

**Draft 2021**

**Arrangements for dealing with complaints about Councillors**

**Contents**

**General and Interpretation ..... 3**

**Making a complaint and Preliminary Considerations ..... 5**

**Stage One – Initial Assessment of Complaint..... 8**

**Stage 2 - Informal Resolution..... 12**

**Stage Three – Formal Investigation..... 13**

**Finding of no Breach of the Code of Conduct ..... 14**

**Finding of a Breach of the Code of Conduct..... 14**

**Stage Four - Hearing ..... 15**

**No Appeal ..... 16**

**Revision of these Arrangements ..... 16**

**Review of these Arrangements..... 16**

**Appendix One..... 17**

**Complaints Panel Process and Procedure..... 17**

**Pre-hearing process ..... 17**

**Hearing Procedure ..... 18**

**Conclusions..... 20**

## Arrangements for dealing with complaints under the Code of Conduct about District and Town and Parish Councillors

The Localism Act 2011 places a general duty on district and town and parish councils to ensure that high standards of conduct are maintained and demonstrated to the public. Councillors have both individual and collective responsibility to maintain these standards, support expected behaviour and challenge behaviour which falls below expectations. Most councillors conduct themselves appropriately and in accordance with the Code of Conduct but if there is a suggestion that they have breached the Code of Conduct, a principal authority (i.e., the District Councils) must have an effective, fair, impartial, and transparent complaints and investigation procedure to enable it to make decisions on allegations, in which both councillors and the public can have confidence. (Any complaints about town and parish councils must be dealt with under the arrangements adopted by the District Councils). It is also important to maintain the integrity of any process and focus resources on the most serious misconduct and this is why this process incorporates a public interest test.<sup>1</sup>

Likewise, sanctions should be imposed in a consistent way and only where there is a genuine breach. The Localism Act refers to these collectively as the ‘arrangements’<sup>2</sup>.

This procedure applies when a complaint is received that a member of South Oxfordshire or Vale of White Horse District Councils or a town / parish councillor within the districts has, or may have, failed to comply with the Code of Conduct for Members (‘the Code’). The District Councils will review their Code each year and regularly seek, where possible, the views of the public, community organisations and the town and parish Councils.<sup>3</sup>

Whilst responsibility for the adoption and review of their individual Codes is a matter for town and parish councils, the Monitoring Officer will provide help and guidance where necessary or requested. The Code will be readily accessible to both councillors and the public and will be placed in a prominent position on the District Councils’ websites and available in hard copy at their premises.<sup>4</sup>

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<sup>1</sup> Paragraph 3.6

<sup>2</sup> References to Best Practice refer to the recommendations made by the Committee for Standards in Public Life in its report of January 2019 – Local Government Ethical Standards

<sup>3</sup> **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.

<sup>4</sup> **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.

## 1. General and Interpretation

The person making the complaint will be referred to as the **complainant** and the person against whom the complaint is made will be referred to as the “**Subject member**”.

1.1 The **Complaints Panel** is a body who will make decisions on matters referred to it by the Monitoring Officer and consists of three members of the Audit & Governance sub-committee together with an Independent Person (who will be non-voting). The members of the Panel will only consist of councillors or any named substitutes from the relevant District Council / area from which a complaint originates.

1.1.1 A meeting of the Complaints Panel to consider a reference from the Monitoring Officer will be referred to as a **hearing**.

1.2 The **Monitoring Officer**<sup>5</sup> is a senior officer of the Council who has been delegated responsibility for administering the system of complaints about member misconduct and as part of that role may nominate another officer of suitable experience and seniority to carry out any of the functions listed in this procedure.

1.2.1 The Monitoring Officer will provide advice, support and management of investigations and adjudications on alleged breaches to Town and Parish Councils within South Oxfordshire and Vale of White Horse.<sup>6</sup> However, the Monitoring Officer cannot provide advice to Town and Parish Councils in relation to matters outside of the Code, e.g., decision making, governance issues and meeting process and procedure and etiquette.

1.2.2 The Monitoring Officer has appointed deputies to act when he/she is unavailable or has an actual or potential conflict of interest. If there is no deputy or the deputy is unavailable, the Monitoring Officer may ask a Monitoring Officer from a different authority to undertake the investigation.<sup>7</sup>

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<sup>5</sup> The role of Monitoring Officer is a statutory role with personal responsibilities which encompasses the following:-

- (a) a duty to report to the Council in any case where the Monitoring Officer is of the opinion that any proposal or decision is or is likely to be illegal or to constitute maladministration.
- (b) a range of functions relating to Members' conduct; and
- (c) specific functions under the Council's Constitution.

<sup>6</sup> **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.

<sup>7</sup> **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.

1.2.3 The Deputy Monitoring Officers are:

Mrs Pat Connell – Legal Services Manager  
Mr Steven Corrigan – Democratic Services Manager

1.3 The Council appoints **Independent Persons** who are members of the public from outside the District Councils to assist the Monitoring Officer and Complaints Panel in considering complaints. The Independent Persons currently appointed by the District Councils are:

South Oxfordshire

Mr George Green and  
Mr Chris Smith

Vale of White Horse

Mr Chris Smith and  
Mr Martin Wright.<sup>8</sup>

1.3.1 The Monitoring Officer must seek the views of the Independent Person and take them into account before deciding on an allegation they have decided to investigate.

1.3.2 The Monitoring Officer may seek the views of the Independent Person at any other stage of the process.

1.3.3 The subject member may seek the views of one of the Independent Persons at any stage, but this will usually be a different Independent Person to the one consulted by the Monitoring Officer.

1.4 No member or officer of the District Councils, town or parish council or Independent Person will participate in any stage of the arrangements if he or she has, or may have, any conflict of interest in the matter. Members will consider if they are associated with the complainant or closely associated with the subject member or are a witness to the conduct leading to the complaint.

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<sup>8</sup> **Best practice 7:** Local authorities should have access to at least two Independent Persons.

2. **Making a complaint and Preliminary Considerations**<sup>9</sup>

Complaints should be made in writing using the prescribed complaints form, either by e-mail to:

[monitoring.officer@southandvale.gov.uk](mailto:monitoring.officer@southandvale.gov.uk)

or in hard copy to:

The Monitoring Officer,  
South Oxfordshire and Vale of White Horse District Councils  
135 Eastern Avenue,  
Milton Park,  
Milton OX14 4SB

- 2.1 Complaints about councillors may be made by anyone, but complaints about the conduct of a town or 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.<sup>10</sup> (For the avoidance of doubt, whilst this is the normal approach, this provision does not preclude the clerk from making a complaint where it would be appropriate for them to do so.) Where he/she considers it appropriate in the circumstances, the Monitoring Officer may require the town or parish council to seek to resolve the complaint itself in the first instance.
- 2.2 An oral complaint will be accepted where the complainant is unable to write or where there is a language barrier. Where an oral complaint is received it will be transcribed and sent to the complainant for their approval.
- 2.3 Anonymous complaints will only be accepted in exceptional circumstances. Further information regarding confidentiality and anonymous complaints is set out below.
- 2.4 Complainants will be encouraged to submit their complaint using the standard complaints form and must provide substantiated information setting out which elements / sections of the Code of Conduct are alleged to have been breached; provide details of the evidence relied upon; outline what form of resolution the complainant is seeking. Further information regarding the range of sanctions

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<sup>9</sup> **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.

<sup>10</sup> **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.

available is set out in paragraph 8.3 below. Other written complaints will be accepted so long as they contain all relevant information. The Monitoring Officer will ask the complainant to provide further information before accepting a complaint if there is insufficient information provided.

- 2.5 If the complaint identifies criminal conduct or breach of other regulations by any person, the Monitoring Officer is authorised to report this to the police or other prosecuting or regulatory authority, in addition to any action taken pursuant to the Code.
- 2.6 In the case of any alleged criminal conduct, to avoid potentially prejudicing an ongoing criminal investigation, the complaint will normally be held in abeyance pending the outcome of any criminal investigation.

2.7 Confidentiality

If a complainant wishes their identity to be withheld, they should state this and provide full reasons why they believe their request for confidentiality is justified when submitting the complaint. Any request for confidentiality will be considered by the Monitoring Officer at the initial assessment stage of these arrangements. In reaching his/her decision the Monitoring Officer may also consult with the council's Independent Person.

- 2.8 As a matter of fairness and natural justice the subject member will usually be told who has complained about them and receive full details of the complaint and the complainant is made aware that their data will be processed in this way.<sup>11</sup> However, in exceptional circumstances, the Monitoring Officer may withhold the complainant's identity if they are satisfied that the complainant has reasonable grounds for believing that:

- they or any witness relevant to the complaint may be at risk of physical harm
- they are at risk of victimisation or harassment
- their 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.

- 2.9 The Monitoring Officer will consider whether the complaint can be dealt with without making the complainant's identity known, and in particular whether investigation of the complaint would require the complainant's participation.

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<sup>11</sup> This will be made clear on the complaints form

- 2.10 If the Monitoring Officer decides to refuse a request by a complainant for confidentiality, they will offer the complainant the option to withdraw the complaint, rather than proceed with his or her identity being disclosed. The Monitoring Officer will balance whether the public interest in acting on a complaint will outweigh the complainant's wish to have his or her identity withheld from the subject member.
- 2.11 The Monitoring Officer will normally discontinue a complaint - if it is considered appropriate to do so - where the subject member ceases to be a councillor before a final determination has been made. An exception to this would be where the Monitoring Officer is of the view that it is in the public interest for findings to be made. When a complaint is discontinued the Monitoring Officer will write to the complainant setting out the reasons for their decision.

2.12 Anonymous Complaints

If an anonymous complaint is received it will be considered by the Monitoring Officer at the initial assessment stage of these arrangements. In reaching his/her decision the Monitoring Officer may also consult with the Independent Person.

- 2.13 The principles of fairness and natural justice referred to in paragraph 2.8 will also be applied to anonymous complaints and such complaints will only be accepted if they include documentary or photographic evidence indicating a serious or significant matter.

2.14 Withdrawing Complaints

If a complainant asks to withdraw the complaint prior to the Monitoring Officer making an initial assessment on it, the Monitoring Officer will consider whether the public interest in taking the complaint forward outweighs the complainant's wish to withdraw it and will normally consider whether the complaint is such that action can be taken on it without the complainant's participation. Consideration will also be given as to whether there is an identifiable underlying reason for the request to withdraw the complaint, in particular whether there is evidence that pressure has been placed on the complainant to withdraw the complaint.

2.15 Multiple Complaints

If the Monitoring Officer receives a number of complaints about the same matter, the complaints will normally be dealt with together unless it would be inappropriate to do so.

2.16 Complaints About Members of More than One Council

When the Monitoring Officer receives a complaint about a councillor who is known to be a member of another authority, for example the County Council, the Monitoring Officer may establish whether a similar allegation has been made to the other authority. Depending on the circumstances and in which capacity the member was acting at the time of the alleged misconduct, the Monitoring Officer will consider, in consultation with the Monitoring Officer from the other authority, which authority should more appropriately deal with the complaint.

2.17 Receipt and Acknowledgement of Complaints

The Monitoring Officer will acknowledge receipt of the complaint in writing within 10 working days of all required information being provided. The complainant will be given details about how the complaint will be dealt with and provided with a link to these arrangements.

**Stage One – Initial Assessment of Complaint**

3.0 The complaint will be automatically rejected if:

- The complaint is not against one or more named member of South Oxfordshire or Vale of White Horse District Councils or any town or parish council within the Districts; or
- The complaint is against a current member of the District Councils or any town or parish council within the Districts but it is clear that the subject member was not acting in their capacity as a member of that Council at the time of the alleged failure to comply with the Code.<sup>12</sup>
- It relates to an incident before a councillor or co-optee was elected or co-opted<sup>13</sup>

The Monitoring Officer will consider all of the circumstances before reaching a conclusion as to the status of the member at the time of the alleged breach of the Code and may need to make further enquires to establish the capacity in which the member was acting at the time of the alleged misconduct.

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<sup>12</sup> Elected members are not permanently 'on duty'. The Code only applies when they are acting in their official capacity, but may also apply when a member is seeking to rely on their official status or give the impression that they are acting in their official capacity.

<sup>13</sup> The Code only applies to councillors and co-optees and is not retrospective in application

- 3.1 Where a complaint is rejected on the above grounds the Monitoring Officer will write to the complainant explaining why their complaint cannot be dealt with under this procedure.
- 3.2 At any time, the Monitoring Officer may request further information from either the complainant, the subject member, or any other persons considered appropriate before making an initial assessment.
- 3.3 If the complaint is not automatically rejected:
- The Monitoring Officer will write to the subject member and copy in the Group Leader and / or Whip (if applicable) and in the case of a complaint about a town or parish council member to the Clerk, with a copy of the complaint and the name of the complainant, (unless anonymity has been requested and accepted as valid by the Monitoring Officer).
- 3.3.2 The subject member may if they wish, within 10 working days of being provided with a copy of the complaint, make written representations to the Monitoring Officer which must be considered when deciding how the complaint should be dealt with. Representations received after this time may be considered at the discretion of the Monitoring Officer but in any event, will not be considered after the Monitoring Officer has made and communicated the initial assessment of the complaint.
- 3.3.3 A decision regarding the progress of the complaint will normally be taken within 20 working days of either receipt of representations from the subject member or, where no representations are submitted, 20 working days of the expiry of the period mentioned in paragraph 3.3.2 above. The complainant and the subject member will be informed should there be a delay in completing any stage of the process.
- 3.4 The Monitoring Officer will consider the complaint against the criteria set out below and may consult with the Council's Independent Person before reaching a decision<sup>14</sup> on the initial assessment as to whether the complaint merits investigation, or another course of action. Where the complaint relates to a town or parish councillor, the Monitoring Officer may also seek the views of the clerk of the town or parish council before deciding.

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<sup>14</sup> **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.

3.5 If the complaint has not been rejected on the grounds in paragraph 3.0, the Monitoring Officer will go on to consider the following criteria to decide whether further action is merited. No further action will ordinarily be taken where:

- A substantially similar allegation has previously been made by the complainant to the Monitoring Officer. In these cases, the Monitoring Officer will normally reject the complaint unless sufficient new evidence is provided, or the complaint has since been the subject of an investigation by another regulatory authority which has made a finding against the member
- The complaint is about something that happened so long ago that those involved are unlikely to remember it clearly enough to provide credible evidence, or where the lapse of time means there would be little benefit or point in acting now. It will be unusual for complaints older than one year to be accepted
- Subject to Paragraph 2.12, if the allegation is anonymous
- The complaint is of an interpersonal nature that would more properly be dealt with by referring the matter to the member's Group Leader for informal resolution or in the case of a parish or town council, to the Chair and Clerk
- The allegation discloses a potential breach of the Code of Conduct, but the complaint is technical in nature and not serious enough to merit any action and the resources needed to investigate and determine the complaint are wholly disproportionate to the allegations or
- The complaint appears to be malicious, vexatious, politically motivated or tit for tat. Such a complaint may be identifiable:
  - through repeated allegations making the same, or broadly similar, complaints against the same councillor(s) or co-optee(s) about the same alleged incident
  - as being reasonably construed as intending to cause annoyance, frustration, or worry to the other party (generally vexatious complaints)
  - through use of aggressive or repetitive language of an obsessive nature
  - through repeated complaints that disclose no potential breach of the Code(generally persistent complaints)
  - where it seems clear that there is an ulterior motive for a complaint
  - from counter allegations against a councillor that previously made a complaint(generally tit-for-tat complaints)
  - where a complainant refuses to let the matter rest once they have exhausted the complaints process.

3.6 Public Interest Test<sup>15</sup>

In the event that the Monitoring Officer decides that the grounds set out in paragraph 3.5 do not apply to the complaint, he/she will go on to consider the complaint against the public interest test below.

3.7 Limited resources should not be used to investigate matters which are trivial or which have little or no impact on the public. It is important that resources are focused on matters that are serious and which are capable of undermining the relationship between councillors and the public they serve - such as corruption, bullying and misuse of power in public office.

3.8 There is no widely accepted definition of public interest, but it has been described as “*something which is of serious concern and benefit to the public*”. The public interest therefore relates to something which has an impact on the public and is not merely a matter the public finds to be of interest or a matter that impacts solely on an individual (although an individual may be more directly impacted by the matter than the wider public).

3.9 Each complaint, and any supporting information, will be examined against a two stage test at the point of initial assessment and on an ongoing basis.

3.9.1 **Part One**, the Monitoring Officer will consider whether there is **direct evidence** that a breach of the Code of Conduct has occurred.

3.9.2 **Part Two**, the Monitoring Officer will consider whether an investigation or a referral the Complaints Panel is required in the public interest based on the following factors:

- the seriousness of the breach
- whether the member deliberately sought personal gain for themselves or another person at the public expense
- whether the circumstances of the breach are such that a member has misused a position of trust or authority and caused harm to another, e.g., bullying and harassment
- whether the breach was motivated by any form of discrimination against the victim’s ethnic or national origin, gender, disability, age, religion or belief, sexual orientation, or gender identity

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<sup>15</sup> **Best practice 6:** Councils should publish a clear and straightforward public interest test against which allegations are filtered.

- 3.10 After applying the steps above the Monitoring Officer, having consulted with the Independent Person, will then give his / her decision on the initial assessment of the complaint.
- 3.11 If the Monitoring Officer decides that the complaint ought to be rejected or that no further action is necessary / appropriate, a decision notice will be sent to the complainant and the subject member. The decision notice will summarise the allegation, give the decision of the Monitoring Officer and the reasons for the decision.
- 3.12 If the complaint is not concluded under Stage One, the following process will apply

### **Stage 2 - Informal Resolution**

- 4.0 The Monitoring Officer is authorised to resolve complaints informally without the need for a formal investigation where possible and at all stages of the process. Early, informal resolution may be appropriate for example where: -
- There is a breach of the Code but this is minor or technical in nature
  - The Subject member is relatively inexperienced
  - The member has admitted making an error as soon as the complaint has been brought to their attention
  - The member has already apologised or has offered to do so
  - Training or conciliation would be a more appropriate response.
- 4.1 Types of informal resolution might include:
- An apology from the subject member
  - An agreement from the subject member to attend relevant training
  - The subject member offering to engage in a process of mediation or conciliation with the complainant or
  - Any other action capable of resolving the complaint.
- 4.2 Where the Monitoring Officer seeks to resolve the complaint informally, he or she will provide the subject member with a reasonable timescale within which to attempt to resolve the complaint - usually this will be a maximum of 10 working days - and provide the subject member with the contact details for the Independent Person who will be available to the subject member to give them advice on what form of resolution they would consider appropriate. (Providing such guidance will not prevent the Independent Person from giving a view to the Complaints Panel.)

- 4.4 Before deciding upon a course of action the subject member may seek guidance from a Group Whip, Leader of the 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 if that has not already been specified in their complaint.
- 4.5 The Monitoring Officer will establish whether the subject member has resolved the complaint to the Complainant's satisfaction. 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.
- 4.6 Where it has not been possible to agree a form of resolution between the subject member and the complainant, the Monitoring Officer will go on to decide if the complaint merits formal investigation in the public interest. Where the subject member has made a reasonable offer of local resolution which has been rejected by the complainant, the Monitoring Officer will take account when deciding on next steps.

### **Stage Three – Formal Investigation**

- 5.1 Where the Monitoring Officer, in consultation with the Independent Person, decides that a complaint merits investigation he/she may appoint an investigating officer to carry out the investigation. The investigating officer may be an officer, an officer from another council, or an external investigator. However, depending on the circumstances, the Monitoring Officer may at his/her discretion dispense with the need for a full investigation and simply present the facts.
- 5.2 The investigating officer will follow guidance issued by the Monitoring Officer on the investigation of the complaint. The guidance will follow the principles of proportionality and the cost effective use of council resources and shall be interpreted in line with these principles. The investigating officer should aim to complete their investigation within a maximum of one month of their appointment.
- 5.3 When the investigation is complete, the investigating officer will produce a draft report and send copies to the Monitoring Officer, complainant, and subject member for comments on matters of factual accuracy only. The complainant and subject member will have a period of five working days to comment, but this can be extended for a reasonable period by the investigating officer in consultation with the Monitoring Officer.

- 5.4 The investigating officer will take any such comments received during a period specified into account before issuing their final report to the Monitoring Officer who will share it with the Independent Person. If the Monitoring Officer is not satisfied that the investigation has been conducted thoroughly, the investigating officer may be asked to reconsider the report, aspects of it, and / or the conclusions.

### **Finding of no Breach of the Code of Conduct**

- 6.0 Where the investigating officer's report finds no evidence that the subject member has breached the Code, the Monitoring Officer, in consultation with the Independent Person, will review the report and make a formal determination.
- 6.1 The Monitoring Officer will write to the complainant and the subject member (and to the clerk of the town or parish council, where the complaint relates to a town or parish council member), with a copy of the decision notice and the Investigating Officers report.
- 6.2 The decision of the Monitoring Officer is final and the complaint will be considered concluded at the point the decision notice is issued.

### **Finding of a Breach of the Code of Conduct**

- 7.0 Where the investigating officer finds that the subject member has breached the Code, the Monitoring Officer will review the report and will, having consulted the Independent Person, either send the matter for hearing to the Complaints Panel or consider whether informal resolution is appropriate.

#### **7.1. Informal Resolution**

If the Monitoring Officer believes that the matter can reasonably be resolved without the need for a hearing, for example because informal resolution has not yet been considered, s/he will consult with the Independent Person and the complainant and seek to agree a fair resolution.

- 7.2 If the subject member and the complainant accept the suggested resolution, the Monitoring Officer will report the outcome to the Complaints Panel and the clerk to the town or parish Council (if appropriate) for information but will take no further action.
- 7.3 If the complainant or the subject member refuse informal resolution in principle or to engage with the agreed outcome, the Monitoring Officer will refer the matter to the Complaints Panel for hearing without further reference to the complainant or the subject member.

## Stage Four - Hearing

8. Where informal resolution is not appropriate or the complainant and / or subject member refuse to accept informal resolution, the Monitoring Officer will report the investigating officer's findings to the Complaints Panel which will conduct a hearing before deciding whether the member has failed to comply with the Code and, if so, what action (if any) to take in respect of the member.

8.1 The process to be adopted by the Complaints Panel is set out in Appendix One

### 8.2 Action available to the Complaints Panel

Where the Complaints Panel finds that a subject member has breached the Code, it will publish a decision notice on the website of the relevant district council. In the case of a town or parish council a decision notice will be provided (which must be published on its website) of its findings in respect of the subject member's conduct<sup>16</sup> setting out the following:

- 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
- Any sanction applied.

### 8.3 Sanctions Available to the Complaints Panel

In the event of a finding of a breach of the Code, the Complaints Panel may:

- Recommend to the relevant council that the subject member should be formally censured
- Require the subject member to provide an apology to the complainant or any other person it considers appropriate
- Request the subject member remove any social media content which led to the complaint
- Recommend to the subject member's Group Leader (or in the case of ungrouped members recommend to Council) that he/she be removed from any or all committees or sub committees of the Council
- Instruct the Monitoring Officer (or recommend to the town or parish council) to arrange training for the subject member

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<sup>16</sup> **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.

- Recommend to the Leader of the respective council (or the town or parish council) that the subject member should be removed from all outside appointments to which they have been appointed or nominated by the council (or by the town or parish council)
- Withdraw (or recommend to the town or parish council that it withdraws) facilities provided to the subject member by the council such as a computer, website and/or e-mail and internet access; or
- Place such restrictions on the subject member's access to staff and or buildings or parts of buildings which may be reasonable in the circumstances.

**It should be noted that there is no legal power to suspend or disqualify the subject member or to withdraw any allowances.**

### **No Appeal**

9. There is no right of appeal against the substantive decision of the Monitoring Officer or of the Complaints Panel.
- 9.1 If the complainant believes that there has been unreasonable delay in dealing with the complaint or that Monitoring Officer has failed to consider relevant information or follow these arrangements, they are at liberty to refer the matter to the Local Government Ombudsman. (This does not apply to complaints made by councillors as they are not considered to be members of the public). A factsheet can be accessed at the following link:

<https://www.lgo.org.uk/make-a-complaint/fact-sheets/other-topics/complaints-about-standards-and-member-conduct>

### **Revision of these Arrangements**

10. In individual cases the Monitoring Officer may, in consultation with the Chair of Audit & Governance Committee, revise these arrangements, as he or she considers appropriate, to enable the process to be dealt with efficiently. Any such revisions to be reported to the next meeting of the Audit & Governance Committee.

### **Review of these Arrangements**

11. These arrangements were last reviewed in 2021 and shall be reviewed every year thereafter, or earlier where there is a change in the applicable law or circumstances warrant an earlier review.

## Appendix One

### Complaints Panel Process and Procedure

#### Pre-hearing process

1. The Monitoring Officer will ensure that the complainant and the subject member are provided with a final version of the investigation report. If the subject member is a member of another authority, the Monitoring Officer will send a copy of the report to the other authority's Monitoring Officer if they request it.
2. The officer providing administrative support to the Complaints Panel will:
  - a. provide a copy of the pre-hearing and hearing procedures set out below to the subject of the complaint
  - b. outline to the subject member their rights and responsibilities, including the right to be represented and call witnesses
  - c. propose a date for the hearing
  - d. use hearings procedure forms A to F<sup>17</sup>, asking for a written response from the subject of the complaint to find out whether they:
    - disagree with any of the findings of fact in the investigation report, and the reasons for disagreement
    - want a solicitor, barrister or any other person to represent them at the hearing – this will be at the subject members cost

*Note: the Complaints Panel will normally give permission for people who are not lawyers to accompany the Subject member but may refuse permission if the person is directly involved in the matter that the Panel will determine.*

    - want to give evidence to the complaints panel, either verbally or in writing
    - want to call relevant witnesses to give evidence to the complaints panel
    - can attend the hearing on the proposed date
    - want any part of the hearing held in private
    - want any part of the investigation report or other relevant documents withheld from the public.
  - e. send a copy of the subject of the complainant's response to the Monitoring Officer and invite the Monitoring Officer to say whether they want:

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A: Response of the subject of the complaint to the evidence set out in the investigation report

B: Other evidence relevant to the complaint

C: Representations to consider on findings of failure to comply with codeD:

Arrangements for the complaints panel

E: Details of proposed witnesses to be called

F: Checklist and summary for the pre-hearing process

- to be represented at the hearing
  - to call relevant witnesses to give evidence to the Complaints Panel
  - any part of the hearing held in private
  - any part of the investigation report or other relevant documents withheld from the public
  - to invite any other witnesses the complaints panel feels are appropriate.
3. The Monitoring Officer or legal adviser to the Complaints Panel will prepare a report which will be given to all members of the Complaints Panel setting out the key points of the investigation report and also confirm:
- a date, time and place for the hearing
  - the main facts of the case that are agreed
  - the main facts, which are not agreed
  - which witnesses will give live evidence
4. The Monitoring Officer will provide the information set out in paragraph 3 to:
- the subject member
  - the complainant
  - the investigator, who will make any necessary arrangements for the attendance of witnesses
  - anyone representing the Subject member and
  - if applicable, notify any relevant town or parish council of the date, time and place of the hearing
5. The subject member must raise any disagreements with the finding of facts in the investigation report during the pre-hearing process. The Complaints Panel will not consider any new disagreements about the investigation's findings of fact at the hearing itself, unless there are good reasons why these were not raised beforehand, or it was impracticable to do so.

## **Hearing Procedure**

6. Preliminary Matters

The subject member does not have to attend the hearing or have representation and cannot be compelled to do so. If the subject member chooses not to attend the hearing, the Complaints Panel will decide in their absence.

7. The Independent Person will attend a Complaints Panel meeting when it considers code of conduct complaints. Their views may be sought and taken

into consideration before the it reaches any conclusion on whether the councillor's conduct constitutes a failure to comply with the code of conduct. The Independent Person's views may also be sought before the Panel makes recommendations to the Monitoring Officer for action following a finding of breach of the code of conduct.

8. The Complaints Panel may take legal advice at any time and in private at any time during the hearing or while considering its conclusions.
9. The Chair of the Complaints Panel will ensure the meeting is quorate. (if the full Audit & Governance sub - committee is considering the case this is four councillors, otherwise a panel of three members (who must all attend) can consider the case). Any declarations of interest will be made at this point.
10. The Chair will introduce those in attendance and set out the procedure to be followed and will explain that:
  - the hearing is a formal process and that there will not be an open discussion
  - the Complaints Panel can only decide on the evidence before it
  - no new issues can be introduced unless they could not reasonably have been raised previously
  - There is no cross examination and all questions are direct through the Chair
11. Exclusion of press and public

Meetings will ordinarily be held in private session, but the Chair should ask the subject member and the Complaints Panel whether they wish to exclude the press or public from all or any part of the hearing. The Chair will then move exclusion.
12. If the subject member is not present at the hearing:
  - the Chair shall ask the legal advisor whether they have indicated an intention not to attend the hearing
  - the Complaints Panel will then consider reasons for non-attendance and decide whether it is in a position to proceed in the absence of the subject member.
  - the Complaints Panel may decide to adjourn the hearing to another date or proceed to consider the matter and make a determination in the absence of the subject member.
13. The Complaints Panel will adopt a two-stage process to consider the investigator's report. The first part of the process will be to consider the

evidence and make findings of fact. If the Complaints Panel is of the view that there has been a breach it will proceed to the second part of the hearing.

14. If the facts are agreed, the Complaints Panel may move directly to stage two of the hearing. If there is a disagreement the Chair will invite the investigating officer, if present, to make any necessary representations to support the relevant findings of fact in the report.
15. The investigating officer may call any necessary supporting witnesses to give evidence. The subject member will be given an opportunity to challenge any evidence put forward by any witness called.
16. The subject member should then have the opportunity to make representations to set out their version of event and call any necessary witnesses to give evidence.
17. The Chair or members of the Complaints Panel may question any of the witnesses and may allow the investigating officer to challenge any evidence put forward by witnesses called by the subject of the complaint.
18. Once the Complaints Panel has heard all of the representations from both parties, they will then be invited to sum up with the subject member having the final word.

### **Conclusions**

19. **Making Findings of Fact**

The Complaints Panel will then deliberate on the evidence in private and consider whether it is in a position to make findings of fact. In doing so, it will consider whether the subject member was in breach of the Code of Conduct and make findings accordingly. The burden of proof will be on the balance of probabilities.

20. If the Complaints Panel decides that the subject member has not breached the Code, the Complaints Panel will make a formal finding in this regard and the complaint will be dismissed.
21. If the Complaints Panel decides that the subject member has breached the Code, it will set out its findings of fact as to what elements of the complaint are upheld and what sections of the Code have been breached.
22. The Complaints Panel will then invite the subject member or their representative to address it in terms of sanctions before proceeding to

deliberate as to what sanction or sanctions would be appropriate in the circumstances.

23. The Complaints Panel will then deliberate in private to consider whether to impose a sanction and, if so, the nature of the sanction. The Complaints Panel may impose any sanction, or combination of sanctions set out in paragraph 8.3 of the arrangements set out above.
24. The Monitoring Officer will publish a notice to the effect that the subject member has breached the Code and set out any sanction imposed.
25. At all times, the Complaints Panel will consider whether there is a need to provide any recommendations to the council of which the subject member is a member, with a view to promoting high standards of conduct.