (e) No or insufficient information/evidence to substantiate the complaint has been submitted by the Complainant;
- (f) The complaint is malicious, trivial, politically motivated or 'tit-for-tat';
- (g) The complainant is unreasonably persistent, malicious and/or vexatious;
- (h) The alleged misconduct happened more than three months prior to the submission of the complaint (unless it could not reasonably have been uncovered or discovered earlier and the Complainant has complained promptly after uncovering or discovering the misconduct);
- (i) The complaint is relatively minor and dealing with the complaint would have a disproportionate effect on both public money and officers' and Members' time;
- (j) The circumstances have changed so much that there would be little benefit arising from an investigation or other action;
- (k) The complaint has been the subject of an investigation or informal action and there is nothing more to be gained by further action being taken;
- (l) The complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter, e.g. where there is no firm evidence on the matter;
- (m) The complaint is about a deceased person

(n) The complaint is about a person who is no longer a Borough or Parish Councillor or a Co-opted Member.

1.5 Within five working days of the Panel making its decision the Monitoring Officer will prepare a decision notice for signature by the Panel Chairman giving reasons and a copy of the decision notice will be given to the Complainant and Subject Member.

## **2. Notification of Complaint to Subject Member**

2.1 Subject to the decision of the Monitoring Officer in relation to representations received from the Complainant on confidentiality (see paragraph 5 below), the Monitoring Officer will notify the Subject Member and, where applicable, the Parish Clerk of the complaint and the identity of the Complainant.

2.2 The Monitoring Officer may invite the Subject Member and, where applicable, the Parish Clerk to submit initial views on the complaint within 10 working days, which will be taken into account by the Standards Assessment Panel when they decide how to deal with the complaint (see paragraph 4 below). Views received from the Subject Member and/or Parish Clerk after the 10 working day time limit may be taken into account at the discretion of the Monitoring Officer, providing the views are received before the complaint has been referred to the Standards Assessment Panel for consideration and decision.

## **3. Asking for additional information**

3.1 The Monitoring Officer may ask the Complainant, the Subject Member and where applicable, the Parish Clerk for additional information before deciding how to deal with the complaint.

## **4. What process to apply - informal resolution or investigation and/or no action?**

4.1 The Standards Assessment Panel will make a decision on the merits of the complaint taking into account the local assessment criteria.

4.2 Complaints that engage the local assessment criteria are more likely to be rejected - i.e. the decision will be to take No Further Action

4.3 Where the Subject Member has made a reasonable offer of informal resolution it is more likely that the decision will be to instigate the informal

disputes resolution procedure although the seriousness of the complaint and the acceptability of such offer to the Complainant will also be taken into account in making the decision. More information on when it may be appropriate to instigate the informal disputes resolution procedure is given at Paragraph 6 below.

- 4.4 A complaint is more likely to be referred for investigation when:
- (a) it is serious enough, if proven, to justify the range of sanctions available to the Standards Committee (see paragraph 4 of Schedule 4 to these Arrangements;
  - (b) the Subject Member's behaviour is part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the Borough or Parish Council (as the case may be) and there is no other avenue left to deal with it short of investigation. In considering this, the Monitoring Officer may take into account the time that has passed since the alleged conduct occurred.
- 4.5 Where the complaint is referred for investigation, the Monitoring Officer will appoint an Investigating Officer who will conduct the investigation in accordance with the procedure at Schedule 3 to these Arrangements.
- 4.6 If the complaint identifies potential criminal conduct or potential breach of other regulations by the Subject Member or any other person, the Complainant will be advised by the Monitoring Officer to report the complaint to the police or other prosecuting or regulatory authority. In such cases, the complaints process under these Arrangements will be suspended, pending a decision/action by the police or other prosecuting or regulatory authority. Where the police or other prosecuting or regulatory authority decide to take no action on the complaint, the Monitoring Officer will lift the suspension and refer the complaint to the Standards Assessment Panel.
- 4.7 The Monitoring Officer in consultation with the Chairman of the Standards Committee may take no further action in respect of a complaint when one or more of the following apply:

- (a) on-going criminal proceedings or a police investigation into the Subject Member's conduct or where the complaint is suspended in accordance with paragraph 4.6 above;
- (b) investigation cannot be proceeded with, without investigating similar alleged conduct or needing to come to conclusions of fact about events which are also the subject of some other investigation or court proceedings;
- (c) the investigation might prejudice another investigation or court proceedings;
- (d) on-going investigation by another prosecuting or regulatory authority;
- (e) genuine long term (3 months or more) unavailability of a key party;
- (f) serious illness of a key party.

4.8 Within 20 working days of receipt of the complaint, the Monitoring Officer will secure consideration of the complaint by the Standards Assessment Panel. The Panel will make a decision on the complaint and the Monitoring Officer will notify the Complainant, Subject Member and where applicable, the Parish Clerk of such decision within five days of the date of the decision. The decision will be in the form of a decision notice which summarises the complaint, records the decision made and gives reasons for such decision. The decision notice will be published on the Borough Council's website for a minimum of 56 days

4.9 Although there is no right of appeal against the decision of the Standards Assessment Panel, in the event that the Complainant submits additional relevant information, the Monitoring Officer will consider and decide if the matter warrants further consideration under these Arrangements, in which case it shall be treated as a fresh complaint.

## **5. Confidentiality**

5.1 If the Complainant has asked for their identity and/or the existence of the complaint to be withheld from the Subject Member this request will be considered by the Monitoring Officer in accordance with paragraph 5.5 below.

5.2 As a matter of fairness and natural justice, the Subject Member will usually be told who the Complainant is and will also receive details of the



complaint. However, in exceptional circumstances, it may be appropriate to keep the Complainant's identity confidential or not disclose details of the complaint to the Subject Member until the Standards Assessment Panel has considered the complaint and made its decision. Consequently, Complainants should note that the existence and nature of a complaint and the identity of the Complainant will not in any circumstances be withheld from the Subject Member any later than the date of the initial assessment decision by the Standards Assessment Panel.

5.3 Subject to paragraph 5.2 above the Monitoring Officer may withhold the Complainant's identity and/or details of the complaint if they are satisfied that there are reasonable grounds for believing that the Complainant or any other person (e.g. a witness):

- (a) is either vulnerable or at risk of threat, harm or reprisal;
- (b) may suffer intimidation or be victimised or harassed;
- (c) works closely with the Subject Member and are afraid of the consequences, e.g. fear of losing their job;
- (d) suffers from a serious health condition and there are medical risks associated with their identity being disclosed (medical evidence will need to be provided to substantiate this);
- (e) may receive less favourable treatment because of the seniority of the person they are complaining about in terms of any existing Borough or Parish Council service provision or any tender/contract they may have with or are about to submit to the Borough or Parish Council.

OR where early disclosure of the complaint:

- (a) may lead to evidence being compromised or destroyed; or
- (b) may impede or prejudice the investigation; or
- (c) would not be in the public interest.

5.4 Relevant public interest factors favouring disclosure (not an exhaustive list) include:

- (a) to facilitate transparency and ethical governance accountability: recognising that decision-making may be improved by constructive contributions from others;

- (b) to raise public awareness: disclosing the complaint or part of it may inform the community about matters of general concern;
- (c) justice to an individual: the balance of the public interest may favour disclosure of the complaint to the Subject Member when it may not be in the public interest to disclose it to the world at large;
- (d) bringing out in the open serious concerns about the behaviour/conduct of an individual.

5.5 The Monitoring Officer, in consultation with the Chairman of the Standards Committee and the Independent Person will balance whether the public interest in accepting the complaint outweighs the Complainant's wish to have their identity (or that of another person) withheld from the Subject Member. If the Monitoring Officer decides to refuse the Complainant's request for confidentiality, they will offer the Complainant the option to withdraw their complaint. The Complainant will be notified of the Monitoring Officer's decision, with reasons, within 15 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision to refuse the Complainant's request for confidentiality.

## **6. Informal resolution**

- 6.1 These Arrangements enable the Monitoring Officer to resolve complaints informally. In so doing, the Monitoring Officer will consult with the Complainant and the Subject Member to agree what they consider to be a fair resolution, which will help to ensure higher standards of conduct for the future.
- 6.2 Informal resolution may be the simplest and most cost effective way of resolving the complaint and may be appropriate where:
- (a) The Subject Member appears to have a poor understanding of the Code of Conduct and/or related Borough or Parish Council procedures (as the case may be); or
  - (b) There appears to be a breakdown in the relationship between the Complainant and the Subject Member; or

- (c) The conduct complained of appears to be a symptom of wider underlying conflicts which, if unresolved, are likely to lead to further misconduct or allegations of misconduct; or
- (d) The conduct complained of appears common to a number of members of the Borough or Parish Council, demonstrating a lack of awareness, experience or recognition of the particular provisions of the Code of Conduct and/or other Borough/Parish Council procedures, etc; or
- (e) The conduct complained of appears to the Monitoring Officer not to require a formal sanction; or
- (f) The complaint appears to reveal a lack of guidance, protocols and procedures within the Borough or Parish Council; or
- (g) The Complainant and the Subject Member are amenable to engaging in an informal resolution; or
- (h) The complaint consists of allegations and retaliatory allegations between councillors; or
- (i) The complaint consists of allegations about how formal meetings are conducted; or
- (j) The conduct complained of may be due to misleading, unclear or misunderstood advice from officers.

6.3 Informal resolution may consist of one or more of the following actions, which do not have to be limited to the Subject Member, but may extend to other councillors including the whole Borough/Parish Council where it may be useful to address systemic behaviour:

- (a) training;
- (b) conciliation/mediation;
- (c) mentoring;
- (d) apology;
- (e) instituting changes to the Borough or Parish Council's procedures;
- (f) conflict management;
- (g) development of the Borough or Parish Council's protocols;

- (h) other remedial action by the Borough or Parish Council;
  - (i) other steps (other than investigation) if it appears appropriate to the Monitoring Officer in consultation with the Chairman of the Standards Committee and the Independent Person.
- 6.4 If the Subject Member is agreeable to and complies with the informal resolution process, the Monitoring Officer will report the matter to the Standards Committee and, if applicable, the Parish Council for information, but will take no further action.
- 6.5 Where the Subject Member will not participate in the informal resolution process or if, having agreed to one or more actions under the informal resolution process, the Subject Member refuses or fails to carry out any agreed action, the Monitoring Officer will report the matter to the Standards Committee.

# Schedule 3

## PROCEDURE FOR INVESTIGATING THE COMPLAINT

### 1. Preliminaries

1.1 The Investigating Officer will be appointed by the Monitoring Officer and will be aware of their obligations under the Data Protection Act 1998, Equalities Act 2010, the Human Rights Act 1998 and other relevant legislation.

1.2 The Investigating Officer is responsible for gathering all the facts, documents and, where applicable, for interviewing witnesses with knowledge of the facts, and they should remain objective, impartial and unbiased at all times.

1.3 The Subject Member and the Complainant will be advised that the investigation is for fact finding purposes only.

1.4 Witnesses will be identified at the investigation stage and their evidence supported by signed and dated witness statements and/or notes of interview with the Investigating Officer. The Investigating Officer cannot compel the attendance of witnesses or their co-operation.

1.5 The Investigating Officer will **not** make recommendations on sanctions.

1.6 Within 10 working days of being appointed, the Investigating Officer will notify the Subject Member and the Complainant of their appointment and:

- (a) provide details of the complaint to the Subject Member;
- (b) detail the procedure to be followed in respect of the investigation and the relevant timescales for responses and concluding the investigation;
- (c) detail the sections of the Code of Conduct that appear to be relevant to the complaint;
- (d) request contact details of any potential witnesses;
- (e) require that confidentiality is maintained and that details of the complaint not be disclosed to any third party, unless disclosure is to a representative, witness, immediate family members or otherwise as may be required by law or regulation. However, the fact that an investigation is being conducted does not need to remain confidential.

1.7 It may be necessary for the Investigating Officer to agree with the Subject Member which documents will be submitted in evidence. This will generally

include documents that will be relied on, or in support of, the Subject Member's case and which are relevant to the complaint.

1.8 The Investigating Officer may terminate their investigation at any point, where they are satisfied that they have sufficient information to enable them to report to the Monitoring Officer.

## **2. The Draft Report**

2.1 On the conclusion of their investigation the Investigating Officer will issue a draft report (clearly labelled 'DRAFT') to the Monitoring Officer for review.

2.2 Following review by the Monitoring Officer, the draft report will be sent in confidence to the Subject Member and the Complainant (not witnesses) for comment. The draft report will be clearly labelled 'CONFIDENTIAL' and will detail:

- (a) the relevant provisions of the law and the relevant paragraphs of the Code of Conduct;
- (b) a summary of the complaint;
- (c) the Subject Member's response to the complaint;
- (d) relevant information, explanations, etc, which the Investigation Officer has obtained in the course of the investigation;
- (e) a list of any documents relevant to the matter;
- (f) a list of those persons/organisations who have been interviewed;
- (g) a statement of the Investigating Officer's draft findings of fact and reasons;
- (h) the Investigating Officer's conclusion as to whether the Subject Member has or has not failed to comply with the Authority's Code of Conduct;
- (i) that the Investigating Officer will present a final report once they have considered any comments received on the draft.

2.3 Once the Investigating Officer has received any responses from the Subject Member and/or the Complainant, they will finalise the draft report and make their final conclusions and recommendations to the Monitoring Officer. The report will be clearly labelled 'FINAL'.

### **3. Consideration of Investigating Officer's final report**

3.1 The Monitoring Officer will review the Investigating Officer's final report and any comments submitted by the Parties, in consultation with the Independent Person.

3.2 Where, on the basis of the Investigating Officer's report, the Monitoring Officer, having consulted with the Chairman of the Standards Committee and the Independent Person, concludes that there is no evidence of a failure to comply with the Code of Conduct; they will inform the Parties in writing that no further action is considered necessary. There is no right of appeal against the Monitoring Officer's decision.

3.3 Where, on the basis of the Investigating Officer's report, the Monitoring Officer, having consulted with the Chairman of the Standards Committee and the Independent Person, concludes that there is evidence of a failure to comply with the Code of Conduct, he will refer the matter for consideration by the Standards Committee in accordance with the relevant procedure detailed in Schedule 4 to these Arrangements.

3.4 The decision of the Monitoring Officer under Paragraphs 3.2 or 3.3 above shall be reported to the next ordinary meeting of the Standards Committee as an information item,

# Schedule 4

## STANDARDS COMMITTEE

### HEARINGS PROCEDURE

#### 1. Rules of procedure

- 1.1 The quorum for a meeting of the Standards Committee that is conducting a hearing is three Members.
- 1.2 The Independent Person's views must be sought and taken into consideration before the Standards Committee makes a decision:
  - on whether the Subject Member's conduct constitutes a failure to comply with the requirements of the Code of Conduct and, if so;
  - on whether it considers that any sanction should be taken in respect of such failure.
- 1.3 The Independent Person should normally be present throughout the hearing (but not during the deliberations of the Standards Committee in private) but in the event that this is not possible, may instead submit his or her views on the complaint to the Standards Committee in writing.
- 1.4 The legal requirements for publishing agendas, minutes and calling meetings, will apply to the Standards Committee when it conducts a hearing. The hearing will be held in public no earlier than 14 working days after the Monitoring Officer has copied the Investigating Officer's final report to the complainant and the Subject Member. Schedule 12A Local Government Act 1972 (as amended) will be applied to exclude the public and press from meetings if the Standards Committee considers that it is likely that confidential or exempt information will be disclosed.
- 1.5 All matters/issues before the Standards Committee will be decided by a simple majority of votes cast, with the Chairman having a second or casting vote.
- 1.6 Where the Subject Member fails to attend the Standards Committee and where the Standards Committee is not satisfied with their explanation for their absence from the hearing, the Standards Committee may in the first instance, have regard to any written representations submitted by the Subject Member and may resolve to proceed with the hearing in the Subject Member's absence and make a determination or, if satisfied with the Subject Member's reasons for not attending the hearing, adjourn the hearing to another date. The Standards Committee may resolve in exceptional circumstances, that it will proceed with the hearing on the basis that it is in the public interest to hear the allegations expeditiously.<sup>1</sup>

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<sup>1</sup> Janik v Standards Board for England & Adjudication Panel for England (2007)



## **2. Right to be accompanied by a representative**

The Subject Member may choose to be accompanied and/or represented at the Standards Committee by a fellow councillor, friend or colleague. They may **not** be represented by a solicitor, barrister or chartered legal executive.

## **3. The conduct of the hearing**

3.1 Subject to paragraph 3.2 below, the order of business will be as follows:

- (a) apologies for absence;
- (b) declarations of interests;
- (c) in the absence of the Subject Member, consideration as to whether to adjourn or to proceed with the hearing (refer to paragraph 1.11 above);
- (d) introduction by the Chairman, of members of the Standards Committee, the Independent Person, Monitoring Officer, Investigating Officer, legal advisor, complainant and the Subject Member and their representative;
- (e) to receive representations from the Monitoring Officer and/or Subject Member as to whether any part of the hearing should be held in private and/or whether any documents (or parts thereof) should be withheld from the public/press;
- (f) to determine whether the public/press are to be excluded from any part of the meeting and/or whether any documents (or parts thereof) should be withheld from the public/press.

3.2 The Chairman may exercise his discretion and amend the order of business, where he considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

3.3 The Standards Committee may adjourn the hearing at any time.

### **3.4 Presentation of the complaint**

- (a) The Investigating Officer presents their report including any documentary evidence or other material and calls their witnesses. No new points will be permitted;
- (b) The Subject Member or their representative may question the Investigating Officer and any witnesses called by the Investigating Officer;
- (c) The Standards Committee may question the Investigating Officer upon the content of their report and any witnesses called by the Investigating Officer.

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

- (a) The Subject Member or their representative presents their case and calls their witnesses;

- (b) The Investigating Officer may question the Subject Member and any witnesses called by the Subject Member;
- (c) The Standards (Hearings) Sub Committee may question the Subject Member and any witnesses called by the Subject Member.

### **3.6 Summing up**

- (a) The Investigating Officer sums up the complaint; and
- (b) The Subject Member or their representative sums up their case.

### **3.7 Views/Submissions of the Independent Person**

The Chairman will invite the Independent Person to express their view on whether or not they consider that on the facts presented to the Standards Committee, there has been a breach of the Code of Conduct.

### **3.8 Deliberations of the Standards Committee**

#### Deliberation in private

- (a) The Standards Committee will adjourn the hearing and deliberate in private (assisted on matters of law by a legal advisor) to consider whether or not, on the facts found, the Subject Member has failed to comply with the Code of Conduct.
- (b) The Standards Committee may at any time come out of private session and reconvene the hearing in public, in order to seek additional evidence from the Investigating Officer, the Subject Member or the witnesses. If further information to assist the Panel cannot be presented, then the Panel may adjourn the hearing and issue directions as to the additional evidence required and by whom.

### **3.9 Announcing its decision on whether there has been a breach of the Code of Conduct**

- (a) The Standards Committee will reconvene the hearing in public and the Chairman will announce whether or not on the facts found, proved the Panel considers that the Subject Member has failed to comply with requirements of the Code of Conduct of their Authority together with the principal reasons for this decision;
- (b) Where the Standards Committee considers that there has been a failure by the Subject Member to comply with the requirements of the Code of Conduct, the Chairman will invite both the Independent Person and the Subject Member to make their representations as to whether or not they consider any sanctions should be applied and, if so, what form they should take.
- (c) When deciding whether to impose one or more sanctions, the Standards Committee will ensure that any proposed sanctions is reasonable and proportionate to the Subject Member's behaviour and

he Standards Committee will always consider the following questions along with any other relevant circumstances or other factors specific to the local environment:

- (i) What was the Subject Member's intention and did they know that they were failing to follow the Borough/[Parish Council's Code of Conduct?
  - (ii) Did the Subject Member receive advice from officers before the incident and was that advice acted on in good faith?
  - (iii) Has there been a breach of trust?
  - (iv) Has there been financial impropriety, e.g. improper expense claims or procedural irregularities?
  - (v) What was the result/impact of failing to follow the Borough/Parish Council's Code of Conduct?
  - (vi) How serious was the incident?
  - (vii) Does the Subject Member accept that they were at fault?
  - (viii) Did the Subject Member apologise to the relevant persons?
  - (ix) Has the Subject Member previously been reprimanded or warned for similar misconduct?
  - (x) Has the Subject Member previously breached the Borough/Parish Council's Code of Conduct?
  - (xi) Is there likely to be a repetition of the incident?
- (d) Having heard the representations of the Independent Person, the Subject Member and the advice of the Monitoring Officer on the application of sanctions, the Standards Committee will adjourn and deliberate in private.

### 3.10 **Announcing its decision on sanctions**

- (a) Having heard the representations of the Independent Person, the Subject Member and the advice of the Monitoring Officer on the application of sanctions, the Standards Committee will adjourn and deliberate in private
- (b) Where the complaint has a number of aspects, the Standards Committee may reach an opinion and recommend a sanction on each aspect separately.
- (c) The Standards Committee will form its opinions on the balance of probabilities, based on the evidence found to be proved at the hearing.
- (d) Having taken into account the representations of the Independent Person and the Subject Member on the application of sanctions, the Standards Committee will reconvene the hearing in public and the Chairman will announce:
  - (i) the sanctions (if any) to be imposed on the Subject Member;
  - (ii) any other the recommendations (if any) to be made to the Borough/Parish Council or Monitoring Officer;

(iii) that there is no right of appeal against the decisions of the Standards Committee.

#### **4. Range of possible sanctions**

4.1 Subject to Paragraph 4.4 below, where the Standards (Hearings) Sub Committee is of the opinion that the Subject Member has failed to comply with the requirements of the Code of Conduct, any one or more of the following sanctions may be recommended:

- (a) Recommending to the Borough/Parish Council that the Subject Member be issued with a formal censure (i.e. the issue of an unfavourable opinion or judgement or reprimand) by motion;
- (b) Recommending to the Council that the Subject Member be removed from the office of Leader of the Council
- (c) Recommending to the Subject Member's Group Leader or in the case of an ungrouped Member to the Borough Council or in the case of a Parish Council to the Parish Council that the Subject Member be removed from one or more Committees or Sub-Committees of the Borough/Parish Council;
- (d) Recommending to the Leader of the Borough Council that the Subject Member be removed from the Cabinet or removed from particular Portfolio responsibilities;
- (e) Instructing the Monitoring Officer or making a recommendation to the Parish Council to arrange training for the Subject Member;
- (f) Recommending to the Borough/Parish Council that the Subject Member be removed from one or more outside appointments to which they have been appointed or nominated by the Council;
- (g) Recommending to the Borough/Parish Council that it withdraws facilities provided to the Subject Member by the Council, such as a computer, website and/or email and internet access;
- (h) Recommending to the Borough/Parish Council the exclusion of the Subject Member from the Borough/Parish Council's offices or other premises, with the exception of such meeting rooms as are necessary for attending meetings of the Borough/Parish Council and its Executive, Committees and Sub-Committee (as the case may be);
- (i) Reporting the findings of the Standards Committee to the Borough/Parish Council for information;
- (j) Instructing the Monitoring Officer to apply the Informal Disputes Resolution Procedure ;
- (k) Sending a formal letter to the Subject Member;
- (l) Recommending to the Borough/Parish Council to issue a press release or other form of publicity;
- (m) Publishing its findings in respect of the Subject Member's conduct in such manner as the Standards Committee considers appropriate.

4.2 The Standards Committee has no power to suspend or disqualify the Subject Member or to withdraw basic or special responsibility allowances.

4.3 The Standards Committee may specify that any sanction take effect immediately or take effect at a later date and that a sanction be time limited.

## **5. Publication and notification of the decisions and recommendations of the Standards Committee**

5.1 Subject to Paragraph 5.2 below the Monitoring Officer will within 10 working days of the date of the Hearing publish on the Council's web-site for not less than 56 days a Decision Notice of the decision(s) and/or recommendation(s) of the Standards Committee giving the principal reasons of the Committee for such decision(s) and/or recommendation(s). At the same time a copy of the Decision Notice will be sent to:-

- (a) the Subject Member;
- (b) the Complainant;
- (c) the Clerk to the Parish Council (*if the Subject Member is a Town or Parish Councillor*);
- (d) The Subject Member's Group Leader (*if any*); and
- (e) Hertfordshire County Council's Standards Committee (*only where the Subject Member is both a Borough and County councillor.*)

5.2 Where the Standards Committee determines that the Subject Member has not failed to comply with the requirements of the Code of Conduct, the Subject Member shall be entitled to request the Standards Committee not to publish the Decision Notice on the Council's web-site in which case the Monitoring Officer shall give effect to the wishes of the Subject Member in this regard.

5.3 The Monitoring Officer will report as an information item the opinions and/or recommendations of the Standards Committee sitting as a Hearing Committee to the next ordinary meeting of the Standards Committee.

## **6. Evidence of Further Breaches of the Code of Conduct**

If any evidence presented to the Standards Committee tends to indicate other potential breaches of the Borough/Parish Council's Code of Conduct, then the Committee may by resolution refer the matter to the Monitoring Officer as a new complaint. In this event the Chairman of the Standards Committee will outline the concerns of the Committee before referring the matter to the Monitoring Officer.