

## GUILDFORD BOROUGH COUNCIL

# ARRANGEMENTS FOR DEALING WITH ALLEGATIONS OF MISCONDUCT BY COUNCILLORS AND CO-OPTED MEMBERS

### 1 Context

- 1.1 Under Section 28(6) and (7) of the Localism Act 2011, the Council, and each Parish Council within the borough area, must have in place arrangements under which allegations that a councillor or co-opted member ('Member') of the Council or relevant Parish Council has failed to comply with the relevant code of conduct (whether of the Council or the relevant Parish Council) can be made, investigated, and decisions can be made on such allegations.
- 1.2 These arrangements for dealing with allegations of misconduct by councillors and co-opted members ('Arrangements') apply when a complaint is received that a Member of the Council or relevant Parish Council has or may have failed to comply with the Code of Conduct for Members ('the Code').
- 1.3 The terms capitalised in these Arrangements are as defined within the text or at paragraph 2, Interpretation, below.
- 1.4 The Council may by resolution agree to amend these Arrangements, and has delegated to the Corporate Governance and Standards Committee the right to depart from these Arrangements where on the advice of the Monitoring Officer the Sub-Committee considers it expedient to do so in order to secure the effective and fair consideration of any matter and is lawful, and is consistent with the principles of natural justice.
- 1.5 The Council shall appoint one or more Independent Persons from outside the Council to assist the Monitoring Officer and the Corporate Governance and Standards Committee in considering complaints, and whose views:
- (a) must be sought by the Council before it takes a decision on any allegation which it has decided shall be investigated,
  - (b) may be sought by the authority at any other stage, and
  - (c) may be sought by a councillor or co-opted member against whom an allegation has been made.
- 1.6 No Member of the Council will participate in any stage of the arrangements if he or she has, or may have, any conflict of interest in the matter.

### 2 Interpretation

- 2.1 'Assessment Sub-Committee' means the Sub-Committee of the Corporate Governance and Standards Committee constituted in accordance with paragraph 7.6 of these Arrangements.

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- 2.2 'Code of Conduct for Members' means the code of conduct for councillors and co-opted members adopted by the Council, or in relation to a Parish Council the code of conduct adopted by that Parish Council.
- 2.3 'Complainant' means a person who has submitted a complaint in accordance with these Arrangements alleging that a Subject Member has breached the Code of Conduct.
- 2.4 'the Corporate Governance and Standards Committee' means the Corporate Governance and Standards Committee or to a sub-committee to which it has delegated the assessment of complaints or the conduct of a hearing unless the context indicates that it refers only to the Corporate Governance and Standards Committee.
- 2.5 'Formal Investigation' means the process described at paragraph 9 of these Arrangements.
- 2.6 'Hearings Sub-Committee' means the Sub-Committee of the Corporate Governance and Standards Committee constituted in accordance with Appendix 3 of these Arrangements.
- 2.7 'Independent Member' means a co-opted person who is not a Councillor or Officer of the Council who sits on the Corporate Governance and Standards Committee in an advisory capacity but who is not entitled to vote.
- 2.8 'Independent Person' means the person (of whom there may be more than one) appointed by the Council under section 28(7) of the Localism Act 2011 who has the functions set out in that Act, as referred to in paragraph 1.5 above.
- 2.9 'Informal Resolution' means the procedure described in these Arrangements at paragraph 8.
- 2.10 'Investigating Officer' means the person appointed by the Monitoring Officer to undertake a formal investigation of a complaint alleging a breach of the Code of Conduct by a Subject Member. The Investigating Officer may be another officer of the Council, an officer of another authority or an external investigator.
- 2.11 'Investigation Report' means the report prepared in accordance with paragraphs 21 to 24 of the Procedure for Local Investigation of Assessed Complaints at Appendix 2.
- 2.12 'Monitoring Officer' means the statutory officer appointed by the Council under the Local Government and Housing Act 1989 Sections 5 and 5A, being the officer of the Council who is responsible for administering the system of complaints about member misconduct and as part of that role may nominate another officer of suitable experience and seniority to carry out any of the functions listed in these Arrangements.
- 2.13 'Parish Member' means a co-opted member of any parish council within the borough who sits on the Corporate Governance and Standards Committee and in respect of parish matters the Assessment or Hearings Sub-Committees in an advisory capacity but who is not entitled to vote at meetings.

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- 2.14 'Police Reporting Protocol' means the protocol as may be adopted from time to time describing how the Council and the Police will cooperate in the event of the discovery of information or evidence tending toward indicating that a crime has been, or may have been, committed and titled the *Protocol between Guildford Borough Council and Surrey Police regarding the investigation of alleged criminal conduct by Councillors*.
- 2.15 'Subject Member' means an elected or co-opted member of the Council or any elected or co-opted member of any parish council within the borough against whom a complaint has been made alleging a breach of the Code of Conduct.

### 3. Making a complaint

- 3.1 All complaints must be made in writing and shall be on the official complaint form. The complaint form can be posted or e-mailed to the Council's Monitoring Officer whose contact details are:

Monitoring Officer  
Guildford Borough Council  
Legal Services  
Millmead House  
Millmead  
GUILDFORD  
Surrey GU2 4BB  
Email: [monitoringofficer@guildford.gov.uk](mailto:monitoringofficer@guildford.gov.uk)  
Telephone: 01483 444135

- 3.2 Complainants who find difficulty in making their complaint in writing (e.g. because of a disability) will be offered assistance. A request for assistance should be made in the first instance by contacting the Monitoring Officer, whether in person, by phone, or email (whether by themselves or by somebody assisting them) using the contact details set out in paragraph 3.1 above.
- 3.3 A complaint should describe the resolution (whether formal or otherwise) sought, and must provide substantiated information: the Monitoring Officer shall rely wholly on information and evidence accompanying a complaint when conducting the Initial Jurisdiction Test. Further information regarding the range of formal sanctions available is set out in paragraph 27 of Appendix 3.

### 4. Complaints identifying possible criminality, complainant confidentiality, and anonymous complaints,

#### Anonymous Complaints

- 4.1 Anonymous complaints will not normally be investigated, and will only be accepted in exceptional circumstances where the Monitoring Officer (in consultation with the Independent Person) concludes that the balance of the public interest lies in doing so, and the fairness of the procedure is maintained.

#### Complaints Identifying Possible Criminality

- 4.2 If the complaint identifies criminal conduct by any person, the Monitoring Officer shall, having regard to the Police Reporting Protocol, make a report to the Police or

other appropriate investigatory authority, in addition to any action taken pursuant to the Code. In the case of alleged criminal conduct, the complaint may be held in abeyance pending the outcome of any criminal investigation.

### **Complainant and Witness Confidentiality**

- 4.3 If a Complainant or any witness giving any information or involved in any discussions (whether with the Monitoring Officer, the Investigating Officer, the Independent Person, or the Parish Member) wishes their identity to be withheld, they should state this on the complaint form (or, in the case of a witness, in writing to the Monitoring Officer), providing full reasons. Any request for confidentiality will be considered by the Monitoring Officer at the Initial Assessment stage of these Arrangements. In reaching his/her decision, the Monitoring Officer shall have regard to the principles described at paragraph 4.4 below, and may also consult with the Council's Independent Person.
- 4.4 As a matter of fairness and natural justice and in order to preserve the probative value of any evidence given, the Subject Member will usually be told who has complained about them and receive details of the complaint. However, in exceptional circumstances, the Monitoring Officer may withhold the identity of a Complainant or witness where the Monitoring Officer is satisfied that the Complainant has reasonable grounds for believing that they, or any witness relevant to the complaint, may be at risk of serious harm, or his or her employment may be jeopardised if their identity is disclosed, or where there are medical risks (supported by medical evidence) associated with the Complainant's identity being disclosed. The Monitoring Officer (in consultation with the Independent Person) will consider whether the public interest in taking action on a complaint outweighs the wish of the Complainant or witness to have his or her identity withheld from the Subject Member, whether the fairness of proceedings is maintained.
- 4.5 Where the Monitoring Officer decides to refuse a request by a Complainant or a witness for confidentiality, they will offer the Complainant the option to withdraw the complaint or the witness to withdraw their witness evidence.

### **Sensitive and confidential information**

- 4.6 Where any decision notice, record, or report (including the report of an Investigating Officer) contains information which is sensitive or confidential, the Monitoring Officer having regard to the Access to Information Procedure Rules at Part 4 of the Council's constitution may redact it in any published version.

## **5. The Handling of Complaints**

### **Discontinuance of Complaints by Monitoring Officer**

- 5.1 The Monitoring Officer may discontinue a complaint or terminate an investigation if they consider it appropriate to do so, having regard to whether the balance of the public interest lies in continuing to action the complaint, where the Subject Member:
- (a) ceases to be a Member of the Council,
  - (b) has a long term or serious illness and is unable to participate in the procedure, or

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(c) dies.

5.2 Where a complaint is discontinued, the Monitoring Officer will write to the Complainant and the Subject Member setting out the reasons for their decision.

### **Timeframes and Communications Policy**

5.3 The Monitoring Officer will acknowledge receipt of the complaint within 10 working days of all required information being provided.

5.4 Key dates in relation to the administration of the Arrangements are set out in the body of the Arrangements, and shall act as targets to facilitate the swift administration of the Arrangements but which, if missed, will not invalidate the procedure comprised herein.

5.5 The Complainant and the Subject Member will be informed should there be a delay in completing any stage of the process.

5.6 The Communications Policy at Appendix 1 shall have effect in relation to any matters of publicity, or public engagement associated with a Complaint.

### **Participation of Complainant**

5.7 Where the Monitoring Officer concludes in consultation with the Independent Person, that the participation of the Complainant (by way of interview, or appearance before Hearings Sub-Committee) would be in the public interest, the Monitoring Officer shall request the further participation of the Complainant, giving reasonable notice, and such support as the Complainant may reasonably require and where the Complainant declines to participate this shall be recorded in the report of any decision or investigation, or reported to the Hearings Sub-Committee (as the case may be).

## **6. Stage 1 – Initial Jurisdiction Test**

6.1 The Monitoring Officer will, within 20 working days of the acknowledgement referred to in paragraph 5.3 above, apply the following questions to determine whether a Complaint falls within the jurisdiction of these Arrangements:

- (a) Did the alleged conduct occur before the adoption of the Code of Conduct?
- (b) Was the Subject Member a member of the Borough or relevant Parish Council at the time of the alleged conduct?
- (c) Was the Subject Member acting in an official capacity as a councillor at the time of the alleged conduct? (The case law and legislative position is that Code of Conduct matters can only be dealt with when the allegation is about something that a Councillor did in his or her role as a councillor when acting in an official capacity.)
- (d) Did the alleged conduct occur when the Subject Member was acting as a member of another authority, subject to the code of conduct of that authority,

and not subject to these *arrangements for dealing with allegations of misconduct by Councillors?*

- (e) If the facts were proved would the alleged conduct be capable of constituting a breach of the Code of Conduct?
- (f) Is the complaint limited to dissatisfaction with the Borough or relevant Parish Council's decisions, policies and priorities?

6.2 Where a complaint is rejected on any of the above grounds, the Monitoring Officer will write to the Complainant explaining why their complaint cannot be dealt with under this procedure.

6.3 If the Complaint passes the Initial Jurisdiction Test, it will proceed to stage 2.

## **7. Stage 2 – Procedure for Initial Assessment of Complaint**

7.1 The Monitoring Officer will notify the Subject Member, and if applicable, the Parish Clerk of the existence of the complaint, providing a copy of the complaint and such information as accompanied it (subject to paragraphs 4.3 and 4.4 (confidential complaints)). The documents provided may include necessary redactions in order to maintain any confidentiality that has been agreed by the Monitoring Officer. The Monitoring Officer will invite the Subject Member to submit any comments or information in response within 20 working days of the notification, which the Monitoring Officer will take into account in conducting the Initial Assessment.

7.2 Upon the Subject Member either providing a response, or declining to do so within 20 the working days referred to in paragraph 7.1 (unless extended by agreement with the Monitoring Officer), the Monitoring Officer will provide the complaint, accompanying information or evidence, together with any response provided by the Subject Member, pursuant to paragraph 7.1 above, to the Independent Person and, where applicable, to the Parish Member, allowing a reasonable period for that response to be provided, and asking for their view generally, and on whether the complaint merits Informal Resolution or Formal Investigation.

7.3 Once the Independent Person, and the Parish Member (where applicable) have provided a response, the Monitoring Officer shall (subject to the exception described at paragraph 7.6 below) have regard to that response and to the following criteria in deciding whether a complaint should be subject to Informal Resolution or Formal Investigation:

- (a) The seriousness of the matters alleged;
- (b) Whether a substantially similar allegation has previously been made by the Complainant to the Monitoring Officer (unless sufficient new evidence is provided), or the complaint has been the subject of an investigation by another regulatory authority;
- (c) Whether the complaint is about something that happened so long ago that those involved are unlikely to remember it clearly enough to provide credible evidence, or where the lapse of time means there would be little benefit or point in taking action now;

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- (d) Whether the evidence is sufficiently reliable, i.e. whether it is first-hand evidence or hearsay evidence, and whether it is relevant to the alleged breach?
- (e) Whether the Subject Member is willing to participate in an Informal Resolution;
- (f) Whether the allegation is anonymous (subject to paragraph 4.6 above);
- (g) Whether the allegation discloses a potential breach of the Code of Conduct, but the complaint is not serious enough to merit any action; and
  - i) The resources needed to investigate and determine the complaint are wholly disproportionate to the allegations;
  - ii) Whether in all the circumstances there is no overriding public benefit in carrying out an investigation;
  - iii) Whether the complaint appears to be trivial, malicious, vexatious, politically motivated or 'tit-for-tat'; or,
  - iv) Whether the complaint relates to a matter which is the subject of a corporate complaint;

7.4 The Monitoring Officer shall in particular have regard to the following mitigating, and aggravating factors:

### **Mitigating factors (tending to make further action less likely)**

- (1) The substance of the complaint has already been the subject of an investigation or other action relating to the Code of Conduct;
- (2) The allegation took place more than 28 days prior to receipt of the complaint and there would be little benefit in taking action now;
- (3) The Subject Member took appropriate advice on the matter and followed that advice;
- (4) 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;
- (5) It is likely that an investigation will prove only a technical or inadvertent breach;
- (6) The complaint appears to be trivial, malicious, vexatious, politically motivated or 'tit-for-tat';
- (7) The Complainant has involved the press in relation to the alleged complaint;
- (8) The member has already provided (or tried to provide) a suitable remedy (such as apologising);
- (9) The breach occurred in all innocence i.e. without knowledge;
- (10) There was unreasonable provocation;

### **Aggravating factors (tending to make further action more likely)**

- (1) The complaint involves allegations of bullying or intimidation of a Complainant;
- (2) The allegation if proven could have a serious effect upon the reputation of the Council or relevant parish council, upon staff relations or upon public trust and confidence;

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- (3) The Subject Member holds a position of seniority and/or a position of influence;
- (4) There is a pattern of individual acts of minor misconduct which appear to be part of a continuing pattern of behaviour that is unreasonably disruptive to the business of the Council or relevant parish council;
- (5) The Subject Member took appropriate advice on the matter but did not follow that advice;
- (6) The complaint involves an allegation that the behaviour may cause the Council or relevant parish council to breach an equality enactment;

7.5 The criteria set out in paragraphs 7.3 and 7.4 above does not limit or fetter the discretion of the Monitoring Officer and is not an exhaustive or prescriptive list and the Monitoring Officer may take into account other criteria dependent on the circumstances. The existence of such criteria does not fetter the discretion of the Monitoring Officer.

### Assessment Sub-Committee

7.6 The Monitoring Officer may refer a complaint to the Assessment Sub-Committee for assessment. The referral power is at the absolute discretion of the Monitoring Officer. Examples of when a referral may take place include, but are not limited to the following:

- (1) It is an allegation where there is a perceived or actual conflict of interest e.g. the Monitoring Officer has previously advised the Subject Member on the matter;
- (2) It involves the Mayor or Deputy Mayor of the Council;
- (3) It involves the Leader, a member of the Executive, or the leader of a political group;
- (4) It involves a Chairman or Vice Chairman of a Council Committee or Sub-Committee
- (5) The Complaint is from a Statutory Officer of the Council (the Head of Paid Service, Section 151 Officer, or the Monitoring Officer).

7.7 The Assessment Sub-Committee will be established in the same way as other Sub-Committees of the Corporate Governance and Standards Committee. The Assessment Sub-Committee shall have all the powers of the Monitoring Officer described in paragraph 7. Where the Assessment Sub-Committee finds that a complaint should be subject to Informal Resolution, paragraph 8 shall apply and the Monitoring Officer shall resume responsibility for the progression of the matter

7.8 Decisions of the Assessment Sub-Committee are usually made in private. Neither the Complainant nor the Subject Member will usually be permitted to attend where such meetings contain confidential personal information. In such cases, meetings will not be open to the press or public. The rules covering the exclusion of the press and public are set out in the Access to Information Procedure Rules at Part 4 of the Council's Constitution. If the press and public are to be excluded from a committee or sub-committee, a formal resolution of the meeting is required. This must specify the legal grounds for exclusion.

7.9 The members of any Assessment Sub-Committee will be selected by the Monitoring Officer, in consultation with the Chairman of the Corporate Governance and



Standards Committee in accordance with paragraph 10.3(b) of Part 2, Article 10 of the Constitution.

**Decision in writing**

- 7.10 The decision of the Monitoring Officer, or Assessment Sub-Committee (as the case may be) shall be recorded in writing, and a decision notice will be sent to the Complainant and the Subject Member within 10 working days of the decision. The Independent Person shall be given the option to review and comment on allegations which the Monitoring Officer (or Assessment Sub-Committee) is minded to dismiss as being without merit, vexatious, or trivial. The decision notice will summarise the allegation, give the decision of the Monitoring Officer or Assessment Sub-Committee, and the reasons for their decision. There is no right of appeal against the decision of the Monitoring Officer or Assessment Sub-Committee.

**8. Stage 3 - Informal Resolution**

- 8.1 In appropriate cases, the Monitoring Officer may seek to resolve the complaint without the need for a formal investigation by way of Informal Resolution, which may be appropriate for example:

- (a) Where it is apparent that the Subject Member is relatively inexperienced as a Member or has admitted making an error, was not actuated by any malicious intent, and the matter would not warrant a more serious sanction,
- (b) Where training or conciliation would be a more appropriate response.

- 8.2 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;
- (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.

- 8.3 Where the Monitoring Officer seeks to resolve the complaint informally he or she will provide the Subject Member with recommendation together with a reasonable timescale within which to attempt to resolve the complaint (usually this will be 20 working days following a decision to seek Informal Resolution) or to engage in a process of Informal Resolution organised by the Monitoring Officer.

- 8.4 Before deciding upon a course of action, the Subject Member may seek guidance from the Leader of their political group, the Independent Person, and/or the Monitoring Officer. The Monitoring officer may also seek the Complainant's views 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.

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- 8.5 At the end of the 20 working day period referred to at paragraph 8.3 above the Monitoring Officer will, in consultation with the Independent Person, seek to establish whether the Subject Member has resolved the complaint to the Complainant's satisfaction.
- 8.6 Where it has been possible to agree a form of resolution between the Subject Member and the Complainant, 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.
- 8.7 Where it has not been possible to agree a form of resolution between the Subject Member and the Complainant, the Monitoring Officer will decide if the complaint merits formal investigation.
- 8.8 Where the Subject Member makes a reasonable offer of informal resolution, but it is rejected by the Complainant, the Monitoring Officer will take account of this in his or her decision but may impose the Informal Resolution.
- 8.9 Where Informal Resolution is proposed, the Monitoring Officer may direct that the Subject Member maintains confidentiality as to the matters discussed, and parties involved.

### **9. Stage 4 – Formal Investigation**

- 9.1 Where the Monitoring Officer, or Assessment Sub-Committee decides that a complaint merits investigation, he/she will appoint an Investigating Officer.
- 9.2 The process of appointment and functions of the Investigating Officer are set out at Appendix 2.

### **10. Stage 5 – Review of Report**

- 10.1 The Monitoring Officer will, within 10 working days of the receipt of the Investigating Officer's report prepared in accordance with Appendix 2, review the report.
- 10.2 The Monitoring Officer will, in consultation with the Independent Person, determine whether:
- (a) The report is complete, or (where incomplete) should be referred back to the Investigating Officer or a newly appointed Investigating Officer; or,
  - (b) No further action is required, because the report finds no breach of the code of conduct; or
  - (c) The matter may be reasonably resolved by way of Informal Resolution; or,
  - (d) The matter should proceed to the Hearings Sub-Committee.
- 10.3 Save in respect of the circumstances described in paragraph 10.2 (a) above, the Monitoring Officer will give both the Complainant and the Subject Member a copy of the Investigating Officer's final report, subject to any necessary redactions in respect

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of confidential or sensitive information, and shall notify the Chairman of the Corporate Governance and Standards Committee of his or her decision.

### 11. **Stage 6 – Hearings Sub-Committee**

- 11.1 Where the Monitoring Officer has determined that the matters should proceed to the Hearings Sub-Committee, Appendix 3 shall apply.

Adopted by the Council on: 24 July 2018 (amended on 6 October 2020)

**Communications Policy in relation to Member Complaints**

1. The Communications Policy sets out guidelines on what can be communicated during any ongoing complaint. This covers both public statements to the media and communications with the Subject Member and Complainant and, if appropriate, the relevant Parish Council. Any communications shall be under the supervision of the Monitoring Officer who may direct any exception to them, or specific action.

**Statements to the Media**

2. The Council should communicate in a professional and objective manner. In all cases, the Council's approach to the media should be:
  - (a) open and honest whilst respecting the human rights of those parties involved, and
  - (b) responsive, balanced, and timely
3. All media communications will be made by the Council's Communications and PR Manager, in consultation with the Monitoring Officer and the Chairman of the Corporate Governance and Standards Committee.
4. During the first two stages of the process when a complaint is either the subject of the Initial Jurisdiction Test (Stage 1), or the Initial Assessment Test (Stage 2), it is not usual to make any public statement about a case. However, some matters may be in the public domain at an early stage. Where a statement is sought on an allegation at this stage, the Council should simply confirm or where appropriate deny the fact that an allegation has been received and is being assessed save for circumstances in which a corrective or guiding statement is justified to maintain confidence in the process. Regard should be had as to whether a complainant has sought his or her identity to be maintained as confidential; for example, it may be appropriate not to disclose the existence of a complaint until the Initial Jurisdiction Test has been applied.
5. Where, following assessment, no action is to be taken on a case, public attention should not be drawn to an allegation which is not being pursued. However, where a public statement is necessary, and subject to paragraph 4.8 of the Arrangements, reasons should be given as to further action is being pursued.
6. Where, following assessment some further action is being taken, either the matter is being investigated or some other resolution is being pursued or has occurred, a more pro-active stance may be necessary such as a short statement being made available to confirm the fact, e.g. that an investigation is now underway, and that no further comments will be made until the conclusion of the case. Councillors and officers should not make any comments one way or the other while an investigation is ongoing. All information gathered in the course of an investigation will be regarded as confidential. All parties that are interviewed will be requested to maintain confidentiality and councillors may in particular be referred to their obligation under paragraph 3 of the Code of Conduct not to disclose information that they have received in confidence. Any report issued by an Investigating Officer will be marked "Confidential" to preserve the integrity of any further investigation the Investigating

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Officer may need to carry out. Release of confidential information to the media may lead to an investigation being terminated.

7. Where some other resolution has been reached, this may be made available with the consent of the Subject Member.
8. Where an investigation has been completed and this results in a local hearing, the Corporate Governance and Standards Committee will arrange for a summary of the decision and reasons for that decision to be published on the Council's website.
9. The Corporate Governance and Standards Committee may also make available the minutes and reports of the Hearings Sub-Committee, subject to the advice of the Monitoring Officer.

**Procedure for Local Investigation of Assessed Complaint**

**Appointment of Investigating Officer**

1. Following the decision of the Monitoring Officer to investigate the allegation or upon receipt of the referral to the Monitoring Officer from the Assessment Sub-Committee for an investigation, the Monitoring Officer will appoint an Investigating Officer in respect of the allegation and instruct him or her to conduct an investigation of the allegation and to report thereon to the Monitoring Officer.
2. Where the Monitoring Officer acts as Investigating Officer, the role of legal adviser to the Hearings Sub-Committee shall be appointed by him to another individual, whether an internal or external appointee.
3. The Monitoring Officer may at his or her sole discretion make an external appointment to the role of Investigating Officer where for example:
  - (a) The complaint looks likely to raise particularly complex or sensitive issues;
  - (b) There is insufficient expertise within the Council to carry out the investigation;
  - (c) There is insufficient capacity within the Council to carry out the investigation;
  - (d) A conflict has, or may be perceived to have, arisen.

**Notification of Investigation to the Subject Member**

4. The Monitoring Officer will notify the Subject Member in writing:
  - (a) that the allegation has been referred for local investigation and possible hearing;
  - (b) the identity of the person making the allegation (unless identification of the Complainant might prejudice the investigation or put the Complainant at risk);
  - (c) the conduct which is the subject of the allegation;
  - (d) the paragraph(s) of the Code of Conduct which appear to be relevant to the allegation(s);
  - (e) the procedure which will be followed in respect of the investigation;
  - (f) the identity of the Investigating Officer;
  - (g) the identity of the Independent Person whose views may be sought by the Subject Member; and
  - (h) the identity of the Parish Member whose views may be sought by the Subject Member if the Subject Member is a parish councillor.

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5. The Monitoring Officer shall provide the Subject Member with a copy of the complaint.
6. In very exceptional cases, where the Monitoring Officer has reason to believe that there is a serious risk of intimidation of witnesses or destruction of evidence, the Monitoring Officer may initiate an investigation before notifying the Subject Member, and shall consider whether the matter should be referred to the Police, in accordance with paragraph 4.2 of the Arrangements.

### **Notification to the Complainant**

7. At the same time as notifying the Subject Member, the Monitoring Officer will notify the Complainant in writing of the matters set out above.

### **Notification to the Corporate Governance and Standards Committee**

8. At the same time as notifying the Subject Member, the Monitoring Officer will notify the Chairman of the Corporate Governance and Standards Committee in writing of the matters set out above.

### **Notification to the Parish Council Clerk**

9. Where the allegation relates to the conduct of a Subject Member of a Parish Council in his or her capacity as such, at the same time as notifying the Subject Member, the Monitoring Officer will notify the Clerk of the Parish Council concerned in writing of the matters set out above.

### **Investigation Process**

10. The agreed process may be the standard procedure used by the external investigator. As a minimum, the Investigating Officer will interview the Complainant, the Subject Member and, where possible, any witnesses to the event or events that are the substance of the complaint. The Investigating Officer will produce notes of these meetings that will be signed by the interviewees as fair records of what was said in the interviews. If the complaint is complex, the Investigating Officer may produce formal, signed statements and participants will be notified that the information they have provided could be released into the public domain if the matter proceeds to a hearing.
11. Interviews may be recorded where the Investigating Officer, in consultation with the Monitoring Officer, considers this appropriate.
12. The Monitoring Officer will agree with the Investigating Officer the scope and parameters of the investigation before an investigation starts. However, these may change during the course of an investigation depending on the findings of that investigation. Any changes will be agreed with the Monitoring Officer by the Investigating Officer and this agreement will be documented.

### **Initial Response of the Subject Member**

13. The Monitoring Officer should request the Subject Member to respond to the Investigating Officer in writing within 14 days of notification as follows:

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- (a) advising the Investigating Officer whether the Member admits or denies the breach of the Code of Conduct which is the subject of the allegation;
- (b) listing any documents which the Subject Member would wish the Investigating Officer to take into account in any investigation of the allegation, where possible providing copies of these documents and informing the Investigating Officer of where the original documents may be inspected;
- (c) providing the Investigating Officer with the name, address and telephone number (or other appropriate contact details) of any person or organisation whom the Subject Member would wish the Investigating Officer to interview in the course of any investigation of the allegation; and
- (d) providing the Investigating Officer with any information which the Subject Member would wish the Investigating Officer to seek from any person or organisation.

### **Supporting information from the Complainant**

14. In notifying the Complainant as above, the Monitoring Officer will request the Complainant to respond to the Investigating Officer within 14 days of notification as follows:
- (a) listing any document which the Complainant would wish the Investigating Officer to take into account in any investigation of the allegation, where possible providing copies of these documents, and informing the Investigating Officer of where the original documents may be inspected;
  - (b) providing the Investigating Officer with the name, address and telephone number (or other appropriate contact details) of any person or organisation whom the Complainant would wish the Investigating Officer to interview in the course of any investigation; and
  - (c) providing the Investigating Officer with any information which the Complainant would wish the Investigating Officer to seek from any person or organisation.
15. The Subject Member has a duty to cooperate with any investigation and to respond promptly and to comply with any reasonable requests from the Investigating Officer for such things as interviews, comments on draft meeting/interview notes or the provision of information necessary for the conduct of an investigation.

### **Confidentiality**

16. It is important that confidentiality is maintained throughout the investigation and that details of the complaint are not 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.

### **Termination of an Investigation**

17. In exceptional circumstances, and as is referred to in paragraph 5.1 of the Arrangements, the Monitoring Officer may stop an investigation before it is finished,



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for example where confidential information has been released to the media, if the Subject Member ceases to be a councillor, has a long term or serious illness, or dies and it is deemed no longer in the public interest to pursue the matter further. If the Monitoring Officer stops the Investigation early, he/she will give their reasons to the Subject Member and the Complainant.

18. 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 or Hearings Sub-Committee.

### **Reference to Police or other regulatory agencies**

19. At any point in the course of the investigation, if the Investigating Officer is of the opinion the complaint identifies criminal conduct or breach of other regulation by any person, he or she shall notify the Monitoring Officer, who may direct that the investigation is suspended. The Monitoring Officer shall report the matter, as appropriate, in accordance with the Police Reporting Protocol.
20. Where the police or other agency investigates the matter, the Monitoring Officer shall take the advice and direction of the Police in deciding whether and when to inform the Subject Member, the Complainant, the Chairman of the Corporate Governance and Standards Committee and if appropriate the clerk to the relevant Parish Council. Where the Police or other relevant investigating body declines to undertake the investigation, the Monitoring Officer shall instruct the Investigating Officer to resume his or her investigation.

### **The Draft Report**

21. When the Investigating Officer is satisfied that he or she has sufficient information or has obtained as much information as is likely to be reasonably capable of being obtained, he or she shall prepare a draft Investigation Report setting out:
  - (a) the details of the allegation;
  - (b) the relevant provisions of the Code of Conduct;
  - (c) the Subject Member's initial response to the allegation(s) (if any);
  - (d) the relevant information, advice and explanations which he or she has obtained in the course of the investigation;
  - (e) a list and copy of any documents relevant to the matter;
  - (f) a list of those persons whom he or she has interviewed, a copy of the record and any meeting notes and those organisations from whom he or she has sought information;
  - (g) a note of any person or organisation who has failed to co-operate with the investigation and the manner in which they have failed to co-operate;
  - (h) a statement of his or her draft findings of fact;

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- (i) his or her conclusion as to whether the Subject Member has or has not failed to comply with the Code of Conduct;
  - (j) any recommendations which the Investigating Officer is minded to make to the Hearings Sub-Committee. Where the allegation relates to a parish councillor, such recommendations would be recommendations which the Investigating Officer would recommend the Hearings Sub-Committee make to the relevant Parish Council.
22. The draft Investigation Report should also state that the Investigation Report does not necessarily represent the Investigating Officer's final finding and that the Investigating Officer will be in a position to present a final report to the Hearings Sub-Committee once he or she has considered any comments received on the draft Investigation Report.
23. The Investigating Officer shall then send a copy of his or her draft Investigation Report to the Subject Member and the Complainant and request that they send any comments thereon to him or her within 14 days of the date of that request. The draft Investigation Report will be clearly labelled 'DRAFT' and 'CONFIDENTIAL'.

### **The Final Report**

24. After the expiry of that period (or such extended period as the Investigating Officer may allow), the Investigating Officer shall reconsider and amend his or her draft report in the light of any comments received and produce and send to the Monitoring Officer his or her final Investigation Report. The report will be clearly labelled 'FINAL' and 'CONFIDENTIAL'.

**Appendix 3**

**Procedure and powers of the Corporate Governance and Standards Committee, and Hearings Sub-Committee**

**Timing**

1. The Corporate Governance and Standards Committee will seek to hold a hearing in relation to an allegation within three months of receiving the Investigation Report. The hearing will be conducted by a Sub-Committee of the Corporate Governance and Standards Committee known as the Hearings Sub-Committee.

**Before the hearing**

**The pre-hearing process**

2. The Corporate Governance and Standards Committee will use a written pre-hearing process in order to allow the hearing to proceed fairly and efficiently.
3. The Monitoring Officer will ask the Subject Member to provide the following information within 15 working days:
  - (a) to identify those paragraphs in the Investigating Officer's Report with which the Subject Member agrees, and those paragraphs in the Report with which the Subject Member disagrees and the reasons for such disagreement;
  - (b) to identify any further documentary evidence upon which the Subject Member would like to rely at the hearing;
  - (c) to ascertain if they are going to attend the hearing and if they are going to represent themselves or whether they are going to employ someone to represent them, in which case they should provide the details of their representative prior to the hearing;
  - (d) to give reasons whether the whole or any part of the hearing should be held in private and whether any of the documentation supplied to the Hearings Sub-Committee should be withheld from the public.
4. The Monitoring Officer will ask the Investigating Officer to comment on the Subject Member's response within 15 working days to say whether or not he or she:
  - (a) will be represented at the hearing;
  - (b) wants to call witnesses to give evidence to the sub-committee;
  - (c) wants any part of the hearing conducted in private and why;
  - (d) wants any part of the Investigating Officer's report or other relevant documents to be withheld from the public and why.

5. The Monitoring Officer will endeavour to accommodate the availability of the parties (including the Complainant attending the hearing before notifying the parties of the date, time and place for the hearing.

### **The Hearing**

#### **Preliminary**

6. The members of the sub-committee will be selected by the Monitoring Officer after having consulted the Chairman of the Corporate Governance and Standards Committee, noting the restrictions of paragraph 1.6 of the Arrangements above, and in accordance with paragraph 10.4 (b) of Part 2, Article 10 of the Constitution.

#### **Notification of the Hearing**

7. The Monitoring Officer shall ensure that, when the agenda for the Hearings Sub-Committee is sent out to members of the Hearings Sub-Committee, including the final report, the agenda and the report are also sent at the same time to:
  - (a) the Subject Member
  - (b) the Complainant;
  - (c) Witnesses; and
  - (d) the Clerk to the relevant Parish Council if the Subject Member is a parish councillor.
8. The Hearings Sub-Committee will be convened to determine the outcome of the Complaint and shall follow the Order of Business set out below.

#### **The Order of Business**

9. The order of business will be as follows, subject to the Chairman exercising discretion and amending the order of business where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter:
  - (a) Election of a Chairman.
  - (b) Apologies for absence and notification of substitutes.
  - (c) Declarations of interests.
  - (d) In the absence of the Subject Member, consideration as to whether to adjourn or to proceed with the hearing.
  - (e) Introduction by the Chairman, of Members of the Hearings Sub-Committee, the Independent Person, the Parish Member (if the complaint involves a parish councillor), the Monitoring Officer or Legal Advisor to the Sub-Committee, Investigating Officer, Complainant(s) and the Subject Member and their representative (if appointed).

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- (f) To receive representations from the Monitoring Officer, the Investigating Officer and 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 (subject to Part 1 of Schedule 12A Local Government Act 1972 (as amended)).
- (g) 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 (subject to Part 1 of Schedule 12A Local Government Act 1972 (as amended)).and the reasons for such an exclusion.
- (h) Conduct of the Hearing. The Hearings Sub-Committee may adjourn the hearing at any time.

### **Presentation of the Complaint**

- 10. The Investigating Officer presents their report including any documentary evidence or other material and calls any complainant witnesses.
- 11. The Hearings Sub-Committee will give the Subject Member the opportunity to ask any questions regarding the evidence presented through the Chairman. This is not cross examination but an opportunity to ask questions/points of clarification on the evidence presented at the hearing.
- 12. The Hearings Sub-Committee may question the Investigating Officer upon the content of his or her report and any complainant witnesses. This is not cross examination but an opportunity to ask questions/points of clarification on the evidence presented at the hearing.

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

- 13. The Subject Member or their representative presents their case and calls their witnesses.
- 14. The Hearings Sub-Committee will give the Investigating Officer the opportunity to ask any questions regarding the evidence presented through the Chairman.
- 15. The Hearings Sub-Committee may question the Subject Member upon the contents of their case and any Subject Member witnesses.

### **Summing up**

- 16. The Investigating Officer sums up the complaint.
- 17. The Subject Member or their representative sums up their case.

### **Deliberations of the Hearings Sub-Committee**

- 18. The Hearings Sub-Committee will adjourn the hearing and deliberate in private (assisted on matters of law by a legal advisor, and taking the view of the Independent Person and the Parish Member (where applicable) who shall be entitled to retire to consider their view) to consider whether on the facts found, the Subject Member has failed to comply with the Code of Conduct.

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19. The Hearings Sub-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 Hearings Sub-Committee cannot be presented, then the Hearings Sub-Committee may adjourn the hearing and issue directions as to the additional evidence required and by whom.
20. The Hearings Sub-Committee will make its decision on the balance of probability, based on the evidence before it during the hearing.
21. Where the complaint has a number of aspects, the Hearings Sub-Committee may reach a finding, apply a sanction and /or make a recommendation on each aspect separately.
22. Having deliberated on its decision the Hearings Sub-Committee will reconvene the hearing in public and the Chairman will announce that, on the facts presented, the Hearings Sub- Committee considers that there has been a breach of the Code of Conduct, or no breach, as the case may be.
23. If the Hearings Sub-Committee considers that there has been **no breach of the Code of Conduct**, the Sub-Committee will set out the principal reasons for the decision. The Chairman will also announce that the Sub-Committee's full decision and reasons will be issued by the Monitoring Officer, in writing, within approximately 10 working days following the close of the hearing.
24. If the Hearings Sub-Committee decides that there has been **a breach of the Code of Conduct**, the Chairman will announce the principal reasons for the decision.
25. The Chairman will then invite the Investigating Officer and the Subject Member, to make their representations as to whether any sanction(s) or recommendations should be applied and what form any sanction(s) or recommendation(s) should take. In reaching its decision, the Hearings Sub-Committee may make any recommendations it considers may facilitate and enhance ethical standards within the relevant authority, noting the list at paragraph 28 below.
26. Having heard the representations/views, the Hearings Sub-Committee will adjourn with the legal adviser and deliberate in private. The Independent Person and the Parish Member (if appropriate) shall express their view in private session and shall be entitled to retire to consider their view beforehand.
27. Having deliberated on the suggested sanctions and/or recommendations(s) and the application of any sanctions(s), and having taken into account the Independent Person's views and those of the Parish Member if the complaint relates to a parish councillor, the Hearings Sub-Committee will reconvene the hearing and the Chairman will announce:
  - (a) whether any sanctions are to be applied (sanctions can only be recommended if the Subject Member is a parish councillor).
  - (b) Whether any recommendations will be made to the Borough or Parish Council or the Monitoring Officer.

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- (c) That the Sub-Committee's full decision and reasons will be issued by the Monitoring Officer, in writing, within approximately 10 working days following the close of the hearing.
- (d) That the decision will be published on the Borough Council's website; and
- (e) That there is no internal right of appeal against the Hearings Sub-Committee's decision(s) and/or recommendations(s).

### Range of Possible Sanctions

28. The Corporate Governance and Standards Committee has delegated to the Hearings Sub-Committee such of its powers to take action in respect of the Subject Member as may be necessary to promote and maintain high standards of conduct. Accordingly, the Hearings Sub-Committee may:

- (a) Publish and report its findings in respect of the Subject Member's conduct (or recommend to the relevant Parish Council that it does so);

And it may

- (b) Report its findings to Council (or to the Parish Council) for information;
- (c) Censure the Member;
- (d) Recommend to the Subject Member's political group leader (or in the case of an un-grouped Subject Member, recommend to Council) that they be removed from any or all Committees or Sub-Committees of the Council for a specified period;
- (e) Recommend to the Leader of the Council, in the case of an Executive Subject Member, that the Subject Member be removed from the Executive, or removed from particular portfolio responsibilities for a specified period;
- (f) Instruct the Monitoring Officer (or recommend to the relevant Parish Council) that the Subject Member be requested to participate in appropriate training or participate in conciliation and/or mediation; and where the Subject Member does not cooperate, the Monitoring Officer shall report the matter to the Chair of Corporate Governance and Standards who shall cause a meeting of the Hearings Sub-Committee to take place with the purpose of resolving to apply an alternative sanction;
- (g) Recommend to Council or the Leader of the Council (in the case of appointments by the Executive) or the relevant Parish Council that the Subject Member be removed from all or particular outside appointments to which they have been appointed or nominated by the Council or by the relevant Parish Council for a specified period (in which case the meeting of the Council or relevant Parish Council to consider the proposed removal shall do so on the basis of the report alone, and shall not re-hear the matter);
- (h) Withdraw, or recommend to the relevant Parish Council that it withdraws facilities provided to the Subject Member by the Council, such as a computer, website and/or e-mail and internet access for a specified period;

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- (i) Exclude, or recommend that the relevant Parish Council excludes the Subject Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings and public areas;
- (j) Issue a formal letter of advisement as to future conduct to the Subject Member;
- (k) Request that Subject Member should tender an apology to such persons as were aggrieved by his or her actions;
- (l) Where the Monitoring Officer and Independent Person are not satisfied that the Subject Member has tendered the apology described at 27.11 the Monitoring Officer shall report the matter to the Chair of Corporate Governance and Standards who shall cause a meeting of the Hearings Sub-Committee to take place with the purpose of resolving to apply an alternative sanction.

The Hearings Sub-Committee cannot suspend a Subject Member, withdraw a Subject Member's allowance, impose financial penalties, award compensation or make an award of costs.

### **Matters to Consider when Applying a Sanction**

29. When deciding whether to apply one or more sanctions referred to above, the Hearings Sub-Committee will ensure that the application of any sanction is reasonable and proportionate to the Subject Member's behaviour and that any sanction does not unduly restrict the Subject Member's ability to perform the functions of a councillor. The Hearings Sub-Committee will consider the following questions along with any other relevant circumstances raised at the hearing:
- (a) What was the Subject Member's intention and did they know that they were failing to follow the Borough or Parish Council's Code of Conduct?
  - (b) Did the Subject Member receive relevant advice from officers before the incident and was that advice acted on in good faith?
  - (c) Has there been a relevant breach of trust?
  - (d) Has there been financial impropriety, e.g. improper expense claims or procedural irregularities?
  - (e) What was the result/impact of failing to follow the Borough or Parish Council's Code of Conduct?
  - (f) How serious was the incident?
  - (g) Does the Subject Member accept that they were at fault?
  - (h) Did the Subject Member apologise to the relevant persons?



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- (i) Has the Subject Member previously been warned or reprimanded for similar misconduct?
- (j) Has there been a relevant previous breach by the Subject Member of the Borough or Parish Council's Code of Conduct?
- (k) Is there likely to be a repetition of the incident?
- (l) Was it a deliberate breach of the code or was it inadvertent (i.e. the Member thought that he/she was acting in a private capacity)? If capacity is an issue, the Hearings Sub-Committee will need to give reasons for its decision that the Subject Member was or was not acting publicly.

### **The written decision**

30. The Chairman will announce its decision on the day. The Monitoring Officer will issue a full written decision approximately 10 working days after the end of the hearing to:
- (a) The Subject Member;
  - (b) The Complainant;
  - (c) Any witness; and
  - (d) The clerk to any Parish Council concerned.

### **Making the findings public**

31. The Monitoring Officer will also arrange for a decision notice to be published as soon as possible on the Council's website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.
32. If the Hearings Sub-Committee finds that a Subject Member did not fail to follow the relevant authority's Code of Conduct, the public summary must say this, and give reasons for this finding.
33. If the Hearings Sub-Committee finds that a Subject Member failed to follow the Code of Conduct, but that no action is needed, the public summary must say that the Subject Member failed to follow the Code of Conduct, outline what happened and give reasons for the Hearings Sub-Committee's decision not to take any action.
34. If the Hearings Sub-Committee finds that a Subject Member failed to follow the Code of Conduct and it sets a sanction, the public summary must say that the Member failed to follow the Code of Conduct, outline what happened, explain what sanction has been set and give reasons for the decision made by the Hearings Sub-Committee.

### **Costs**

35. Subject Members are responsible for meeting the cost of any representation at a Hearings Sub-Committee meeting from their own finances and not those of the Council. The Hearings Sub-Committee cannot make orders as to costs. Neither the

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Borough Council nor a Parish Council can contribute to the Subject Member's costs or the Complainant's costs or indemnify a Subject Member or Complainant against costs which he or she may incur.

### **Appeals**

36. There is no right of appeal for a Member against a finding by the Hearings Sub-Committee following a hearing.

### **Variation**

37. The Monitoring Officer or the Hearings Sub-Committee on the advice of the Monitoring Officer, in consultation with the Chairman of the Corporate Governance and Standards Committee, may vary this procedure in any particular instance where he or she or they is/are of the opinion that such a variation is expedient in order to secure the effective and fair consideration of any matter, is lawful, and is consistent with the principles of natural justice.