

Arrangements for dealing with Allegations of Misconduct by Councillors under the Localism Act 2011

1 Context

- 1.1. It is expected that elected members of Woking Borough Council (the Council) uphold the highest standards of public office. However, in the event that there is a complaint, it is important that this is handled effectively to ensure public confidence is maintained.
- 1.2. These arrangements describe how the public can make a complaint that a Member of the Council has failed to comply with the Council's Member Code of Conduct, and sets out how the Council will deal with allegations of a failure to comply with the Code of Conduct.
- 1.3. Under Sections 28(6) and (7) of the Localism Act 2011, the Council must have "arrangements" under which allegations that a Member, or co-opted Member, has failed to comply with the Council's Code of Conduct can be investigated, and decisions made on such allegations. Such arrangements must provide for the Council to appoint at least one Independent Person, whose views must be sought by the Council before it takes a decision on an allegation which it has decided shall be investigated. The Independent Person's views can also be sought by the Council at any other stage, or by a Member against whom an allegation has been made.
- 1.4. The terms capitalised in these arrangements are as defined within the text or at paragraph 2, Interpretation, below.

2. Interpretation

- 2.1. 'Code of Conduct' means the code of conduct for councillors and co-opted members adopted by the Council.
- 2.2. '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.
- 2.3. 'Subject Member' means an elected or co-opted member of the Council against whom a complaint has been made alleging a breach of the Code of Conduct.
- 2.4. 'Independent Person' means a person or persons appointed by the Council under section 28(7) of the Localism Act 2011 who has the functions set out in section 28(7) of the Localism Act 2011.
- 2.5. 'Independent Member' means a co-opted person who is not a Councillor or Officer of the Council who sits on the Standards Panel in an advisory capacity but who is not entitled to vote.
- 2.6. 'Informal Resolution' means the procedure described in these Arrangements at paragraph 7.
- 2.7. 'Investigating Officer' means the person appointed by the Monitoring Officer to undertake a formal investigation of a complaint alleging a breach of the Code of Conduct by a Subject Member. The Investigating Officer may be another senior officer of the Council, an officer of another authority or an external investigator.

- 2.8. 'Monitoring Officer' means a statutory officer appointed by the Council under the Local Government and Housing Act 1989 ss 5 and 5A who has a role in the assessment of complaints and the promotion and maintenance of high standards of conduct within local authorities and his or her deputy or representative.
- 2.9. The Standards Panel is a sub-committee of the Council's Standards and Audit Committee. The Independent Person is invited to attend all meetings of the Standards Panel and his/her views are sought and taken into consideration before it takes any decision on whether the Subject 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.

3. The Code of Conduct

- 3.1. The Council has adopted a Code of Conduct for Members. This is available for inspection on the Council's website (www.woking.gov.uk) and on request from the Council's Monitoring Officer.

4. Making a Complaint

- 4.1. All complaints must be made in writing and shall be on the official complaint form. Completion of the complaint form will enable the Council to process the complaint efficiently and transparently. A copy of the complaint form can be found at Appendix 1A. The complaint form can be posted or e-mailed to the Council's Monitoring Officer whose contact details are:

Joanne McIntosh
The Monitoring Officer,
Woking Borough Council,
Civic Offices,
Gloucester Square,
Woking,
Surrey,
GU21 6YL

Joanne.mcintosh@woking.gov.uk

- 4.2. 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.

5. Anonymous Complaints

- 5.1. 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.
- 5.2. 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.

- 5.3. If the Monitoring Officer decides to refuse the Complainant's request for confidentiality, the Complainant will be notified of the Monitoring Officer's decision with reasons. At this stage the Complainant will be given the option to withdraw the complaint.
- 5.4. There is no right of appeal against the Monitoring Officer's decision to refuse the Complainant's request for confidentiality.
- 5.5. If the Complainant's request for confidentiality is upheld, the Monitoring Officer will inform the Complainant that confidentiality may be retained but is subject to review by the Monitoring Officer as the matter progresses.
- 5.6. The Monitoring Officer will acknowledge receipt of a complaint within five working days of receiving it, and will keep the Complainant informed of the progress of their complaint.
- 5.7. The Monitoring Officer will, within five working days of receipt, normally advise the Subject Member that a complaint has been received (together with the name and address of the complainant and brief details of the complaint unless it is subject to confidentiality). The Member shall not make any representations to the Monitoring Officer at this stage of the process.
- 5.8. The Monitoring Officer will, within the same timescale, normally advise the Leader of the Council, the Member's Group Leader and the Chief Executive of the receipt of the complaint (together with the name and address of the complainant and brief details of the complaint unless it is subject to confidentiality). The Leader of the Council, the Member's Group Leader and Chief Executive shall not make any representations to the Monitoring Officer at any stage of the process.
- 5.9. The Monitoring Officer may decide not to advise the Subject Member, Leader of the Council, Member's Group Leader or Chief Executive of the receipt of the complaint if this might prejudice a subsequent investigation. The Monitoring Officer shall have the discretion to notify other persons of the receipt of the complaint as he/she considers appropriate. The Monitoring Officer shall inform the Complainant and Subject Member should he/she exercise discretion.

6. Assessment of Complaint

- 6.1. The Monitoring Officer will assess every complaint received and, after consultation with the Independent Person, make a decision as to the most appropriate action to be taken in relations to the complaint. This decision will normally be taken within ten working days of receipt of the complaint. Details of how the Monitoring Officer will assess the complaint can be found at Appendix 1B.
- 6.2. Where the Monitoring Officer requires additional information in order to come to a decision, he/she may refer back to the Complainant for such information, and may also request information from the Subject Member.

- 6.3. The following decisions can be taken by the Monitoring Officer in consultation with the Independent Person:
- a) No further action;
 - b) Attempt Informal Resolution;
 - c) Recommend Formal Investigation;
 - d) Referral to the Police or other regulatory agency if the complaint identifies criminal conduct or breach of other regulation.
- 6.4. Where the Monitoring Officer has taken a decision, he/she will inform the Complainant, the Independent Person, the Subject Member, and where appropriate the Chairman of the Standards and Audit Committee, all Group Leaders, the Chief Executive, of his/her decision and the reasons for that decision. The Monitoring Officer shall have the discretion to notify other persons of his/her decision (and the reasons for that decision) as he/she considers appropriate.

7. Informal Resolution

- 7.1. 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.
- 7.2. 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.
- 7.3. 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.

- 7.4. 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.
- 7.5. At the end of the 20 working day period 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.
- 7.6. 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.
- 7.7. 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.
- 7.8. 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 and may impose the Informal Resolution.
- 7.9. Where Informal Resolution is proposed, the Monitoring Officer may direct that the Subject Member maintains confidentiality as to the matters discussed, and parties involved.

8. Formal Investigation

- 8.1. If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer.
- 8.2. The Investigating Officer will decide whether he/she needs to meet or speak to the Complainant to understand the nature of the complaint, and so that they can explain their understanding of events and suggest what documents the Investigating Officer needs to see, and who the Investigating Officer needs to interview.
- 8.3. The Investigating Officer will normally write to the Subject Member and provide him/her with a copy of the complaint, and ask the Subject 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 the Complainant's identity confidential or disclosure of details of the complaint to the Subject Member might prejudice the investigation, the Monitoring Officer can delete the Complainant's name and address from the papers given to the Subject Member, or delay notifying the Subject Member until the investigation has progressed sufficiently.
- 8.4. At the end of the investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to the Complainant and to the Subject Member concerned, to give both an opportunity to identify any factual matter in the draft report which is disputed or requires further investigation. A copy of the draft report will also be sent to the Monitoring Officer.

- 8.5. Having received and taken account of any comments that may be made on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer.
- 8.6. The Monitoring Officer will, within 10 working days of the receipt of the Investigating Officer's report, review the report.
- 8.7. 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 Standards Panel.
- 8.8. A copy of the final report shall be sent to the Complainant, Subject Member, and at the discretion of the Monitoring Officer where appropriate to the Leader, Members Group Leader, Chairman of the Standards and Audit Committee and the Chief Executive.

9. Standards Panel

- 9.1. If the Monitoring Officer considers that Informal Resolution is not appropriate, or the Subject Member concerned is not prepared to undertake any proposed remedial action, the Monitoring Officer will report the Investigating Officer's report to the Standards Panel before deciding whether the Subject Member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the Member.
- 9.2. The Standards Panel, 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 Standards Panel concludes that the Subject Member did fail to comply with the Code of Conduct, the Chairman will inform the Subject Member of this finding and the Standards Panel will then consider what action, if any, it should take as a result of the Subject Member's failure to comply with the Code of Conduct. In doing this, the Standards Panel will give the Subject Member an opportunity to make representations to it and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter. Separate guidance this procedure can be found at Appendix 1C.

10. Sanctions

- 10.1 The Standards and Audit Committee has delegated to the Standards Panel power to take action in respect of individual Members who have breached the Code of Conduct. Accordingly the Standards Panel may –
 - a) Publish its findings in respect of the Member's conduct. This might comprise issuing a press release and/or inserting a public notice in the local newspaper(s);
 - b) Report its findings to Council for information;
 - c) Censure or reprimand the Member;

- d) 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 for such period as the Standards Panel considers appropriate;
 - e) Recommend to the Leader of the Council that the Member be removed from the Executive, or removed from particular Portfolio responsibilities for such period as the Standards Panel considers appropriate;
 - f) Instruct the Monitoring Officer to arrange training for the Member;
 - g) Recommend to the Council that the Member be removed from all outside appointments to which he/she has been appointed or nominated by the Council for such period as the Standards Panel considers appropriate;
 - h) Withdraw facilities provided to the Member by the Council, such as a computer, website and/or email and Internet access for such period as the Standards Panel considers appropriate; or
 - i) Exclude the Member from the Council's offices or other premises, with the exception of meeting rooms as are necessary for attending Council, Committee and Sub-Committee meetings for such period as the Standards Panel considers appropriate.
- 10.2. The Standards Panel has no power to suspend or disqualify the Member or to withdraw Members' allowances.

11. Notification of Decision

- 11.1. At the end of the Standards Panel, the Chairman will state the decision of the Standards Panel as to whether the Subject Member failed to comply with the Code of Conduct and as to any actions which it resolves to take.
- 11.2. Following consultation with the Chairman of the Standards Panel and Independent Person the Monitoring Officer shall issue the formal written decision notice to the Subject Member and send a copy to the Complainant. The decision notice shall include reasons for the decision. The Monitoring Officer will also make the summary of the decision notice available for public inspection and report the decision to the next convenient meeting of the Standards and Audit Committee.

12. Appeals

- 12.1. There is no right of appeal for as Complainant or for the Subject Member against a decision of the Monitoring Officer or the Standards Panel.
- 12.2. There is a right of complaint to the Local Government and Social Care Ombudsman.

13. Discontinuance of Complaints by Monitoring Officer

13.1 The Monitoring Officer has a discretion to 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
- (c) dies.

13.2 Where a complaint is discontinued, the Monitoring Officer will write to the Complainant and the Subject Member setting out the reasons for their decision. (Should a Subject Member become seriously ill or die, the Monitoring Officer shall exercise discretion in regards to contacting the Subject Members and/or their next of kin)

14. Confidentiality

14.1 Unless otherwise permitted under these arrangements or required by legislation, a complaint (and all associated information and documents) that a Member has breached the Code of Conduct shall remain confidential until such time that the Monitoring Officer or Standards Panel consider it appropriate (if at all) to disclose the complaint (and all associated information and documents).

14.2 Unless, otherwise determined, the findings of the Standards Panel shall be made public in accordance with the guidance set at Appendix 1C.

15 Timescales

15.1 The investigation shall be carried out promptly, with the expectation that all investigations and resolutions of the Standards Panel will be completed within a maximum period of four months. All those involved in the complaint should do their utmost to ensure that this can happen.

15.2 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.

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

16 Complaint Support

16.1 Assistance and support shall be provided to the Complainant and Subject Member throughout this process by the Deputy Monitoring Officer or Head of Human Resources as appropriate.

17 Annual Report

17.1 The Monitoring Officer shall submit an annual report to the Standards and Audit Committee. The report should include appropriate details of all complaints received (including those where no breach was found).

Adopted by Woking Borough Council on 31 March 2022.

APPENDIX 1A

**COMPLAINT FORM:
CODE OF CONDUCT FOR MEMBERS**

**To: The Monitoring Officer
Woking Borough Council**

A. Your details

1. Please provide us with your name and contact details. Anonymous complaints will only be considered if there is independent evidence to substantiate the complaint.

Title:	
First Name:	
Last Name:	
Address:	
Contact Telephone:	
Email:	
Signature:	
Date of Complaint:	

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

The following people will see this form:

- the Council's Independent Person advising the Standards Panel
- Monitoring Officer of the Borough Council
- the Chairman of the Standards and Audit Committee, if the matter proceeds to investigation
- the Standards Panel, if the matter proceeds to a Standards Panel

A brief summary of your complaint may also be shared, with the Member(s) you are complaining against. If you have serious concerns about your name and a summary, or details of your complaint being released, please complete Section C of this Form and also discuss your reasons or concerns with the Council's Monitoring Officer.

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

- A member of the public
- An elected or co-opted Member of the Council
- A Member of Parliament
- A Monitoring Officer
- Other council employee, contractor or agent of the Council
- Other (please state)

B. Making your Complaint

For a brief summary of sanctions available to the Standards Panel, please see information at the end of this Form.

- 3. Please provide us with the name of the member(s) you believe have breached the Borough Council's Code of Conduct.
- 4. Please explain in this section (or on separate sheet(s)) what the Member is alleged to have done that you believe breaches the Code of Conduct. If you are complaining about more than one member you should clearly explain what each individual person has done, with dates / witnesses to substantiate the alleged breach.

Title	First Name	Last Name	Summary of alleged breach of Code of Conduct

It is also important that you provide all the evidence you wish to have taken into account by the Monitoring Officer when he/she decides whether to take any action on your complaint or not. For example:

- You should be specific, wherever possible, about exactly what you are alleging the member said or did. For instance, instead of writing that the member insulted you, you should state what it was they said or did to insult you.
- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide any relevant background information or other relevant documentary evidence to support your allegation(s).
- If the allegation(s) being made occurred over **28** days from the alleged behavior or conduct, clearly explain why the complaint was not made during that period of time.

Please provide us with the details of your complaint and the evidence you want the Monitoring Officer to consider. Continue on a separate sheet if there is not enough space on this form.

C. Confidentiality of complainant and the complaint details

(Only complete this next section if you are requesting that your identity is kept confidential.)

5. In the interests of fairness and in compliance with the rules of natural justice, we believe members who are complained about have a right to know who has made the complaint and the substance of the allegation(s) made against him/her. We are, therefore, unlikely to withhold your personal details or the details of your complaint unless you have good reasons to believe that you have justifiable grounds, for example:-

- you believe you may be victimised or harassed by the Member(s) against whom you are submitting a written complaint (or by a person associated with the same); or
- you feel you may receive less favourable treatment from the Council because of the seniority of the Member against whom you are submitting a written complaint in terms of any existing Council service provision or any tender/contract that you may have or are about to submit to the Council.

Please note that requests for confidentiality or requests for suppression of the personal and complaint details will not automatically be granted. The Monitoring Officer will consider the request with the Independent Person alongside the substance of your complaint and the Monitoring Officer will then contact you with the decision. If your request for confidentiality is not granted, we will usually allow you the opportunity, if you so wish, of withdrawing your complaint.

However, it is important to understand that - in exceptional circumstances, where the matter complained about is very serious - we may proceed with an investigation (or other action) and may have no choice but to disclose your personal and complaint details, because of the allegation(s) made, even if you have expressly asked us not to.

Please provide us with details of why you believe we should withhold your name and/or the details of your complaint. Continue on a separate sheet if there is not enough space on this form.

D. Additional Information

6. Frivolous, vexatious and politically-motivated tit-for-tat complaints are likely to be rejected.
7. Complaints must be submitted in writing. In line with the requirements of the Equality Act 2010, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing. We can also help if English is not your first language.
8. If you need any support in completing this form, please contact the Monitoring Officer as soon as possible.

E. Process from here

9. Once a valid complaint relating to an alleged breach of the Code of Conduct for Members has been received by the Monitoring Officer, it will be considered by the Monitoring Officer with the Independent Person. You and the member against whom the complaint has been made will not be allowed to attend these deliberations, as the matter will be considered in private.
10. The Monitoring Officer, in consultation with the Independent Person, may resolve to:
 - (a) dismiss your complaint, with reasons;
 - (b) ask you for additional information, with reasons; or
 - (c) refer your complaint for investigation (or other action).
11. You will be notified once the decision is made and given information on any further stage(s) in the process at that time.

Monitoring Officer
Woking Borough Council
Civic Offices
Gloucester Square
Woking
GU21 6YL

Joanne.mcintosh@woking.gov.uk
01483 743038

Annex 1AA: Sanctions available to the Standards Panel

The Standards and Audit Committee has delegated to the Standards Panel power to take action in respect of individual Members who have breached the Code of Conduct. Accordingly the Standards Panel may –

- a) Publish its findings in respect of the Member's conduct. This might comprise issuing a press release and/or inserting a public notice in the local newspaper(s);
- b) Report its findings to Council for information;
- c) Censure or reprimand the Member;
- d) 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 for such period as the Standards Panel considers appropriate;
- e) Recommend to the Leader of the Council that the Member be removed from the Executive, or removed from particular Portfolio responsibilities for such period as the Standards Panel considers appropriate;
- f) Instruct the Monitoring Officer to arrange training for the Member;
- g) Recommend to the Council that the Member be removed from all outside appointments to which he/she has been appointed or nominated by the Council for such period as the Standards Panel considers appropriate;
- h) Withdraw facilities provided to the Member by the Council, such as a computer, website and/or email and Internet access for such period as the Standards Panel considers appropriate; or
- i) Exclude the Member from the Council's offices or other premises, with the exception of meeting rooms as are necessary for attending Council, Committee and Sub-Committee meetings for such period as the Standards Panel considers appropriate.

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

APPENDIX 1B

Assessment of the Complaint

The Monitoring Officer will, within 10 working days of the acknowledgement of receipt of a complaint, apply the following questions to determine whether a Complaint falls within the jurisdiction of these arrangements.

The Monitoring Officer shall do so in consultation with the Independent Person.

Stage 1 - Initial Jurisdiction Test

The complaint will be assessed by the Monitoring Officer against an Initial Jurisdiction Test as follows:

- (a) Did the alleged conduct occur before the adoption of the Code of Conduct?
- (b) Was the Subject Member a member of the Borough 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?
- (e) If the facts, could be established, as a matter of evidence, could or would the alleged conduct be capable of a breach of the Code of Conduct?
- (f) Is the complaint limited to dissatisfaction with the Borough Council's decisions, policies and priorities, etc.?

If the complaint fails one or more of the initial jurisdiction tests, no further action will be taken by the Monitoring Officer and the complaint will be rejected. The Complainant will be notified accordingly with reasons. There is no internal right of appeal against the Monitoring Officer's decision.

If the complaint satisfies the Initial Jurisdiction Test the Monitoring Officer the Monitoring Officer will then proceed to assess the complaint. The Assessment Test aids the Monitoring Officer in reaching a decision on the complaint by enabling the Monitoring Officer to consider the following criteria, whilst taking into account the nature of the complaint and the need to adopt a proportionate response:

Stage 2 - The Assessment Test:

General

- (1) Has the Complainant submitted enough information as regards the allegation and alleged misconduct to sustain a potential breach of the Code of Conduct?
- (2) Is an investigation likely to prove on the balance of probability whether or not a breach took place?
- (3) Does the complaint appear to be too trivial to warrant further action?
- (4) Is the evidence sufficiently reliable i.e. is it first-hand evidence or hearsay evidence?
- (5) Is the evidence relevant to the alleged breach?
- (6) Could any further evidence be revealed by an investigation?
- (7) Would an investigation serve any useful purpose?
- (8) Is the allegation serious enough to warrant further action?

Mitigating factors (tending to make further action less likely)

- (9) The substance of the complaint has already been the subject of an investigation or other action relating to the Code of Conduct;
- (10) The allegation took place more than 28 days prior to receipt of the complaint and there would be little benefit in taking action now;
- (11) The Subject Member took appropriate advice on the matter and followed that advice;
- (12) 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;
- (13) It is likely that an investigation will prove only a technical or inadvertent breach;
- (14) The complaint appears to be malicious, vexatious, politically motivated or tit-for-tat;
- (15) The Complainant has involved the press in relation to the alleged complaint;
- (16) The member has already provided (or tried to provide) a suitable remedy (such as apologising);
- (17) The breach occurred in all innocence i.e. without knowledge;
- (18) There was unreasonable provocation;
- (19) The complaint involves a Subject Member who is seriously ill and it would not be in the public interest to pursue;
- (20) The complaint is about a deceased person;
- (21) The complaint is about a person who is no longer a borough councillor.

Aggravating factors (tending to make further action more likely)

- (22) The complaint involves allegations of bullying or intimidation of a Complainant;
- (23) The allegation if proven could have a serious effect upon the reputation of the Council or parish council, upon staff relations or upon public trust and confidence;
- (24) The Subject Member holds a position of seniority and/or a position of influence;
- (25) 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
- (26) the Council;
- (27) The Subject Member took appropriate advice on the matter but did not follow that advice;
- (28) The complaint involves an allegation that the behaviour may cause the Council to breach an equality enactment;

The criteria set out in the Assessment Test is not an exhaustive or prescriptive list and the Monitoring Officer can take into account other criteria dependent on the circumstance of the complaint. The existence of such criteria does not fetter the discretion of the Monitoring Officer. A written record of the assessment decision will be provided aiding robust and transparent decision-making.

APPENDIX 1C

STANDARDS PANEL GUIDANCE

The need for a Standards Panel

The Standards Panel will seek to hold a Standards Panel in relation to an allegation within 28 working days of receiving the Investigation Report.

Before the Standards Panel

The Standards Panel process

The Panel will use a written Standards Panel process in order to allow the Standards Panel to proceed fairly and efficiently.

The Subject Member will be asked to provide the following information to the Monitoring Officer within 5 working days from the notification of the Standards Panel:

- to identify those paragraphs in the Investigating Officer's Report which the Subject Member agrees with and those paragraphs in the Report that the Subject Member disagrees with and the reasons for such disagreement;
- to identify any further documentary evidence which the Subject Member would like to rely upon at the Standards Panel;
- to ascertain if they are going to attend the Standards Panel 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 Standards Panel;
- to give reasons whether the whole or any part of the Panel should be held in private and whether any of the documentation supplied to the Standards Panel should be withheld from the public.

The Investigating Officer will also be asked to comment on the Subject Member's response within a set time to say whether or not he or she:

- wants to call witnesses to give evidence to the Standards Panel;
- wants any part of the Panel conducted in private and why;
- wants any part of the Investigating Officer's report or other relevant documents to be withheld from the public and why.

The Monitoring Officer will endeavour to accommodate the availability of the parties attending the Standards Panel before notifying the parties of the date, time and place for the Standards Panel.

The Complainant will be asked to provide the following information to the Monitoring Officer:

- the Investigator's report forms basis of the case that the Code of Conduct has been breached. The Complainant asked to identify those paragraphs in the Investigating Officer's Report which the Complainant agrees with and those paragraphs in the Report that the Complainant disagrees with and the reasons for such disagreement. to ascertain if they wish to attend the Standards Panel and whether or not they wish to make representations to the Standards Panel. It should be noted that the Investigating Officer shall advocate that the Code of Conduct has been breached. The Complainant, at the discretion of the Chairman of the Standards Panel, may request the opportunity to rebut any matters raised within the Standards Panel to which they disagree.

- to give reasons whether the whole or any part of the Standards Panel should be held in private and whether any of the documentation supplied to the Standards Panel should be withheld from the public.

The Standards Panel

The Order of *Business*

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:

- Appointment of a Chairman/Vice Chairman.
- Apologies for absence.
- Declarations of interests.
- The Chairman shall confirm that the Standards Panel is quorate.
- In the absence of the Subject Member, consideration as to whether to adjourn or to proceed with the Standards Panel.
- Introduction by the Chairman, of Members of the Standards Panel, the Independent Person, the Monitoring Officer or Legal Advisor to the Standards Panel, Investigating Officer, Complainant(s) and the Subject Member and their representative (if appointed).
- 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.
- Conduct of the Standards Panel. The Standards Panel may adjourn the Standards Panel at any time.

Presentation of the Complaint

The Investigating Officer presents their report including any documentary evidence or other material and calls any complainant witnesses.

The Standards Panel will give the Subject Member the opportunity to ask any questions regarding the evidence presented through the Chair.

The Standards Panel may question the Investigating Officer upon the content of his or her report and any complainant witnesses.

Presentation of the Subject Member's case

The Subject Member or their representative presents their case and calls their witnesses.

The Standards Panel will give the Investigating Officer the opportunity to ask any questions regarding the evidence presented through the Chair.

The Standards Panel may question the Subject Member upon the contents of their case and any Subject Member witnesses.

Summing up

The Investigating Officer sums up the complaint.

The Complainant to have the opportunity to rebut any matters raised within the Panel to which they disagree.

The Subject Member or their representative sums up their case.

Views/Submissions of the Independent Person

The Chairman will invite the Independent Person, to express their view on whether they consider that on the facts presented to the Standards Panel there has been a breach of the Code of Conduct or no breach as the case may be.

Deliberations of the Standards Panel

The Standards Panel will adjourn the Standards Panel and deliberate in private (assisted on matters of law by a legal advisor) to consider whether on the facts found, the Subject Member has failed to comply with the Code of Conduct.

The Standards Panel may, at any time, come out of private session and reconvene the Standards Panel in public, in order to seek additional evidence from the Investigating Officer, the Subject Member or the witnesses. If further information to assist the Standards Panel cannot be presented, then the Standards Panel may adjourn the Standards Panel and issue directions as to the additional evidence required and by whom.

The Standards Panel will make its decision on the balance of probability, based on the evidence before it during the Standards Panel.

Where the complaint has a number of aspects, the Standards Panel may reach a finding, apply a sanction and /or make a recommendation on each aspect separately.

Having deliberated on its decision the Standards Panel will reconvene the Standards Panel in public and the Chairman will announce that, on the facts presented, the Standards Panel considers that there has been a breach of the Code of Conduct, or no breach, as the case may be.

If the Standards Panel considers that there has been **no breach of the Code of Conduct** the Standards Panel 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 Standards Panel.

If the Standards Panel decides that there has been **a breach of the Code of Conduct**, the Chairman will announce the principal reasons for the decision.

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 Standards Panel may make any recommendations it considers may facilitate and enhance ethical standards within the relevant authority. The Independent Person will then be invited to express their view on any sanction(s) or recommendation(s).

Having heard the representation/views, the Standards Panel will adjourn and deliberate in private.

Having deliberated on the application of any sanctions(s), and having taken into account the Independent Person's views the Standards Panel will reconvene the Standards Panel in public and the Chairman will announce:

- whether any sanctions are to be applied
- Whether any recommendations will be made to the Council or the Monitoring Officer.
- That the Standards Panel's full decision and reasons will be issued by the Monitoring Officer, in writing within approximately 10 working days following the close of the Standards Panel.
- That the decision will be published on the Borough Council's website; and
- That there is no internal right of appeal against the Standards Panel decision(s) and/or recommendations(s).

Range of Possible Sanctions

The Standards Panel may:

- Publish and report its findings in respect of the Subject Member's conduct to a meeting of the full Council
- Recommend to Council that the Subject Member be requested to apologise;
- Recommend to the Subject Member's political group leader (or in the case of an un-grouped Subject Member, recommend to Council or to Committees) that they be removed from any or all Committees or Standards Panels of the Council for a specified period;
- 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;
- Recommend to Council that the Subject Member be requested to participate in appropriate training or participation in conciliation or mediation;
- Recommend to Council or the relevant Parish Council that the Subject Member be removed from all outside appointments to which they have been appointed or nominated by the Council for a specified period;
- Withdraw 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;
- Exclude 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;
- Issue a formal letter to the Subject Member;
- Issue a formal reprimand to the Subject Member.

The Standards Panel 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

When deciding whether to apply one or more sanctions referred to above the Standards Panel 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 Panel will consider the following questions along with any other relevant circumstances raised at the Standards Panel:

- What was the Subject Member's intention and did they know that they were failing to follow the Council's Code of Conduct?
- Did the Subject Member receive relevant advice from officers before the incident and was that advice acted on in good faith?
- Has there been a relevant breach of trust?
- Has there been financial impropriety, e.g. improper expense claims or procedural irregularities?
- What was the result/impact of failing to follow the Council's Code of Conduct?
- How serious was the incident?
- Does the Subject Member accept that they were at fault?
- Did the Subject Member apologise to the relevant persons?
- Has the Subject Member previously been warned or reprimanded for similar misconduct?
- Has there been a relevant previous breach by the Subject Member of the Council's Code of Conduct?
- Is there likely to be a repetition of the incident?
- 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 Standards Panel will need to give reasons for its decision that the Subject Member was or was not acting publicly.

The written decision

The Chairman will announce its decision on the day. The Committee will issue a full written decision approximately 10 working days after the end of the Standards Panel to:

- The Subject Member; and
- The Complainant;

Making the findings public

A summary of the decision and reasons for that decision to be published on the Council's website.

If the Standards Panel finds that a Subject Member did not fail to follow the Council's Code of Conduct, the public summary must say this, and give reasons for this finding.

If the Standards Panel 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 Standards Panels decision not to take any action.

If the Standards Panel 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 Sub- Committee.

Costs

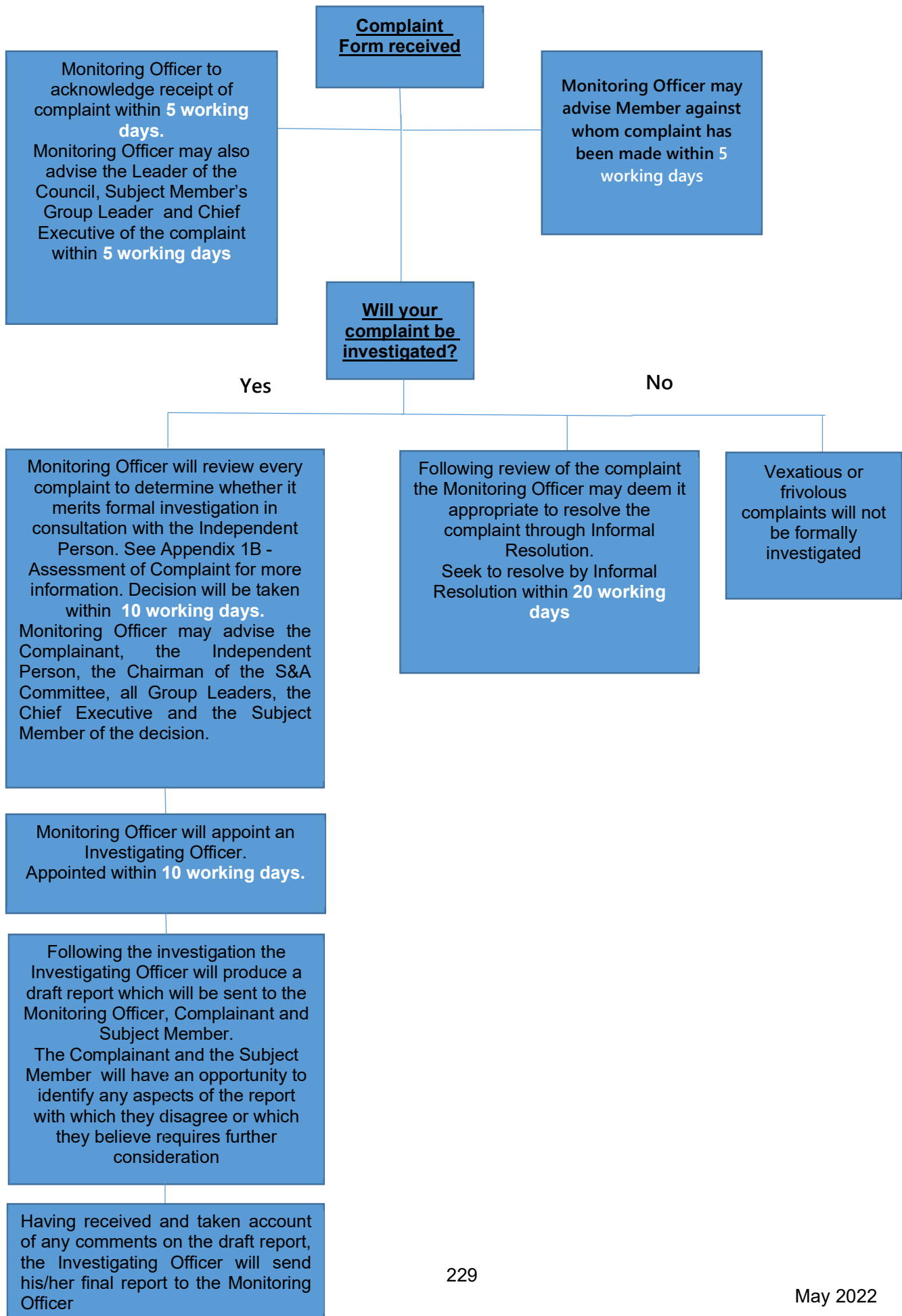
Subject Members are responsible for meeting the cost of any representation at a Standards Panel meeting. The Standards Panel cannot make orders as to costs. The Council cannot contribute to the Subject Member's costs or the Complainant's costs or indemnify a Subject Member or Complainant against costs which he or she may incur.

Appeals

There is no internal right of appeal for a Member against a finding by the Standards Panel following a Standards Panel.

Variation

The Monitoring Officer or the Chairman of the Standards Panel may vary this procedure in any particular instance where her she or they is/are of the opinion that such a variation is desirable and does not conflict with statutory requirements.



Outcome of Complaint

Investigating Officer concludes there is no evidence of failure to comply with Code of Conduct?

Investigating Officer concludes there is evidence of failure to comply with Code of Conduct?

Monitoring Officer will review the Investigating Officer's report within **10 working days** and, if satisfied (after consulting the Independent Person) that the Investigating Officer's report is sufficient, the Monitoring Officer will write to the Complainant and to the Subject Member concerned to provide them with a final copy of the report and to notify them that he/she is satisfied that **no further action is required**

The Monitoring Officer shall send a copy of the final report to the Complainant, Subject Member, the Leader, Members Group Leader, Chairman of the Standards and Audit Committee and the Chief Executive

If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider his/her report

Monitoring Officer will review the Investigating Officer's report within **10 working days** and will then either send the matter before the Standards Panel or, after consulting the Independent Person, seek **Informal Resolution**

Informal Resolution
Monitoring Officer will consult Independent Person and Complainant to agree what they consider a fair resolution. If Subject Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards and Audit Committee for information, but will otherwise take no further action

Within 20 working days

Standards Panel

Monitoring Officer will conduct the Standards Panel process. See Appendix 1C. The Investigating Officer and Subject Member will make representations to the Standards Panel and if the Panel finds the Subject Member failed to comply with the Code of Conduct the Chairman will inform the Member of this finding and the Standards Panel will then consider what action, if any, it should take as a result of the Member's failure to comply with the Code of Conduct

Monitoring Officer will prepare a formal decision notice in consultation with the Chairman of the Standards Panel.

Within 10 working days

The decision notice will set out the reason for the decision and be sent to the Complainant and to the Member