

## Annex 1

### Comparator Procedures

#### **LEEDS**

#### **Procedure for considering complaints alleging a failure to comply with a Members' Code of**

#### **Conduct**

Part 4(k)

Issue 2 – 2022/23

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#### **PROCEDURE FOR CONSIDERING COMPLAINTS ALLEGING A FAILURE TO COMPLY WITH A MEMBERS' CODE OF CONDUCT WITHIN THE AREA OF LEEDS METROPOLITAN DISTRICT COUNCIL**

##### Introduction

1. This procedure should be used to deal with complaints submitted under the Members' Code of Conduct adopted by Leeds City Council and the Parish and Town Councils in the Leeds area.
2. The Members' Code of Conduct applies to elected Members and voting co-opted members when they are acting in that capacity and this procedure relates to all complaints relating to allegations that a Member or Co-opted Member has failed in their obligations under the Code of Conduct adopted by the relevant Authority,
  - a) Complaints which relate to a failure to comply with the rules about 'Disclosable Pecuniary Interests' will not be accepted and should be directed by the complainant to the West Yorkshire Police for their consideration.
  - b) Complaints relating to an employee or which relate wholly to a service related issue, will not be accepted by the Monitoring Officer under this procedure but instead the complainant will be referred to the relevant service in order for them to respond to the complainant directly.
3. The Monitoring Officer may nominate another officer of suitable experience and seniority to carry out any of the functions listed in this procedure.

##### Stage 1 - Initial assessment by the Monitoring Officer

4. Complaints must be submitted in writing<sup>1</sup>, must provide substantiated information to evidence the issue complained of, and should outline what form of resolution the complainant is seeking, otherwise the Monitoring Officer shall ask the complainant to resubmit their complaint or provide further information. Ideally the complainant should use the complaint form to submit their complaint, but other written complaints will be accepted so long as they contain the relevant information.
5. The Monitoring Officer will acknowledge receipt of the complaint and provide the complainant with a copy of this procedure. They will then assess the complaint<sup>2</sup> in consultation with the Independent Person. The Council will 'Take No Further Action' where a complaint appears to be intended to cause annoyance, frustration or worry (vexatious), is intended to do harm (malicious), or where it is apparent that a complaint has little or no substance (frivolous), particularly in terms of value or importance to the wider Public Interest (i.e. trivial complaints) or are politically motivated or

tit-for-tat. For any other complaint, the Monitoring Officer will assess the complaint and make a decision as to whether it is valid and whether it should be

1 Complaints about the conduct of a parish or town councillor towards a clerk should be made by the chair or the by the parish or town council as a whole, rather than by the clerk in all but exceptional circumstances.

2 Including seeking and reviewing any readily obtainable information (including observations and recollections from the Subject Member).

Procedure for considering complaints alleging a failure to comply with a Members' Code of Conduct

Part 4(k)

Issue 2 – 2022/23

Last amended on 20th March 2023

upheld and where the complaint is upheld, whether further action would be proportionate and/or in the public interest.

6. The following types of complaint<sup>3</sup> will not be considered as 'valid complaints' under this procedure and will result in No Further Action being taken:

- a. Complaints which are submitted anonymously<sup>4</sup>;
- b. Complaints which do not identify a subject Member;
- c. Complaints which relate to a Member's personal or private life;
- d. Complaints concerning a failure to respond to a request from a constituent or other individual;
- e. Complaints which relate to the alleged actions of employees of the Council or non-voting co-optees;
- f. Complaints which relate to a decision of an employee or a Committee;
- g. Complaints which relate to a person who is no longer a Member of the Council or which refer to alleged incidents before the person became a Member of the Council;
- h. Complaints which refer to alleged incidents which happened so long ago<sup>6</sup> that there would be little benefit in taking action now;
- i. Complaints which relate to an alleged failure to comply with the rules regarding 'Disclosable Pecuniary Interests';<sup>7</sup>
- j. Complaints containing trivial allegations, cause annoyance, frustration or worry (vexatious), or intended to do harm (malicious), or where it is apparent that a complaint has little or no substance (frivolous), particularly in terms of value or importance to the wider Public Interest (i.e. trivial complaints), are politically motivated or tit-for-tat;

The following types of complaint will not be upheld:

<sup>3</sup> Specified in sub-paragraph (a) – (j).

4 Complaints which contain a request for the complainant's identity to be withheld may be considered to be 'valid complaints', although the complainant's identity will only be withheld in exceptional circumstances. If the Monitoring Officer does not consider it appropriate to withhold the complainant's identity, the complainant will be given the opportunity to withdraw their complaint before it proceeds to the next stage.

5 Anonymous complaints which reveal potential fraud or corruption will be referred to Internal Audit for consideration under the Council's adopted Whistle blowing Policy.

6 In general terms complaints should be submitted within 6 months of the alleged incident.

7 Such complaints should be redirected by the complainant to the West Yorkshire Police the Monitoring Officer will provide contact details to the Complainant.

Procedure for considering complaints alleging a failure to comply with a Members' Code of Conduct

Part 4(k)

Issue 2 – 2022/23

Last amended on 20th March 2023

k. Complaints regarding alleged behaviour which has already been the subject of an investigation or some form of action, or are more suited for resolution through alternative means;

l. Complaints which do not evidence a failure to comply with obligations under the Members' Code of Conduct or otherwise do not relate to the Members' Code of Conduct;

m. Complaints where it is not possible to investigate, or in relation to which there is no action which could be taken which would achieve an outcome sought by the complainant in the circumstances of the case.

7. In all cases where the complaint names a Member of a relevant authority, the Member will be notified of the complaint<sup>8</sup> and the name of the complainant<sup>9</sup> and invited to comment.

8. In any case where the Monitoring Officer decides that the complaint cannot be progressed further under the procedure, they will write to the complainant explaining why. There is no Council appeal process for decisions taken by the Monitoring Officer at this stage, however complainants will be advised of their right to contact the Local Government and Social Care Ombudsman.

Stage 2 - Informal resolution

9. If, following assessment, the Monitoring Officer decides that the complaint should be upheld they will write to the complainant and explain that the matter is to be referred to the subject Member for the Member to seek to resolve the issue in accordance with this procedure.

10. At the same time, the Monitoring Officer will refer the matter to the subject Member<sup>10</sup> and the relevant Group Whip<sup>11</sup> for their consideration. The Monitoring Officer will provide the subject Member with a reasonable timescale within which to attempt to resolve the complaint (usually this will be 28 days) and will provide the subject Member with the contact details for the Independent Person<sup>12</sup>.

11. Types of informal resolution might include:

- a. An explanation by the subject Member of the circumstances surrounding the complaint;
- b. An apology from the subject Member;

8 Information shared will include details of the complainant and their complaint. The Subject Member will receive this information as a data controller in their own right and all usual data protection controls will apply.

9 Except where the Monitoring Officer is satisfied the complainant should remain anonymous.

10 Information shared will include details of the complainant and their complaint. The Subject Member will receive this information as a data controller in their own right and all usual data protection controls will apply.

11 If the subject Member is the Group Whip, the complaint will be copied to their Group Leader. In the case of a Parish or Town Council without structured political groups, the Monitoring Officer could consider involving the Chairperson of the Council.

12 See Annex 1 for a summary of the role of the Independent Person.

Procedure for considering complaints alleging a failure to comply with a Members' Code of Conduct

Part 4(k)

Issue 2 – 2022/23

Last amended on 20th March 2023

- c. An agreement from the subject Member to attend relevant training or to take part in a mentoring process;
- d. Offering to engage in a process of mediation or conciliation between the subject Member and the complainant; or
- e. Any other action capable of resolving the complaint.

12. Before deciding upon a course of action the subject Member may seek guidance from a Group Whip, the Independent Person, and/or the Monitoring Officer or an appropriate senior person nominated by them. It may also be appropriate for the Monitoring Officer<sup>13</sup> to seek the view of the complainant to ascertain what form of informal resolution they would find acceptable, particularly if the form of resolution they have specified in their complaint is not possible.

13. The Independent Person is available to the subject Member to give them advice on the severity of the complaint and what form of resolution they would consider appropriate. Providing such guidance will not prevent the Independent Person from giving a view to the Standards and Conduct Committee about the complaint at a later stage.

14. At the end of the period given to resolve the complaint, the Monitoring Officer will, in consultation with the Chair of the Standards and Conduct Committee and the Independent Person, seek to establish whether the subject Member (or Group Whip) has appropriately addressed matters which have been raised by the complainant.

15. Where the subject Member has appropriately addressed the matters raised there will be no further action taken in respect of the complaint and the Monitoring Officer will notify both the complainant and the subject Member of this decision.

16. Where, in the opinion of the Monitoring Officer in consultation with the Independent person, it has not been possible to appropriately address matters, the complaint will be referred to the Standards and Conduct Committee for consideration. The Monitoring Officer will notify both the complainant and the subject Member of this decision and will provide the subject Member with information regarding the Council's insurance arrangements (and how legal representation may be accessed).

17. There will be no appeal process for decisions taken by the Monitoring Officer and the Chair of the Standards and Conduct Committee at this stage.

### Stage 3 – Standards and Conduct Committee

18. The Monitoring Officer will commission a report of the complaint for consideration by the Standards and Conduct Committee. This report will include readily obtainable information, a summary of the complaint, the Monitoring Officer's assessment of it and the efforts made to resolve the matter informally.

13 Or other suitable senior person as appropriate (including that Members' Whip)

Procedure for considering complaints alleging a failure to comply with a Members' Code of Conduct

Part 4(k)

Issue 2 – 2022/23

Last amended on 20th March 2023

19. The Monitoring Officer must arrange for a meeting of the Standards and Conduct Committee (or the relevant Sub-Committee<sup>14</sup>)<sup>15</sup> to be convened to consider the report. Wherever possible the meeting will take place within 28 days of the report being finalised.

20. If the complaint relates to a Parish or Town Councillor, one of the co-opted Parish Members will be invited to attend the Committee meeting. The Parish Member will not be entitled to vote at the meeting but will be entitled to speak, at the discretion of the Chair.

21. The following people will also be invited to attend the Committee meeting:

- a. The complainant;
- b. The subject Member;
- c. The Group Whip (if relevant); and
- d. The Independent Person.

If the complainant or the subject Member are unable to attend the meeting they will be asked for a written statement for consideration by the Committee.

22. The Monitoring Officer will attend the meeting in order to advise the Committee.

23. At the beginning of the meeting the Committee will be asked to resolve whether the complaint should be considered in private in accordance with the provisions of Rule 10 of the Access to Information Procedure Rules relating to exempt information. If the meeting is to be held in private the press and public will be excluded<sup>16</sup>.

24. After initial consideration of the commissioned report, the Committee may ask questions of anyone present at the meeting in order to reach a conclusion on the complaint.

25. Before reaching a final decision on the complaint, the Committee must seek, and take account of, the view of the Independent Person in relation to the complaint.

26. If the Committee is unable to reach a conclusion on the complaint on the basis of the information before it, it may adjourn the meeting and request that the Monitoring Officer seeks the further

14 Such Sub-Committee will be made up of three Members of the Standards and Conduct Committee, one of whom must be from the same political group as the subject Member (wherever possible), but not all of the Members will be from the same political group. The Chair will be elected from among the membership at the beginning of the meeting, but cannot be from the same political group as the subject Member.

15 References to the Committee in rules 21 to 36 below shall be read as references to the Sub-Committee if such sub-committee has been appointed and is convened to hear the complaint.

16 The Committee may invite people to remain in the meeting if it is considered that they could provide information relevant to the complaint.

Procedure for considering complaints alleging a failure to comply with a Members' Code of Conduct

Part 4(k)

Issue 2 – 2022/23

Last amended on 20th March 2023

information required. However, when doing so the Committee should consider whether the information will be readily available to the Monitoring Officer.

27. Once the Committee is satisfied with the information before it, it must decide on the balance of probabilities whether the subject Member has failed to comply with the Members' Code of Conduct and if so,

- a. Whether further action is warranted; and
- b. What form of action might be appropriate; and
- c. Whether to make any other general recommendation to the authority.

28. If the Committee concludes that the subject Member did not fail to comply with the Members' Code of Conduct, this will conclude the complaints process. In such cases no further action will be taken in respect of the complaint, although the Committee may still wish to consider making a recommendation to the authority with a view to promoting and maintaining high standards of conduct in general. Such recommendations may include proposed changes to internal procedures and practices or training for Members in general.

29. If the Committee concludes that the subject Member has failed to comply with the Members' Code of Conduct, the Committee must consider whether further action is warranted in respect of the subject Member, and recommend what form of action might be appropriate.

30 The recommendations available to the Committee include but are not limited to:

a. A formal letter to the subject Member from the Chair of the Standards and Conduct Committee setting out the conclusions of the Committee;

b. Formal censure by a motion of full Council; or

c. Removal by the authority of the Member from a relevant Committee(s) subject to statutory and constitutional requirements.

The Committee has no authority to disqualify or suspend the subject Member as a Councillor.

31. The Committee may make a recommendation in relation to one or more of the above to full Council or, if appropriate, the Town or Parish Council, the Group Whip or the Chair of the Standards and Conduct Committee.

32. The Committee may also make general recommendations to the relevant authority<sup>17</sup> with a view to promoting and maintaining high standards of conduct within the authority. As stated above, such recommendations may include proposed changes to internal procedures and practices or training for Members in general. The Monitoring Officer will be responsible for communicating such recommendations to the relevant Committee or officer for consideration.

17 Which shall be Leeds City Council and / or the Town or Parish Council concerned as appropriate

Procedure for considering complaints alleging a failure to comply with a Members' Code of Conduct

Part 4(k)

Issue 2 – 2022/23

Last amended on 20th March 2023

33. Within five working days of the Committee meeting, the Chair of the Committee will write to the complainant and the subject Member explaining the final decision of the Committee and detailing any recommendations made.

34. There will be no right of appeal against a decision of the Committee.

## ANNEX 1 - ROLE OF THE 'INDEPENDENT PERSON'

### Role of the Independent Person

The role of the independent person is set out in Section 28 of the Localism Act 2011.

As part of its arrangements under which decisions on allegations can be made, each principal authority must appoint at least one independent person.

The independent person's views will be sought, and taken into account, by the authority before:-

☐ Making a decision at Stage 1 of this procedure;

☐ Making a decision as to whether the subject Member has appropriately addressed matters raised by the complainant by way of informal resolution at Stage 2 of this procedure;

☐ Making a decision on an allegation that it has decided to investigate under Stage 3 of this procedure.

A member or co-opted member of the authority (or of a parish council in the area) may seek the Independent Person's views on an allegation made against them.



## **The Standards Committee and Standards Sub-Committee**

### **1, Role of the Standards Committee**

1.1 The Standards Committee is a key component of the Council's corporate governance arrangements. Its primary function is to advise the Council on discharging its statutory duty under the Localism Act 2011 to promote and maintain high standards of conduct among Elected Members.

### **2, Membership**

2.1 Six Elected Members reflecting the overall political balance of the Council. Two Co-opted Independent Members appointed from the local community.

### **3, Frequency of Meetings**

3.1 The Committee will normally meet on two occasions during the Municipal Year. The

Chair will be able to call additional meetings should this be required.

### **4, Functions of the Standards Committee**

4.1 To review the Member Code of Conduct on an annual basis in the light of best practice and statutory guidance.

4.2 To respond on behalf of the Council to consultations on issues relating to standards of conduct of Members under any relevant provision.

4.3 To consider complaints against Councillors and Parish/Town Councillors referred to the Council alleging breaches of local Codes, determining whether matters should proceed to investigation and making recommendations on sanctions.

### **5. Functions of the Standards Sub-Committee**

5.1 To consider allegations of Elected Member misconduct except where the Chair of the Committee agrees that the whole Committee should be convened when a complaint merits consideration by the full Committee

### **6. Accountability Arrangements**

6.1 To publish an Annual Report on the work of the Committee and its performance in relation to the terms of reference and the effectiveness of the Committee.

### **7. Arrangements for the Conduct of Business**

#### **7.1 Conduct of Meetings**

Meetings are to be conducted in accordance with the Council's Procedure Rules.

#### **7.2 Conflicts of Interest**

If any Member of the Committee has a conflict of interest they must act in accordance with the Code of Conduct.

#### **7.3 Quorum**

The quorum for the Committee shall be no less than three Members of the Committee including one co-opted Member.

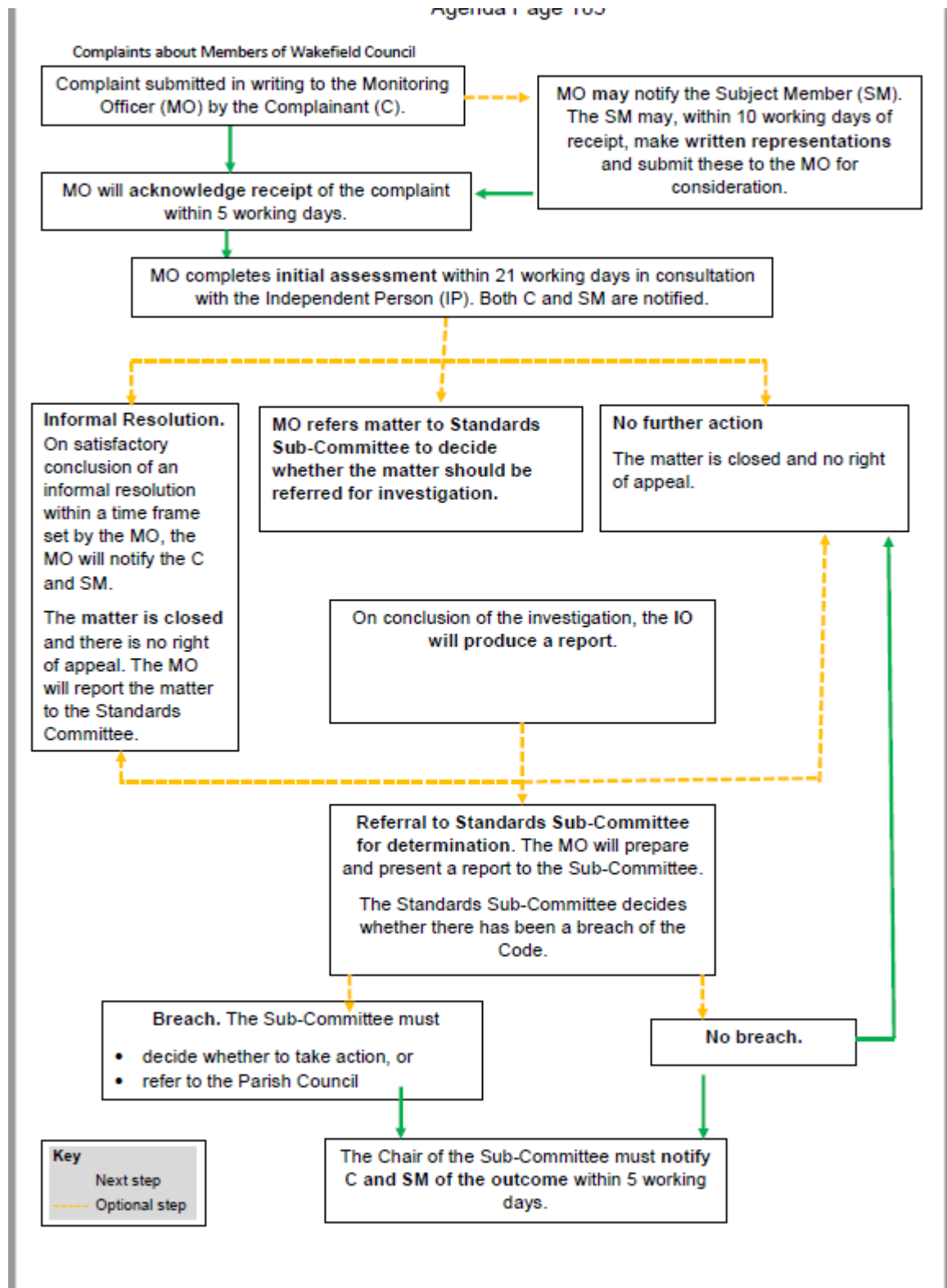
The quorum for the Sub-Committee shall be no less than 3 Members of the Standards Committee including one co-opted Member

#### **7.4 Chair of the Meeting**

The Council will appoint the Chair of the Committee. The Sub-Committee will appoint a Chair from amongst their number at each meeting.

#### **7.5 Attendees**

Rights to attend are set out in the Access to Information Procedure Rules in Part 4 of the Constitution.



## **NORTH YORKSHIRE**

### Standards arrangements

These arrangements set out how you may make a complaint that an elected or co-opted member of the North Yorkshire Council (or of a parish or town council within its area) that an elected or voting co-opted Member has failed to comply with that Council's Code of Conduct for Members.

These arrangements are made under Sections 28(6) and (7) Localism Act 2011.

#### 1 Independent Person

The Council has appointed Independent Persons whose views must be sought by the Council before it takes any decision on an allegation which has been decided should be investigated. The Independent Person's views can also be sought by the Council at any other stage or by a Member (or member or co-opted member of a parish or town council within the Council's area) against whom an allegation has been made. In practice complaints are dealt with by the Monitoring Officer, and by the Standards and Governance Committee.

#### 2 Members' Code of Conduct

The Council has adopted a Code of Conduct for Members, which is also published on the Council's website.

Each parish or town council is also required to adopt a code of conduct. If you wish to inspect a parish or town council's code of conduct, you should inspect any website operated by the parish or town council or request the clerk to allow you to inspect that council's code.

#### 3 Making a Complaint

If someone considers there has been a breach of the Code of Conduct by a Member, and wants to make a complaint, they should write or send an email to:

The Monitoring Officer  
North Yorkshire Council  
County Hall  
Northallerton  
North Yorkshire

DL7 8AD

email: [MonitoringOfficer@northyorks.gov.uk](mailto:MonitoringOfficer@northyorks.gov.uk)

Where possible, the standard complaint form should be used. It is available from the Monitoring Officer at the above address.

It is important to provide a name and contact address. Please note that the Council will not investigate anonymous complaints unless there is a significant public interest in doing so.

#### 4 Timescales

We aim to deal with any complaint, so far as possible, within 3 months of receipt, or as soon as possible thereafter.

The Monitoring Officer will acknowledge receipt of your complaint within 5 working days and will keep you informed of progress.

#### 5 Assessment for Investigation or Other Action

Every complaint relating to the Code of Conduct will be received by the Monitoring Officer.

The Member who is the subject of a complaint ('the subject Member') will be advised of the complaint and copied into any relevant correspondence or complaint form received from the Complainant. Where a complaint relates to a parish or town councillor, the Monitoring Officer may also inform the parish or town council of the complaint and seek views before deciding whether the complaint merits formal investigation or any other action. The Monitoring Officer will review complaints and consult with the Independent Person in doing so, and will decide whether a complaint merits formal investigation or any other action. Where there is a difference of opinion between the Monitoring Officer and the Independent Person, then the allegation will be investigated.

This assessment will take place, where possible, within 20 working days of receipt of the complaint or as soon as possible thereafter. The Monitoring Officer may request more information to assist the decision as to whether investigation is appropriate.

The subject Member may also be requested to provide information about the matter.

The Monitoring Officer will advise you, in writing, of their decision about whether or not the matter should be investigated.

If the complaint identifies criminal conduct or breach of other regulation, the Monitoring Officer will consult the Police and/or such other regulatory agencies as they consider appropriate.

The Monitoring Officer will not refer for investigation matters which are, in their opinion, and after consultation with the Independent Person, vexatious, offensive, trivial or politically motivated. Regard may be had to the Standards and Governance Committee Protocol for dealing with Unreasonably Persistent/Vexatious Complainants in this respect and in relation to the handling of such complaints generally.

If the Monitoring Officer has a conflict of interest or does not for any other reason consider it appropriate that they undertake initial assessment of a complaint, it will be referred to the Standards and Governance Committee.

The Standards and Governance Committee will be informed of the outcome of all complaints received. In addition, the Monitoring Officer shall, when they deem it appropriate, liaise with the Chair of the Committee regarding patterns of complaints, for example where large numbers of complaints are received against a particular

Member, a specific complaint relating to one Member is registered by more than one complainant or there is an unusually large number of complaints generally.

#### 6 Informal Resolution

Wherever possible the Monitoring Officer will seek to resolve a complaint informally without the need for formal investigation or referral to the Standards and Governance Committee.

This may involve trying to mediate between the parties, aiming to clarify misunderstandings, or encouraging discussion between the Complainant and subject Member to enable a resolution between them, or where appropriate, an apology. It may also involve other remedial action by the Council.

If the Member or the Council make a reasonable offer of local resolution but the Complainant is not willing to accept the offer, the Monitoring Officer will take this into account in deciding whether a complaint merits formal investigation.

#### 7 Investigation

If the Monitoring Officer concludes that a matter merits investigation, the Complainant will be invited to submit all information they wish to submit in support of their allegation within 10 working days of request.

Once the information is received it will be sent to the Member who is subject to the complaint, who would also be invited to submit all information they wish to be considered in response within 10 working days.

Throughout the process the Monitoring Officer will ensure the subject Member and Complainant receive appropriate support and assistance.

The Monitoring Officer may also appoint a member of their staff to oversee the gathering of information relating to the matter which will comprise the investigation ('the Nominated Officer'). The Nominated Officer will consider whether any further information is needed and take steps so far as possible to secure its production.

A report containing the information provided by the Complainant and subject Member will be prepared by the Nominated Officer and copied to both parties and sent to the Monitoring Officer. The report will conclude with a recommendation as to whether it is considered that there has been a breach of the Code.

#### 8 Conclusion of no evidence of failure to comply with the Code of Conduct

The Monitoring Officer will receive and review the report and consult the Independent Person upon it. Subsequently, if satisfied that the report is sufficient, the Monitoring Officer will write to the Complainant and the subject Member notifying them that they are satisfied that no further action is required.

#### 9 Conclusion that there is evidence of failure to comply with the Code of Conduct

The Monitoring Officer will review the report and consult the Independent Person as to whether local resolution may be possible. If any suggested resolution is not agreed, the matter will be referred to the Standards and Governance Committee for consideration.

If the matter can reasonably be resolved in the Monitoring Officer's opinion without the need for a hearing they will consult the Independent Person, with the Complainant and subject Member, to seek to agree a fair resolution which will also ensure higher standards of conduct for the future.

As with initial assessment this can include the Member accepting that conduct was unacceptable and offering an apology, and/or other remedial action by the Council. If the Member complies with the suggested resolution the matter will be reported to the Standards and Governance Committee but no further action will be taken.

#### 10 Hearing

If local resolution is not appropriate, or the Complainant or subject Member are not satisfied with the proposed resolution, or the subject Member is not prepared to undertake any proposed remedial action, the report will be reported to a Hearings Panel ('the Panel') of 3 Members from the Standards and Governance Committee. Where a complaint is in relation to a town or parish councillor the Panel will also include a town or parish councillor representative. The parish representative will not be from the same parish as the subject Member. The Independent Person will attend all Panel meetings and will be consulted by the Panel in making its decision about whether there has been a breach of the Code and any action to be taken.

The Panel will meet to decide whether the Member has failed to comply with the Code of Conduct and, if so, whether to take any action.

The report will be presented to the Panel. The Complainant and the subject Member will be invited to attend the Panel to present information and make representations in relation to the allegations that there has been a failure to comply with the Code of Conduct. The Independent Person will be present. The Panel can proceed in the absence of either the subject Member or the Complainant where it deems this to be appropriate.

The Panel shall consult with the Independent Person and be advised by the Monitoring Officer. It may conclude:

- (a) that the Member did not fail to comply with the Code of Conduct;
- (b) that the Member did fail to comply with the Code of Conduct; and, if it so concludes, the Panel may determine whether any action is necessary and, if so, what sanction is appropriate.

#### 11 What action can the Panel take if there has been a breach of the Code of Conduct?

The Panel may:

- (a) issue a letter of censure to the Member and where appropriate require an apology to be given to the Complainant;
- (b) recommend to the Member's Group Leader that they be removed from any or all committees or sub-committees of the Council;

(c) instruct the Monitoring Officer to arrange training for the Member;

except where the Subject Member is a parish or town council Member in which case the Panel can only make recommendations to the relevant town/parish council.

The Panel has no power to suspend or disqualify the Member or to withdraw allowances.

The Panel shall consult the Independent Person and decide what, if any, publicity should be undertaken regarding the outcome of the matter. Options for such publicity include a notice on the Council's website or a press release.

12 What happens at the end of the hearing?

The Chair of the Panel will announce the decision of the Panel as to whether the Member has failed to comply with the Code of Conduct and as to any action it deems necessary. The Monitoring Officer will prepare a Decision Notice which will be given to the subject Member and the Complainant within 10 working days. The outcome will be reported to the next meeting of the Standards and Governance Committee.

13 Revision of these arrangements

The Council may by resolution agree to amend these arrangements and delegates to the Chair of the Panel the right to depart from these arrangements where they consider it expedient to do so to secure the effective and fair consideration of any matter.

14 Appeals

There is no right of appeal for the Complainant or the subject Member against a decision of the Monitoring Officer or Panel.

If the Complainant feels that the Council has failed to deal with the complaint properly they may make a complaint to the Local Government and Social Care Ombudsman.

March 2023