

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO ACCOUNTS & AUDIT COMMITTEE

Agenda Item No. 10

meeting date: WEDNESDAY 25 NOVEMBER 2020
 title: REVIEW OF THE COUNCIL'S STANDARDS ARRANGEMENTS
 (MEMBER CONDUCT)
 submitted by: CHIEF EXECUTIVE

1 PURPOSE

1.1 To review the Council's standards arrangements in light of the recommendations of the Accounts & Audit working group and the recommendations of best practice from the Committee of Standards in Public Life ("**CoSPL**").

1.2 Relevance to the Council's ambitions and priorities:

- Community Objectives – }
 - Corporate Priorities – }
 - Other Considerations – }
- The Council has a duty to promote and maintain high standards of conduct by its Members. Review of the arrangements the Council operates supports that duty.

2 BACKGROUND

2.1 On 27 November 2019, the Head of Legal Services submitted a report to committee, detailing the Council's existing standards arrangements under the Localism Act 2011 and highlighted areas committee may wish to consider as part of its review of the procedures.

2.2 The Accounts and Audit committee resolved to appoint a working group comprising of 5 of its members to carry out the review – councillors R Bennett, I Brown, D Peat, R Sherras and J Hill.

2.3 The working group met on Wednesday 12 February 2020 to consider the questions and suggestions raised by the Head of Legal Services in her report dated 27 November 2019. The working group made a number of recommendations which are detailed in a table at **Appendix 1**.

2.4 Separately to the Council's own review of its standards arrangements the CoSPL published its review on Local Government Ethical Standards in January 2019. Within that review they set out a list of 15 items of best practice. The CoSPL state that they expect any local authority can and should implement them and that they would review the implementation during 2020. They have recently written to Chief Executives requesting that an update is provided by 30 November 2020 and the Council's response will be published. The list of best practice is contained at **Appendix 2** to this report.

2.5 The review also contained a list of recommendations one of which was that the Local Government Association ("LGA") should create an updated model code of conduct, in

consultation with representative bodies of councillors and officers of all tiers of local government. The LGA has developed a model code of conduct and a copy of the current draft is enclosed as **Appendix 3** to this report. The LGA advise that this draft will be reviewed in light of discussion which took place on 22 October 2020 with the Councillors forum and a final code will then be prepared for submission to the LGA board on 3 December 2020. Committee will note that the current draft addresses the issues which both the working group and the best practice require to be included in the code of conduct.

3 ISSUES

Member's Code of Conduct

- 3.1 The Working group made a number of recommendations regarding the code of conduct, however in view of the imminent publication of the LGA Model Code of Conduct, and the fact that the current draft contains provisions which reflect the recommendations of the Working Group and the best practice recommendations it is recommended that the Council await its publication and that this be brought to the next meeting of the Accounts and Audit Committee for consideration and adoption.
- 3.2 The CoSPL 3rd recommendation for best practice is that Councils review their codes of member conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities. In order to comply with this recommendation, it is proposed that the Council review its Code of Member Conduct in the last meeting of the Accounts and Audit Committee in each municipal year, so that any revision will apply from the first meeting of the new municipal year. Officers will consult as recommended in advance of submitting the report to Committee.

Independent Persons

- 3.3 Section 28(7) of the Localism Act 2011, requires that Councils must have at least one Independent Person. The CoSPL recommends that Council should have at least two Independent Persons. The Council's current arrangements provide that the Council shall have two independent persons. One post is currently vacant due to resignation of an Independent Person earlier this year. When this issue was considered by the Working Group and their recommendation is that the Council should have three independent persons.
- 3.4 It is proposed therefore that the Council's arrangements under the Localism Act 2011 should be amended to provide for three independent persons. The Council currently has one independent person in post following the resignation of Ian Taylor earlier in the year. It was subsequently resolved by the Emergency Committee on 10 August 2020 that he would remain in post until this Committee. Mr Dearing has confirmed that he is willing to continue in post. It is therefore recommended that his appointment be confirmed as continuing and that the Council should advertise for the appointment of an additional two independent persons in accordance with the provisions of Section 28 of the Localism Act 2011.
- 3.5 The Working Group considered that there should be suitable indemnity in place for the Independent Persons acting in good faith without any undue pressure. The Council is

currently investigating with its insurer whether such an indemnity can be provided and this will be reported to the next meeting of Committee.

- 3.6 The Working Group considered that the Independent Person Protocol should be amended to provide that any agents (paid or unpaid) of the member who is the subject of the complaint, should not approach an Independent Person. A copy of the Independent Person Protocol with the proposed amendments is enclosed as **Appendix 4**. Members should consider in particular the amendments to paragraph 3.
- 3.7 The Working Group considered that the Independent Person Protocol should be amended to include express provision that the Subject Member may not contact the IP who has been consulted by the Monitoring Officer. As stated above a copy of the Independent Person Protocol with the proposed amendments is enclosed as **Appendix 4**. Members should consider in particular the amendments to paragraph 8.

Model of Procedure for dealing with complaints under the Localism Act 2011 (“Arrangements”)

- 3.8 The Working Group made recommendations for amendments to the Arrangements and these are detailed as items 12-17 of **Appendix 1**. The Arrangements have been amended to incorporate these recommendations and are shown in **Appendix 5**.
- 3.9 The Working Group also indicated that it was content for the Council’s procedure to be inline with the standard contained in the Monitoring Officer’s handbook. This has been reviewed and inserted (with any necessary amendments) as an Annex 2 to the arrangements in **Appendix 5**.
- 3.10 It is also thought helpful for the Arrangements to include a procedure for the investigation of complaints. This is included as Annex 1 to **Appendix 5**.
- 3.11 The CoSPL also makes a number of recommendations in respect of the Arrangements:
- that Councils should publish a clear and straightforward public interest test against which allegations are published;
 - where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of fact, the provision of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker and any sanction applied;
 - A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation;
- 3.12 The Arrangements have been amended to incorporate these recommendations (to the extent that they were not already included) and are show in **Appendix 5**.

4 RISK ASSESSMENT

4.1 The approval of this report may have the following implications:

- Resources – Resources will be required in the recruitment process for Independent Persons and in amending the relevant policies and procedures.
- Technical, Environmental and Legal – N/A
- Political – N/A
- Reputation – The Council's reputation will be enhanced by it having arrangements which incorporate the recommendations of the CoSPL.
- Equality & Diversity – N/A

5 RECOMMENDED THAT COMMITTEE

5.1 Approve the proposal for the annual review of the Member Code of Conduct as set out in paragraph 3.2.

5.2 Approve the amendment of the Council's arrangements under the Localism Act 2011, so that the Council shall have three Independent Persons.

5.3 Approve the continuation of the appointment of Mr I B Dearing as an Independent Person for a period of three years.

5.3 Authorise the Head of Legal and Democratic Services to advertise and appoint an additional two Independent Persons in accordance with Section 28 of the Localism Act 2011.

5.4 Approve the amendments to the Independent Person Protocol as shown in Appendix 4.

5.5 Approve the amendments to the Council's arrangements for dealing with standards complaints as show in Appendix 5.

MAIR HILL
HEAD OF LEGAL AND DEMOCRATIC SERVICES

MARSHAL SCOTT
CHIEF EXECUTIVE

For further information please ask for Mair Hill extension 4418

REF: MJH/Accounts&Audit/171120

BACKGROUND DOCUMENTS:

- Report to Accounts and Audit Committee 27 November 2020
- Committee on Standards on Public Life - Local Government Ethical Standards, A Review by the Committee on Standards in Public Life, January 2019.

APPENDIX 1

ACCOUNTS AND AUDIT WORKING GROUP RECOMMENDATIONS	
Member's Code of Conduct	
1.	Should make a specific reference to bullying – failing to treat people with respect
2.	Additional questions should be added to the DPI / Related Party Interest forms to show non-pecuniary interests as well as pecuniary
The Terms of Reference for A & A committee	
3.	The current arrangements are satisfactory – there is no need for a separate Standards committee.
The Arrangements for Independent Persons	
4.	The number of Independent Persons should be increased to 3 to reduce potential conflict of interest.
5.	The usual way for recruitment should be used ie adverts but in addition Facebook etc
6.	They should not be paid other than expenses.
7.	There should be suitable indemnity in place for them acting in good faith without any undue pressure.
8.	The protocol should be amended to make it explicit that the subject member cannot speak to the IP who has been consulted by the Monitoring Officer
9.	The protocol should be amended to include that any agents – paid or unpaid – should not approach any IPs

APPENDIX 1

The Process for making a Complaint	
10.	No change is required to the procedure but an advisory note should be added that where a councillor wants to complain about another councillor from the same political group, their own group complaints process should be used first.
The Model Arrangements for Dealing with a standards complaint against a member.	
11.	A paragraph should be added into the Code regarding the requirement to keep confidentiality of complaints.
12.	Where a member refuses to accept the Council's authority or follow adopted procedures the complaint should be dealt with in their absence.
13.	Councillors should not act as witnesses if they are members of Accounts & Audit committee – or if they do they should declare a conflict of interest and take no part in the discussions.
14.	A strict timescale should also be built into the procedure for responding/submitting information.
15.	Members are expected to maintain confidentiality and support the process.
16.	The role of officers is to give advice on their professional opinions.
The rules that would apply in the event of a matter being referred to the Sub-Committee.	
17.	Representation for the complainant and subject member is out of proportion for the sanctions available The working group endorsed the rules for Standards committee hearings taken from the Monitoring Officer handbook as outlined in Appendix 2 to the report to A & A committee on 27 November 2019.

List of best practice

Our best practice recommendations are directed to local authorities, and we expect that any local authority can and should implement them. We intend to review the implementation of our best practice in 2020.

Best practice 1: Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition.

Best practice 2: Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation, and prohibiting trivial or malicious allegations by councillors.

Best practice 3: Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.

Best practice 4: An authority's code should be readily accessible to both councillors and the public, in a prominent position on a council's website and available in council premises.

Best practice 5: Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.

Best practice 6: Councils should publish a clear and straightforward public interest test against which allegations are filtered.

Best practice 7: Local authorities should have access to at least two Independent Persons.

Best practice 8: An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation, and should be given the option to review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious, or trivial.

Best practice 9: Where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.

Best practice 10: A local authority should have straightforward and accessible guidance on its website on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for investigations and outcomes.

Best practice 11: Formal standards complaints about the conduct of a parish councillor towards a clerk should be made by the chair or by the parish council as a whole, rather than the clerk in all but exceptional circumstances.

Best practice 12: Monitoring Officers' roles should include providing advice, support and management of investigations and adjudications on alleged breaches to parish councils within the remit of the principal authority. They should be provided with adequate training, corporate support and resources to undertake this work.

Best practice 13: A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.

Best practice 14: Councils should report on separate bodies they have set up or which they own as part of their annual governance statement, and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness, and publish their board agendas and minutes and annual reports in an accessible place.

Best practice 15: Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.

Local Government Association

Second Draft Model Councillor Code of Conduct

Introduction

Under review

Definitions

For the purposes of this Code of Conduct a “councillor” means a member or co-opted member of a local authority. A “co-opted member” is defined in the Localism Act 2011 Section 27(4) as “a person who is not a member of the authority but who

- a) is a member of any committee or sub-committee of the local authority, or;
- b) is a member of, and represents the local authority on, any joint committee or joint sub-committee of the authority;

and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee”.

For the purposes of this Code of Conduct “local authority” includes county councils, district councils, London borough councils, parish councils, town councils, fire and rescue authorities, police authorities, joint authorities, economic prosperity boards, combined authorities and National Park authorities.

Purpose of the Code of Conduct

The purpose of this Code of Conduct is to assist you, as a councillor, in modelling the behaviour that is expected of you, to provide a personal check and balance, and to set out the type of conduct that could lead to action being taken. It is also to protect you, the public, fellow councillors, local authority officers and the reputation of local government. It sets out general principles of conduct expected of all councillors and your obligations in relation to standards of conduct. The overarching aim is to create and maintain public confidence in the role of councillors and local government.

In addition to this Code, everyone in public office at all levels – such as ministers, civil servants, members, local authority officers – all who serve the public or deliver public services - should uphold the seven principles of public life. This Code has been developed in line with these seven principles of public life, which are set out in Appendix A.

Application of the Code of Conduct

The Code of Conduct applies to you as soon as you sign your declaration of acceptance of office of councillor and continues to apply to you until you cease to be a councillor.

You are expected to uphold high standards of conduct and show leadership at all times. The Code of Conduct applies to you when you are acting in your capacity as a member or representative of your local authority and applies to all forms of councillor communication and interaction. This includes at meetings, whether face-to-face or

online, as well as written, verbal, non-verbal, electronic and social media communication.

You are also encouraged to follow the Code at all other times where you use your position as a councillor.

General principles of councillor conduct

In accordance with the public trust placed in me, on all occasions I:

- act with integrity and honesty
- act lawfully
- treat all persons fairly and with respect; and
- lead by example and act in a way that secures public confidence in the office of councillor

In undertaking my role, I:

- impartially exercise my responsibilities in the interests of the local community
- do not improperly seek to confer an advantage, or disadvantage, on any person
- avoid conflicts of interest
- exercise reasonable care and diligence; and
- ensure that public resources are used prudently in accordance with my local authority's requirements and in the public interest

Standards of councillor conduct

This section sets out your obligations, which are the minimum standards of conduct required of you as a councillor. A complaint may be made against you which may result in action being taken should your conduct fall short of these standards.

Guidance is included to help explain the reasons for the obligations and how they should be followed.

General Conduct

1. *Respect*

As a councillor I:

1.1 treat other councillors and members of the public with respect.

1.2 treat authority employees, employees and representatives of partner organisations and those volunteering for the authority with respect and respect the role they play.

Respect means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a councillor you can express, challenge, criticise and disagree with views, ideas,

opinions and policies in a robust but civil manner. You should not, however, subject individuals, groups of people or organisations to personal attack.

In your contact with the public you should treat them politely and courteously. Rude and offensive behaviour lowers the public's expectations and confidence in its elected representatives.

In return you have a right to expect respectful behaviour from the public. If members of the public are being abusive, threatening or intimidatory you are entitled to close any conversation in person or online, and refer them to the local authority, any social media provider or if necessary, the police. This also applies to fellow councillors, where action could then be taken under the Councillor Code of Conduct and authority employees, where concerns should be raised in line with the authority's councillor-officer protocol.

2. *Bullying, harassment and discrimination*

As a councillor I:

2.1 do not bully any person.

2.2 do not harass any person.

2.3 promote equalities and do not discriminate unlawfully against any person.

The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or phone calls, happen in the workplace or at work social events and not always be obvious or noticed by others.

The Protection from Harassment Act 1997 defines harassment as conduct that causes alarm or distress or puts people in fear of violence and must involve such conduct on at least two occasions.

It can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person.

Unlawful discrimination is where someone is treated unfairly because of a protected characteristic. Protected characteristics are specific aspects of a person's identity defined by the Equality Act 2010. They are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The Equality Act 2010 places specific duties on local authorities. Councillors have a central role to play in ensuring that equality issues are integral to the local authority's performance and strategic aims, and that there is a strong vision and public commitment to equality across public services.

3. Impartiality of officers of the council

As a councillor I:

3.1 do not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the authority.

Officers work for the local authority as a whole and must be politically neutral (unless they are political assistants). They should not be coerced or persuaded to act in a way that would undermine their neutrality. Although you can question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

4. Confidentiality and access to information

As a councillor I:

4.1 do not disclose information:

- a. given to me in confidence by anyone**
- b. acquired by me which I believe, or ought reasonably to be aware, is of a confidential nature, unless**
 - i. I have received the consent of a person authorised to give it;**
 - ii. I am required by law to do so;**
 - iii. the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or**
 - iv. the disclosure is:**
 - 1. reasonable and in the public interest; and**
 - 2. made in good faith and in compliance with the reasonable requirements of the Local Authority; and**
 - 3. I have consulted the Monitoring Officer prior to its release.**

4.2 do not improperly use knowledge gained solely as a result of my role as a councillor for the advancement of myself, my friends, my family members, my employer or my business interests.

4.3 do not prevent anyone getting information that they are entitled to by law.

Local authorities must work openly and transparently, and their proceedings and printed materials are open to the public except in certain legally defined circumstances. You should work on this basis but there will be times when it is required by law that discussions, documents and other information relating to or held

by the authority must be treated in a confidential manner. Examples include personal data relating to individuals or information relating to ongoing negotiations.

5. *Disrepute*

As a councillor I:

5.1 do not bring my role or authority into disrepute.

As a councillor you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other councillors and/or your local authority and may lower the public's confidence in your or your local authority's ability to discharge your/it's functions. For example, behaviour that is considered dishonest and/or deceitful can bring your authority into disrepute.

6. *Use of position*

As a councillor I:

6.1 do not use, or attempt to use, my position improperly to the advantage or disadvantage of myself or anyone else.

Your position as a member of the authority provides you with certain opportunities, responsibilities and privileges and you make choices all the time that will impact others. However, you should not take advantage of these opportunities to further your own or others' private interests or to disadvantage anyone unfairly.

7. *Use of local authority resources and facilities*

As a councillor I:

7.1 do not misuse council resources.

7.2 will, when using or authorising the use by others of the resources of the local authority:

- a. act in accordance with the authority's requirements; and**
- b. ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the authority or of the office to which the member has been elected or appointed**

You may be provided with resources and facilities by the local authority to assist you in carrying out your duties as a councillor.

Examples include:

- office support
- stationery
- equipment such as phones, and computers
- transport.

These are given to you to help you carry out your role as a councillor more effectively and are not to be used for business or personal gain. They should be used in accordance with the authority's own policies.

8. *Complying with the Code of Conduct*

As a councillor I:

- 8.1 attend any Code of Conduct training provided by my authority.**
- 8.2 cooperate with any Code of Conduct investigation and/or determination.**
- 8.3 do not intimidate or attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings.**
- 8.4 comply with any sanction imposed on me following a finding that I have breached the Code of Conduct.**

It is extremely important for you as a councillor to demonstrate high standards, for you to have your actions open to scrutiny and for you not to undermining public trust in the authority or its governance.

Protecting your reputation and the reputation of the authority

9. *Interests*

As a councillor I :

9.1 Register and declare my interests.

You need to register your interests so that the public, authority employees and fellow councillors know which of your interests might give rise to a conflict of interest. The register is a public document that can be consulted when (or before) an issue arises. The register also protects you by allowing you to demonstrate openness and a willingness to be held accountable. You are personally responsible for deciding whether or not you should declare an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be declared by you or other councillors when making or taking part in decisions, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.

You should note that failure to register or declare a disclosable pecuniary interest is a criminal offence under the Localism Act 2011.

Appendix B sets out the detailed provisions on registering and declaring interests. If in doubt you should always seek advice from your Monitoring Officer.

10. *Gifts and hospitality*

As a councillor I:

- 10.1 Do not accept gifts or hospitality which could give rise to real or substantive personal gain or a reasonable suspicion of influence on my part to show favour from persons seeking to acquire, develop or do business with the authority or from persons who may apply to the authority for any permission, licence or other significant advantage.**
- 10.2 Register with the Monitoring Officer any gift or hospitality with an estimated value of at least £50 within 28 days of its receipt.**
- 10.3 Register with the Monitoring Officer any significant gift or hospitality that I have been offered but have refused to accept.**

In order to protect your reputation and the reputation of the authority you should exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you because you are a councillor. The presumption should always be not to accept significant gifts or hospitality although there may be times when such a refusal may be difficult if it is seen as rudeness in which case you could accept it but must ensure it is publicly registered. However, you do not need to register gifts and hospitality which are not related to your role as a councillor, such as Christmas gifts from your friends and family. It is also important to note that it is appropriate to accept normal expenses and hospitality associated with your duties as a councillor.

Appendices

Appendix A – The Seven Principles of Public Life

The principles are:

Selflessness

Holders of public office should act solely in terms of the public interest.

Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty

Holders of public office should be truthful.

Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Appendix B

Registering interests

1. Within 28 days of this Code of Conduct being adopted by the authority or your election or appointment to office (where that is later) you must register with the Monitoring Officer the interests which fall within the categories set out in Table 1 (Disclosable Pecuniary Interests) and Table 2 (Other Registerable Interests).
2. You must ensure that your register of interests is kept up-to-date and within 28 days of becoming aware of any new interest in Table 1 or 2, or of any change to a registered interest, notify the Monitoring Officer.
3. Where you have a 'sensitive interest' you must notify the Monitoring Officer with reasons why you believe it is a sensitive interest. If the Monitoring Officer agrees they will withhold the interest from the public register.
4. A sensitive interest is defined in the Localism Act as an interest which, if disclosed, could lead to the councillor/member or co-opted member, or a person connected with the member or co-opted member, being subject to violence or intimidation.

Declaring interests

5. Where a matter arises at a meeting which directly relates to an interest in Table 1, you must declare the interest, not participate in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to declare the nature of the interest.
6. Where a matter arises at a meeting which directly relates to an interest in Table 2, you must declare the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to declare the nature of the interest.
7. Where a matter arises at a meeting which directly relates to your financial interest or well-being (and is not a Disclosable Pecuniary Interest) or a financial interest or well-being of a relative or close associate, you must declare the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to declare the nature of the interest.
8. Where a matter arises at a meeting which affects –
 - a. your own financial interest or well-being;
 - b. a financial interest or well-being of a friend, relative, close associate; or
 - c. a body covered by table 1 below you must disclose the interest.
9. Where the matter affects the financial interest or well-being:
 - a. to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and;

- b. a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest

you must declare the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to declare the nature of the interest.

Table 1: Disclosable Pecuniary Interests

To be reformatted

DRAFT

CSPL recommendations

1. Under the Localism Act 2011 the Code of Conduct can only apply to a Councillor when they are carrying out their duties as a councillor or acting as a representative of the Authority. CSPL recommended in their 2019 Report to Government that this narrow scope should be broadened so that a local authority's code of conduct would also apply to a councillor when they claim to act, or give the impression they are acting, in their capacity as a councillor or as a representative of the local authority". If the law is changed to accept that recommendation the Code would need to be updated to reflect that change.
2. CSPL also recommended that there should be a rebuttable presumption that a councillor's behaviour in public is in an official capacity. This would include statements on publicly accessible social media and that section 27(2) of the Localism Act 2011 should be amended to permit local authorities to presume so when deciding upon code of conduct breaches." Again, if the law is changed to accept that recommendation the Code would need to be updated to reflect that change.
3. Other recommendations include:
 - a. Sanctions
 - b. Appeals through the Local Government Ombudsman
4. See CSPL website for further details
www.gov.uk/government/news/theprinciples-of-public-life-25-years



INDEPENDENT PERSON PROTOCOL

Introduction

The purpose of this protocol is to establish the relationship between each independent person (“IP”) and the various parts of the local authority involved in the process of handling standards complaints and promoting standards within the authority. In doing so it will ensure that responsibility is clear at each stage of the process and will set out the roles and responsibilities of the IPs. A flow chart illustrating the processes to be followed and the IP’s involvement in that can be found at **Appendix 1**.

Consideration Of Written Allegations

1. The Monitoring Officer (“MO”) will seek the views of at least one IP before reaching a decision on whether any further action should be taken on a written complaint.
2. When issuing the decision letter or communication, the MO will record that the IP has been consulted and that their views have been taken into account. Where the view of the MO and IP differ, the MO will record the reasons for following a particular course. The letter will make clear that it is the MO and not the IP who is the decision maker.

Matters Under Investigation

3. A member who is the subject of a complaint alleging that they have breached the code of conduct (“Subject Member”) may seek the views of anthe IP. A Subject member who wishes to consult an IP must do so through the MO who will either contact the IP by email/ in writing and/or arrange for a meeting to take place on Council premises. The MO shall communicate any such arrangements to the Subject Member. A Subject Member, including their agents whether paid or unpaid, must not contact an IP directly, and the IP should inform the MO immediately should any direct contact be attempted.
4. Where possible the MO will provide the IP with all available information to enable them to deal with an approach from a Subject Member.
5. Where a Subject Member seeks the views of the IP via a meeting in person, an independent note taker from within the Council will take a record of the proceedings. The

notes will be made available to all relevant parties, subject to any issues surrounding the Data Protection Act (“DPA”) and/or confidentiality.

6. The IP must agree in advance with the Subject Member rules of confidentiality but it will be the IP’s decision upon what shall remain confidential, but in the event that the matters remain confidential a note should be taken to make clear that confidential matters were discussed. Again, this is subject to the provisions of the DPA

7. The MO may also consult the IP at any time during the investigation.

7-8. The Subject Member shall not be permitted to discuss the matter with an IP with whom the MO has consulted on a particular complaint.

Reference to Accounts and Audit - Subcommittee for local hearing and determination

8-9. Where a matter has been referred to the Subcommittee for determination, the Subcommittee must seek the views of the IP before reaching its conclusions. The IP’s views should be recorded in any decision notice and where those views do not reflect the determination reasons must be given for any differences. However, it must be clear that it is the Subcommittee and not the IP who is the decision maker.

Relationship With Accounts And Audit Committee

9-10. The IP shall receive agenda and minutes of all the meetings of Accounts and Audit Committee, be allowed to request for items to be added to the agenda with the agreement of the Chair and be permitted to speak at committee (but not take part in any debate).

10-11. The IP are not members of the Accounts and Audit Committee and therefore are not part of the formal business of the meeting and cannot vote on any matters put to the meeting. They may be invited to observe confidential matters with the agreement of the Chair.

11-12. The MO or Accounts and Audit Committee may request the IP to assist in any training on conduct issues

12-13. The IP may raise any concerns about standards issues or implementation of the process with the MO or Chair of the Accounts and Audit Committee.

13-14. The IP shall be provided with access to such information and facilities within the Council premises as are necessary for them to carry out their role.

~~14.15.~~ The MO will meet or communicate as required with the IP to review relevant matters.

Other matters

~~15.16.~~ The IP shall not make any comment to the media on any matter without the prior agreement of the MO. Any requests for comments from the media shall be referred in the first instance to the MO who may refer these to the Chair of the Accounts and Audit Committee or the Subcommittee as appropriate.

~~16.17.~~ The IP will sign a Code of Conduct, including a register of interests to be held by the MO and will declare any relevant interests in relation to complaints which are received to the MO who will decide whether the interest conflicts with their role and as such they should not be involved.



Ribble Valley Borough Council **Model Arrangements** **for dealing with standards allegations under the Localism Act** **2011 (“Arrangements”)**

1 Context

- 1.1 Ribble Valley Borough Council and the Parish Councils within the district have a shared legal responsibility to promote and maintain high standards of conduct by members of the authority.
- 1.2 Ribble Valley Borough Council’s approach to investigating complaints will be proportionate to the seriousness of the complaint and the Council will in particular seek to ensure informal resolution of complaints wherever possible.
- 1.3 These “Arrangements” set out how you may make a complaint that an elected or co-opted member of this authority, ~~for~~ or of a parish council within its area,] has failed to comply with the ~~authority’s~~ Code of Conduct, and sets out how the authority will deal with allegations of a failure to comply with the a authority’s Code of Conduct.
- 1.4 Under Section 28(6) and (7) of the Localism Act 2011, the Council must have in place “arrangements” under which allegations that a member or co-opted member of the authority, ~~for~~ or of a parish council within the authority’s area], or of a Committee or Sub-Committee of the authority, has failed to comply with that authority’s Code of Conduct can be investigated and decisions made on such allegations.
- 1.5 Such arrangements must provide for the authority to appoint at least one Independent Person, whose views must be sought by the authority before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the authority at any other stage, or by a ~~member~~ ~~for member, or~~ a member or co-opted member of a parish council,] against whom an allegation as been made.

2 The Code of Conduct

- 2.1 The Council has adopted a Code of Conduct for members, which can be found at Part 5 of the Council’s constitution ~~is attached as Appendix One to these arrangements~~ and is available for inspection on the Council’s~~authority’s~~ website and on request from Reception at the Council’s~~Civic~~ Offices.
- 2.2 Each Parish Council is also required to adopt a Code of Conduct. If you wish to inspect a Parish Council’s Code of Conduct, you should inspect any website

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operated by the Parish Council and request the Parish Clerk to allow you to inspect the Parish Council's Code of Conduct.

~~Each parish council is also required to adopt a Code of Conduct. If you wish to inspect a Parish Council's Code of Conduct, you should inspect any website operated by the parish council and request the parish clerk to allow you to inspect the parish council's Code of Conduct.~~

3 Making a complaint

3.1 If you wish to make a complaint, please write or email to –

~~The Monitoring Officer~~Head of Legal and Democratic Services – Diane Rice
Ribble Valley Borough Council
Council Offices
Church Walk
Clitheroe BB7 2RA

Or – [mair.hill](mailto:mair.hill@ribblevalley.gov.uk) email diane.rice@ribblevalley.gov.uk

3.2 If a disability prevents you from making your complaint in writing you may contact the Monitoring Officer by telephone on 01200 425111.

3.3 The Monitoring Officer is a senior officer of the authority who has statutory responsibility for maintaining the register of members' interests and who is responsible for administering the system in respect of complaints of member misconduct.

3.4 In order to ensure that we have all the information which we need to be able to process your complaint, please complete and send us the model complaint form, which can be downloaded from the authority's website, and is available on request from Reception at the [Council](#)ivie Offices.

3.5 When setting out your complaint you should explain which part of the relevant code of conduct you consider has been breached.

3.6 Please do provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form, in which case we will not disclose your name and address to the member against whom you make the complaint, without your prior consent. The authority does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

3.7 The Monitoring Officer will acknowledge receipt of your complaint within **5 working days** of receiving it, and will keep you informed of the progress of your complaint.

4 Will your complaint be investigated?

4.1 The Monitoring Officer will review every complaint received and, after consultation with the Independent Person, take a decision as to whether it merits formal investigation. This decision will normally be taken within 14 days of receipt of your complaint. Where the Monitoring Officer has taken a decision, he/she will inform you of his/her decision and the reasons for that decision.

4.2 Where he/she requires additional information in order to come to a decision, he/she may come back to you for such information, and may request information from the member

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against whom your complaint is directed. The Member will be informed that a complaint has been received and may request, and save in exceptional circumstances, will be required if requested, a copy of the complaint. Where your complaint relates to a Parish Councillor, the Monitoring Officer may also inform the Parish Council of your complaint and seek the views of the Parish Council before deciding whether the complaint merits formal investigation.

4.3 The Monitoring Officer will review the complaint and after consultation with the Independent Person may decide not to investigate your complaint if he/she decides it is inappropriate to do so. Among the reasons for taking this decision are:

- The potential seriousness of the breach (if true);
- The likely cost of an investigation in time and other resources;
- The sufficiency of evidence of the alleged breach;
- Whether the complaint falls outside of the Localism Act 2011 and/or the Code of Conduct, including for example where it is clear that the Member who is the subject of the complaint was not acting in their capacity as a Councillor at the time the alleged conduct occurred;
- Other actions either to remedy the complaint or prevent its re-occurrence (such as reference to the relevant Parish Clerk) or an informal resolution is seen as more appropriate;
- The Member is no longer a serving member of the relevant Council (other than referring a potentially criminal matter to the Police);
- Whether the complaint is anonymous – the Council will not normally investigate anonymous complaints unless there is a clear public interest in doing so;
- The passage of time – if the complaint happened so long ago that there would be little benefit in acting now;
- The complaint is one that the Monitoring Officer believes has been (or largely has been) determined before;
- Any other circumstances bearing upon the public interest.

Informal Resolution

4.4 In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the authority. Where the member or the authority make a reasonable offer of local resolution, but you are not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

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Referral to the Police or other agency

4.5 If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police and other regulatory agencies.

5 **How is the investigation conducted?**

5.1 The procedure for investigating a complaint is set out in Annex 1

5.2 Where complaints are received from more than one Complainant which relate to the same or similar allegations, the Monitoring Officer has discretion to consolidate the complaints so that they are dealt with as part of one investigation and if appropriate, are heard at one hearing.

~~The Council's procedure for the investigation of misconduct complaints is as follows:~~

~~If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer, who may be another senior officer of the authority, an officer of another authority or an external investigator. The Investigating Officer will decide whether he/she needs to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents the Investigating Officer needs to see, and who the Investigating Officer needs to interview.~~

~~The Investigating Officer would normally write to the member against whom you have complained and provide him/her with a copy of your complaint, and ask the member to provide his/her explanation of events, and to identify what documents he needs to see and who he needs to interview. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the member, or delay notifying the member until the investigation has progressed sufficiently.~~

~~At the end of his/her investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to you and to the member concerned, to give you both an opportunity to identify any matter in that draft report which you disagree with or which you consider requires more consideration.~~

~~Having received and taken account of any comments which you may make on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer.~~

56 **What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?**

The Monitoring Officer will review the Investigating Officer's report and, if he/she is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the member concerned, ~~and to the Parish Council, where your complaint relates to a Parish Councillor~~, notifying you that he/she is satisfied that no further action is required, and give you both a copy of the Investigating Officer's final report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly or feels that there are matters requiring further clarification, he/she may ask the Investigating Officer to reconsider his/her report.

67 **What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?**

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The Monitoring Officer will review the Investigating Officer's report in the same way as at paragraph 6 above, and will then either send the matter for local hearing before the Hearings Panel or, after consulting the Independent Person, seek local resolution.

6.1 Local Resolution

—The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with the Independent Person and with you as complainant and seek to agree what you consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the authority. If the member complies with the suggested resolution, the Monitoring Officer will report the matter to the Accounts and Audit Committee, ~~and the Parish Council, if the complaints relates to a Parish council,~~ for information, but will take no further action. ~~If, however~~ However, if you tell the Monitoring Officer that any suggested resolution would not be adequate, the Monitoring Officer will give further consideration to referring the matter for local hearing and may take the Independent Person's view into account in making that decision as to whether the matter should proceed to a hearing is for the Monitoring Officer, who will exercise his/her discretion reasonably. ~~the Monitoring Officer will refer the matter for a local hearing.~~

6.2 Local Hearing

7.2 If the Monitoring Officer considers that local resolution is not appropriate, or you are not satisfied by the proposed resolution, or the member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigating Officer's report to the ~~Subcommittee~~ Sub-Committee comprising three Members of the Accounts and Audit Committee. Membership of the Sub-Committee will be ????? which will conduct a local hearing before deciding whether the member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the member.

7.3 The Council has agreed a procedure for local hearings, which is attached as Annex 2 to these Arrangements.

~~Essentially, the Monitoring Officer will conduct a "pre-hearing process", requiring the member to give his/her response to the Investigating Officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing, and provide advice as to the manner in which the hearing will be conducted. At the hearing, the Investigating Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask you as the complainant to attend and give evidence to the Sub-Committee. The member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Sub-Committee as to why he/she considers that he/she did not fail to comply with the Code of Conduct.~~

~~The Sub-Committee, with the benefit of any advice from the Independent Person, may conclude that the member did not fail to comply with the Code of Conduct, and so dismiss the complaint. If the Sub-Committee concludes that the member did fail to comply with the Code of Conduct, the Chairman will inform the member of this finding and the Sub-Committee will then consider what action, if any, the Hearings Panel should take as a result of the member's failure to comply with the Code of Conduct. In doing this, the Sub-Committee will give the member an opportunity to make representations to the Panel and~~

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~~will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.~~

8 Who are the Hearing Panel?

8.1 The Hearing Panel is a Subcommittee selected from the Council's Accounts and Audit Committee. The Accounts and Audit Committee has decided it will comprise three members of the Committee.

8.2 The Independent Person is invited to all meetings of the Subcommittee and their views sought and taken into consideration before the Subcommittee takes any decision on whether the member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

9 What happens at the end of the hearing?

9.1 At the end of the hearing, the Chair will state the decision of the Subcommittee as to whether the member failed to comply with the Code of Conduct and as to any actions which the Subcommittee resolves to take.

9.2 In accordance with the procedure at Annex 2, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Subcommittee, and send a copy to you, to the subject member (and to the Parish Council), make that decision notice available for public inspection and report the decision to the next convenient meeting of the Accounts and Audit Committee.

9.3 The decision notice will include a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the Subcommittee, and any sanction applied.

7.10 What action can the Sub-Committee take where a member has failed to comply with the Code of Conduct?

~~10.1 The Council has delegated to the Sub-Committee such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. These are set out in paragraph 7 of Annex 2 to these Arrangements. Accordingly the Sub-Committee may—~~

~~7.1— Publish its findings in respect of the member's conduct;~~

~~7.2— Report its findings to Council /or to the Parish Council/ for information;~~

~~7.3— Recommend to the member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;~~

~~7.4— Instruct the Monitoring Officer to /or recommend that the Parish Council/ arrange training for the member;~~

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~~7.5 — Remove [or recommend to the Parish Council that the member be removed] from all outside appointments to which he/she has been appointed or nominated by the authority [or by the Parish Council];~~

~~7.6 — Withdraw [or recommend to the Parish Council that it withdraws] facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or~~

~~7.7 — Exclude [or recommend that the Parish Council exclude] the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.~~

~~The Sub-Committee has no power to suspend or disqualify the member or to withdraw members' or special responsibility allowances.~~

~~8 — What happens at the end of the hearing?~~

~~At the end of the hearing, the Chairman will state the decision of the Sub-Committee as to whether the member failed to comply with the Code of Conduct and as to any actions which the Sub-Committee resolves to take.~~

~~As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chairman of the Sub-Committee, and send a copy to you, to the member [and to the Parish Council], make that decision notice available for public inspection and report the decision where the complaint relates to a Parish Council Member to the next convenient meeting of the Council.~~

~~9 — Who are the Hearings Panel?~~

~~The Sub-Committee will be a ?? Accounts and Audit Committee. The Accounts and Audit Committee has decided that it will comprise a maximum of five members of the Council. It will be comprised of Members of the parent Committee and be politically balanced subject to availability/Members have conflicting interests.~~

~~The Independent Person is invited to attend all meetings of the Hearings Panel and his views are sought and taken into consideration before the Hearings Panel takes any decision on whether the member's conduct constitutes a failure to comply with the Code of conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.~~

1011 Who is the Independent Person?

The Council has two ~~ommittee has 2~~ Independent Persons who applied for the post following advertisement of a vacancy for the post, and were appointed by a positive vote from a majority of all the members of Council on 17 July 2012. [to be updated following committees decision]

112 Revision of these arrangements

The Committee may by resolution agree to amend these arrangements, and has delegated to the Chairman of the Accounts and Audit Committee the right to depart from these arrangements where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

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1213 Appeals

There is no right of appeal for you as complainant or for the member against a decision of the Monitoring Officer or of the Hearings Panel

If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.

Annex 1

PROCEDURE FOR INVESTIGATION OF COMPLAINTS

1 Introduction

1.1 Where the Monitoring Officer has decided to refer a complaint about a Member for investigation, the Monitoring Officer must then arrange for an Investigating Officer to investigate and prepare a report.

1.2 The following is the procedure which will normally be followed in such investigations, although the Monitoring Officer may vary the procedure in any particular case if he/she considers this desirable in the interests of justice or fairness or the effective conduct of the investigation.

1.3 Interpretation

1.3.1 "Member" means the Member of Ribble Valley Borough Council or a Parish Council within its district who is the subject of the complaint;

1.3.2 "Investigating Officer" means the person appointed by the Monitoring Officer to undertake the investigation;

1.3.3 "Complainant" means the person who has made the complaint against the Member;

1.3.4 "Sub-Committee" means any Sub-Committee to which the Accounts and Audit Committee has delegated the conduct of the hearing;

1.3.5 "Legal adviser" means the officer responsible for providing legal advice to the Sub-Committee. This may be the Monitoring Officer, another legally qualified officer of the Authority, or someone appointed for this purpose from outside the Authority.

2. Action Following Decision to Investigate

Appointment of Investigating Officer

2.1 Where the Monitoring Officer decides that an allegation should be investigated, they will appoint an Investigating Officer and instruct him/her to investigate the allegation and produce a report thereon. The Investigating Officer may be an officer of the authority, an officer of another local authority, or an external person.

2.2 The Investigating Officer may appoint persons to assist him/her and may obtain such professional advice as may be necessary for the conduct of the investigation.

2.3 The Monitoring Officer will notify in writing the Member and the Complainant and the Independent Person(s) that an investigation is to be undertaken and will confirm:

2.3.1 the identity of the Complainant;

2.3.2 the conduct which is the subject of the allegation;

2.3.3 the section(s) of the Code of Conduct which appear(s) to be relevant to the allegation;

2.3.4 the identity of the Investigating Officer.

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- 2.4 If the complaint relates to a Parish Council ,the Monitoring Officer will at the same time also notify the Clerk to the Parish Council.
- 2.5 The Monitoring Officer may withhold some or all of this information from the Member if the Complainant has demonstrated exceptional reasons as to why such information may be withheld or where disclosure of details of the complaint to the Member at this stage of the process might prejudice the investigation.
- 2.6 In most cases, it will become necessary at some point for the Member to be informed of the identity of the Complainant and in all cases, for the Member to be informed of the nature of the allegations. The Monitoring Officer will decide whether and at what stage this information will be provided to the Member.

Initial response of the Member

- 2.7 In notifying the Member of the referral for investigation, the Monitoring Officer shall also request the Member to notify the Investigating Officer in writing, within 10 working days, of the following:
- 2.7.1 whether the Member admits or denies the alleged breach of the Code;
- 2.7.2 any initial comment, explanation or representations which the Member wishes to make in relation to the allegation;
- 2.7.3 any documents the Member would wish the Investigating Officer to take into account in the investigation, where possible providing copies of these documents, and advising where the originals can be inspected;
- 2.7.4 the name, address and telephone number (or other contact details) of any person whom the Member would wish the Investigating Officer to interview in the course of the investigation, and the relevance of that person;
- 2.7.5 any information the Member would wish the Investigating Officer to seek from any person or organisation;
- 2.7.6 any other information which the Member considers might be relevant to or assist the investigation.

Supporting information from the Complainant

- 2.6 When notifying the Complainant that the matter has been referred for investigation, the Monitoring Officer shall also request that person to notify the Investigating Officer in writing within 10 working days of:
- 2.6.1 any documents which he/she would wish the Investigating Officer to take into account in the investigation, where possible providing copies of these documents, and advising where the original documents may be inspected;
- 2.6.2 the name, address and telephone number (or other contact details) of any person whom the Complainant would wish the Investigating Officer to interview in the course of the investigation and the relevance of that person;
- 2.6.3 any information which the Complainant would wish the Investigating Officer to seek from any person or organisation;

2.6.4 any additional information which the Complainant has and which might be relevant to, or assist, the investigation.

3. Conduct of Investigation

- 3.1 The purpose of the investigation is to enable the Investigating Officer to prepare a report which will provide sufficient information to determine whether the Member has acted in breach of the Code of Conduct and, where there has been a breach, whether any action should be taken, and if so, what action.
- 3.2 The Investigating Officer will conduct the investigation in such manner as he/she considers best able to ascertain all relevant facts and to achieve the purpose of the investigation, having regard to the rules of natural justice and the need for fairness.
- 3.3 The Investigating Officer will be entitled to seek all relevant information (including documents) that appears necessary or expedient to the conduct of the investigation and can make enquiries of any person believed to have such information, including the Member, the Complainant, other Members or officers of the Council and third parties. All such persons will be expected to co-operate fully with the Investigating Officer and respond properly to such enquiries and provide such information as they can and to attend for interview by the Investigating Officer if requested.
- 3.4 The Investigating Officer will be able to seek information in such manner as he/she thinks appropriate, which may include in writing, by telephone or email, or in person. He/she will attempt to arrange any interviews at a time and place convenient to those concerned.
- 3.5 Any person who appears before the Investigating Officer for interview may be accompanied by a legal representative or friend provided such a person is not a potential witness in the investigation. An interview or telephone conversation may be tape recorded to save time and ensure accuracy, but only with the consent of both the Investigating Officer and the interviewee.

Other Breaches

- 3.6 If during the investigation, the Investigating Officer becomes aware of any other matter which appears to him/her to indicate a breach of the Code by the Member (apart from the breach which he/she is currently investigating), the Investigating Officer shall report the matter to the Monitoring Officer who will provide the Member with details of the matter and invite the Member to provide a statement as to why the additional matter does not constitute a breach of the Code. The Monitoring Officer will then determine, in consultation with the Independent Person whether the additional matter should also be investigated.
- 3.7 The Monitoring Officer may in certain circumstances defer an investigation if he/she considers it appropriate, for example because it might prejudice some other investigation or court proceedings concerning the matter.

4. The Draft Report

- 4.1 On completion of his/her investigation, the Investigating Officer shall prepare a draft report marked 'confidential' setting out:

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- 4.1.1 details of the allegation;
- 4.1.2 the relevant provisions of the Code of Conduct and any relevant Protocol;
- 4.1.3 the Member's response to the allegation (if any);
- 4.1.4 any relevant information, advice and explanations obtained during the investigation;
- 4.1.5 a list of any relevant documents;
- 4.1.6 a list of persons interviewed or from whom information has been sought;
- 4.1.7 a note of any person or organisation who has failed to co-operate with the investigation and the manner of such failure;
- 4.1.8 a statement of the Investigating Officer's draft findings of fact, with reasons;
- 4.1.9 the Investigating Officer's provisional conclusion as to whether the Member has failed to comply with the Code of Conduct, with reasons.
- 4.2 The draft report will also state that it does not necessarily represent the Investigating Officer's final finding, and that he/she will produce a final report once he/she has considered any comments received on the draft report.
- 4.3 The Investigating Officer shall send a copy of the draft report, in confidence, to the Member and the Complainant, and request that they send any comments on it to him/her in writing within 10 working days of receipt. This is an opportunity for the Member and Complainant to identify any matters with which they disagree or which they believe require further consideration.

5. The Final Report

- 5.1 After the expiry of the period referred to in paragraph 4.3 (or such extended period as the Investigating Officer may allow), the Investigating Officer shall reconsider and if appropriate amend his/her draft report in the light of any comments received and expeditiously produce a final report, which will be given to the Monitoring Officer.
- 5.2 The report will state that it represents the Investigating Officer's final findings. The report should have appended to it copies of any significant documents which the Investigating Officer has relied on in reaching his/her conclusions, such as notes of telephone conversations, letters, and notes of interviews and witnesses.

Annex 2

PROCEDURE FOR HEARING OF COMPLAINTS

1. General

1.1. These rules govern the conduct of hearings by the Hearing Sub-Committee.

1.2. The hearing will be into the written allegation(s) of failure to comply with the Code of Conduct made to the Council's Monitoring Officer and investigated in accordance with the arrangements adopted by the Council.

1.3. A hearing may cover more than one allegation, or set of allegations, and more than one investigation, if the Sub-Committee is satisfied that it is expedient and fair.

1.4. In these rules:

1.4.1 "The Monitoring Officer" means the officer designated as the Monitoring Officer to the Council, provided that if the Monitoring Officer is unable to act, or has a conflict of interest (for example as a result of having conducted an investigation into the complaint) then another person or persons may perform the Monitoring Officer's role and these rules will be construed accordingly.

1.4.2 "The Subject Member" means the member or co-opted member against whom the allegation of failure to comply with the relevant Code of Conduct has been made.

1.4.3 "The Investigator" means the person who has conducted an investigation into the allegation or his or her representative at the hearing.

1.4.4 "The Complainant" means the person who made the written allegation(s) of failure to comply with the Code of Conduct.

2. Composition and voting

2.1. The Sub-Committee will comprise three voting members drawn from the Accounts and Audit Committee, one of whom shall be appointed or elected to chair the meeting. The members will be selected in accordance with the legislation on political balance on committees.

2.2. The quorum for a meeting is three members.

2.3. All matters before the Sub-Committee will be decided by a simple majority of votes cast. In the case of equality of votes, the member chairing the meeting will have a second or casting vote.

2.4. An Independent Person appointed by the Council will be normally be present at the hearing. The Sub-Committee must take the Independent Person's views into account before reaching a decision, but he or she will not participate in the hearing or in the decision as a member of the Sub-Committee. Alternatively, if the Independent Person will not be present for all or part of the hearing he or she may submit his or her views to the Sub-Committee in writing.

3. Before the hearing

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3.1. Before the hearing, the Monitoring Officer will, in order to identify the issues and the evidence to be considered, and any procedural issues, provide the Subject Member with the Investigator's report and the accompanying evidence and invite the Subject Member and the Investigator to:

(a) Indicate the facts that are agreed and those that are not;

(b) Indicate the issues in dispute;

(c) Indicate whether they intend to introduce any additional evidence and the witnesses they intend to call to give evidence;

d) State whether they would like all or any part of the hearing to be conducted in private and, if so, why;

(e) State whether they intend to be present at the hearing;

(f) State whether they intend to be represented at the hearing and, if so, by whom.

3.2. The Monitoring Officer will copy the replies to the Subject Member and the Investigator or, if they so request, to their representatives.

3.3. If the member chairing the meeting, or, if none has yet been appointed or elected, the Chair of the Accounts and Audit Committee, considers that the additional evidence of any of the witnesses that are proposed to be called will not assist the Sub-Committee to determine the relevant issues (for example because the evidence or the witnesses' evidence will not be relevant, or will unnecessarily duplicate other evidence and prolong the hearing, then in consultation with the Monitoring Officer he or she may direct that the evidence or the number of witnesses should be limited. The Monitoring Officer will advise the Subject Member and the Investigator of the direction.

3.4. The Monitoring Officer will prepare a report to the meeting including the Investigator's report and the accompanying evidence. The proper officer will send the report to the members of the Sub-Committee and make it available to the public in accordance with the statutory requirements, excluding public access to any part of the report or background papers which, in the proper officer's opinion, relate only to any part of the hearing which is not likely to be open to the public.

4. Requests for adjournment and absence of parties

4.1. If before the hearing the Subject Member requests an adjournment, or indicates that he or she will not be present or represented, the Monitoring Officer will consult the member chairing the meeting, or, if none has yet been appointed or elected, the Chair of the Standards Committee. The member consulted will consider any written representations made by the Subject Member and may direct either that the hearing be adjourned or that the hearing will take place.

4.2. If the hearing then takes place, or if there has been no prior request but the Subject Member is not present at the start of the hearing, or if the Subject Member is present or represented and makes an oral request for an adjournment, then the Sub-Committee will decide whether to adjourn or proceed with the hearing, taking into account the representations that have been made. The Sub-Committee will

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consider whether it is satisfied with the reasons given for a request for an adjournment or whether, in exceptional circumstances, it is not so satisfied, and whether it is in the public interest to hear the allegations expeditiously. In the latter case the Sub-Committee may proceed with the hearing in the Subject Member's absence.

4.3. The Complainant may attend the meeting if called as a witness, or otherwise, but need not do so.

5. Representation at the hearing

5.1. The Subject Member may choose to be accompanied or represented at the hearing by a professional representative, fellow Councillor, friend or colleague.

5.2. The Complainant can be accompanied by a friend or colleague. Unless called as a witness, or requested by the Sub-Committee to address them, the Complainant has no right to participate in the meeting.

6. Conduct of the hearing

6.1. Subject to the exercise of discretion by the Chair, the order of business at the hearing shall be as set out below.

6.2. The Chair may vary the order of business at his or her discretion where he or she considers it expedient and fair to do so.

6.3. The Sub-Committee may adjourn the hearing at any time.

6.4. The Sub-Committee can decide at any time to resolve to exclude the press and public for the following part of the hearing, or for the remainder of the hearing, if it is likely otherwise that confidential or exempt information would be disclosed, in accordance with the provisions of the Local Government Act 1972.

6.5. The first items of business shall be:

(a) the election of the Chair if none has been appointed;

(b) any apologies for absence;

(c) any declarations of interest;

(d) if relevant at this time, consideration whether to exclude the press and public.

(e) if relevant, consideration of any request for an adjournment, and/or whether to proceed with the hearing in the absence of the Subject Member.

6.6. The Chair will then introduce (if present) the members of the Sub-Committee, the Independent Person, the Subject Member, any person representing the Subject Member, the Investigator, the Monitoring Officer, and any other officers present to clerk the meeting or provide legal advice to the Sub-Committee. The Chairman will explain their roles and outline the procedure for the hearing.

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6.7. Any witnesses of fact present in the room will then leave the room, apart from the Subject Member. In exceptional circumstances the Chair may permit the Complainant to remain in the room, unless it would be unfair to do so.

6.8. The evidence presented must be relevant to the issues under consideration and should not be unduly repetitious.

Presentation of the Investigation Report

6.9 The Investigator will present his or her report and accompanying evidence and call his or her witnesses, who may include the Complainant. The Investigator will not normally be permitted to introduce new issues or evidence at this stage.

6.10 The Subject Member or his or her representative may question the Investigator on the content of his or her report and may question the witnesses called by the Investigator on their evidence.

6.11 The members of the Sub-Committee may question the Investigator on the content of his or her report and may question the witnesses called by the Investigator on their evidence.

Presentation of the Subject Member's case

6.12 The Subject Member or his or her representative will present his or her case and evidence and call his or her witnesses.

6.13 The Investigator may question the Subject Member and the witnesses called by the Subject Member or his or her representative on their evidence.

6.14 The members of the Sub-Committee may question the Subject Member and the witnesses called by the Subject Member or his or her representative on their evidence.

Summing up

6.15 The Investigator will sum up his or her case.

6.16 The Subject Member or his or her representative will sum up his or her case.

6.17 In summing up, the Investigator and the Subject Member or his or her representative should express a view on any conflict of evidence and explain why, in their view, the evidence discloses or does not disclose a failure to comply with the Code of Conduct. No new evidence may normally be introduced at this stage.

Views of the Independent Person

6.18 The Chair will invite the Independent Person, if present, to express a view on the evidence and on whether it discloses a failure to comply with the Code of Conduct.

6.19 If the Independent Person is not present the Chair will read out the Independent Person's written representations.

Deliberations of the Sub-Committee

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- 6.20 If the press and public are present, the Sub-Committee will decide whether to resolve to exclude them from their deliberations. They will normally do so, because otherwise they would disclose their views on the individuals who have participated and their evidence, and the balance of the public interest favours free discussion on these matters.
- 6.21 The Subcommittee may clear the room or retire to another room. They may be accompanied by the Monitoring Officer (provided that he or she has not been involved in the hearing in any other capacity) or the legal adviser, whose role shall be limited to the provision of legal advice.
- 6.22 The Sub-Committee may re-open the hearing at any stage in order to seek additional evidence from the Investigator, the Subject Member or any witnesses present. If the additional material is not available, the Sub-Committee may adjourn the hearing and direct its production and by whom.
- 6.23 In principle the Sub-Committee should first find the material facts, including resolving any conflict of evidence, then decide if they disclose a failure to comply with the Code of Conduct.
- 6.24 The Sub-Committee must take its decision on the balance of probabilities ("is it more likely than not?") based on the evidence before it at the hearing and, exceptionally, matters within the general knowledge of the members.

The decision

- 6.25 The Sub-Committee will reconvene the hearing and the Chair will announce whether or not, on the facts found, the Sub-Committee considers that there has been a failure to comply with the Code of Conduct.
- 6.26 If the Sub-Committee has found that there is a failure to comply with the Code of Conduct, the Chair will invite the Investigator, the Subject Member and the Independent Person to make representations on the seriousness of the failure, whether or not any sanctions should be applied and, if so, what form they should take.
- 6.27 The Sub-Committee may also invite the Monitoring Officer to comment on those matters, if he or she has not been involved in the hearing in any other capacity.
- 6.28 The Sub-Committee may make recommendations as to any other matter arising to the Council, a committee or sub-committee, or the appropriate officer.

Deliberations as to sanction

- 6.29 The Sub-Committee will then consider whether to impose any sanction and, if so, in what form.
- 6.30 If the press and public are present, the Sub-Committee will decide whether to resolve to exclude them from their deliberations. The same considerations apply as under paragraph 6.13 (a).

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6.31 The Sub-Committee will seek to ensure that any sanction is reasonable and proportionate to the behaviour of the Subject Member.

6.32 The Sub Committee will have regard to all the circumstances including any local factors and also including the following:

- What was the Subject Member's intention, was he or she aware of the failure to comply with the Code of Conduct, or reckless as to the risk of so doing.
- Had the Subject Member received or declined training on the Code?
- Did the Subject Member receive advice (including in particular advice from officers) and, if so, did he or she act on that advice in good faith?
- Has there been a breach of trust, malice or dishonesty?
- Has there been financial impropriety?
- Was the subject member exercising his or her right to the freedom of expression, and if so:
 - First, was this the expression of political opinion (indicating a higher level of tolerance and a lesser sanction);
 - Second, is the sanction necessary to respond to a pressing social need, such as maintaining standards in public life, and proportionate?
- What was the result or the impact on others of the failure to comply with the Code of Conduct?
- How serious was the failure?
- Did the Subject Member stand to gain personally from the failure?
- Does the Subject Member accept that he or she was at fault?
- Did the Subject Member apologise and, if so, in what terms?
- Does the Subject Member have a record or history of misconduct, has he or she previously been reprimanded or warned of similar misconduct, and/or has he or she previously been found to have failed to comply with a code of conduct?
- Does the Subject Member have a record or history of public service and good conduct?
- How experienced is the member and does he or she have any particular role or responsibilities within the Council?
- Is there likely to be a repetition of the failure to comply with the Code of Conduct?
- Is this an isolated incident or event or is there a wider problem within the Council?

6.33 If evidence before the Sub-Committee indicates other potential failures to comply with the Code of Conduct, which have not previously been addressed, the Chair will outline the concerns and the Sub-Committee will decide whether to refer them to the Monitoring Officer.

7. Possible sanctions

7.1. The Sub-Committee may apply or recommend any one or more of the following sanctions for failure to comply with the Code of Conduct. The list is not exhaustive.

7.1.1 Censuring the member in such terms as the Sub-Committee considers appropriate;

7.1.2 Reporting the findings to the Council, or the Parish Council, for information.

7.1.3 Publishing the findings in such a manner as the Sub-Committee thinks appropriate and proportionate.

7.1.4 Recommending to the Council that he or she should be removed be removed from any or all Committees, Sub-Committees of the Council or from any or all positions or bodies to which the member has been appointed by the Council.

7.1.5 Seeking an apology from the Subject Member (which may be in terms to be approved on behalf of the Sub-Committee) if the Subject Member agrees.

7.1.6 Arranging training for the Subject Member if the Subject Member agrees.

7.1.7 If there is a clear connection between the failure to comply with the Code of Conduct and the use of Council facilities (email or equipment, for example) or premises, and it would be appropriate and proportionate to do so, withdrawing facilities or limiting access to premises: provided that although the sanction may inconvenience the Subject Member it must not prevent the Subject Member from performing his or her core function as a representative of his or her local electorate.

7.2. The Sub-Committee may specify that any sanction may take effect immediately or at a future time and/or be time-limited.

7.3. Any sanction may be suspended on condition that the Subject Member gives a satisfactory apology or attends training within a reasonable period.

7.4. The Sub-Committee may adjourn the hearing to give the Subject Member an opportunity to make a satisfactory apology and reconvene either to acknowledge that an apology has been given or to further consider the matter of sanctions.

7.5. The Sub-Committee has no power to disqualify or suspend the Subject Member or withdraw basic or special responsibility allowances.

8. Publication and notification

8.1. The Monitoring Officer will publish the name of the Subject Member and a summary of the Sub-Committee's decision and any recommendations and the reasons for them on the Council's website within 10 working days of the announcement of the decision.

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8.2. The Monitoring Officer will provide a full written decision and the reasons for the decision, and any recommendations, within 10 working days of the announcement of the decision to:

8.2.1 the Subject Member

8.2.2 the Complainant

8.2.3 the Clerk to the Parish Council (if the complaint is against a Parish Council member or co-opted member acting in that capacity)

8.2.4 the members of the Sub- Committee.

8.3 The Monitoring Officer will report the decision and any recommendations to the next ordinary meeting of the Accounts and Audit Committee for information.