

ARRANGEMENTS FOR DEALING WITH MEMBERS' CODE OF CONDUCT COMPLAINTS

1. CONTEXT

- 1.1 Middlesbrough Council has adopted a Code of Conduct for all Members. Each Parish Council is also required to adopt a Code of Conduct for its Members.
- 1.2 These Arrangements are made under Section 28 of the Localism Act 2011 and set out the process the Council has adopted for dealing with complaints that an Elected Member, Co-opted Member or Parish Councillor has failed to comply with the Members' Code of Conduct.
- 1.3 The Members' Code of Conduct forms part of Middlesbrough Council's Constitution (pages 133 to 139).

2. MAKING A COMPLAINT

- 2.1 Complaints alleging a breach of the Code of Conduct by a Member must be made in writing using the Members' Code of Conduct Complaint form. (Attached at Appendix 4). Assistance will be offered to Complainants who have difficulty in making their complaint in writing. (For the purpose of these arrangements, the Member who is subject to the complaint will be known as the *Subject Member*). The Members' Code of Conduct Complaint Procedure is set out at Appendix 1.
- 2.2 The Member will usually be informed of the identity of the Complainant and provided with a summary of the complaint, unless the Monitoring Officer is of the opinion that it is not in the public interest to do so.
- 2.3 The Complaints Team will acknowledge receipt of a complaint in writing within 3 working days of receipt and send a copy of the complaint to the Subject Member.
- 2.4 The Monitoring Officer may delegate his/her role to the Deputy Monitoring Officer where there is a conflict of interests or in case of absence.

3. CRIMINAL CONDUCT

- 3.1 In accordance with Section 34 of the Localism Act 2011, it is a criminal offence if, without reasonable excuse, a Member:
 - a) Fails to notify the Monitoring Officer of a Disclosable Pecuniary Interest within 28 days beginning with the day the Member becomes, or is re-elected or re-appointed, a Member or Co-opted Member of the Authority.
 - b) Fails to notify the Monitoring Officer of a Disclosable Pecuniary Interest within 28 days of becoming aware of it, where a Member is acting alone in the course of discharging a function of the Authority (including making a decision in relation to the matter) and the interest is not already registered or subject to a pending notification to the Monitoring Officer.
 - c) Fails to disclose a Disclosable Pecuniary Interest at a meeting, where such interest has not already been registered or notified to the Monitoring Officer.
 - d) Fails to notify the Monitoring Officer of a Disclosable Pecuniary Interest within 28 days beginning with the day it is disclosed at a meeting, where such interest has not already been registered or notified to the Monitoring Officer.

- e) Takes part in discussions or votes at meetings that relate to the Disclosable Pecuniary Interests, unless a dispensation has been obtained.
- f) Knowingly or recklessly provides false or misleading information in any of the above disclosures or notifications.

3.2 Where a complaint against a Member relates to conduct of a criminal nature as defined in paragraphs a) to f) above, the Monitoring Officer will report the complaint to the police or other prosecuting or regulatory authority.

4. APPOINTMENT OF, AND ROLE OF INDEPENDENT PERSON

4.1 The Council shall appoint an Independent Person or Persons, in accordance with the requirements of Section 27 of the Localism Act 2011. Middlesbrough Council has appointed two Independent Persons.

4.2 The Independent Person must be consulted and have his or her views taken into account prior to the Monitoring Officer making a finding as to whether a Member has failed to comply with the Code of Conduct or deciding on the course of action to take in relation to the Member. The Independent Person may be consulted by the Monitoring Officer and/or the Subject Member at any stage of the complaints process.

5. INFORMAL RESOLUTION

5.1 The Monitoring Officer, in consultation with the Independent Person, may decide that the complaint can be resolved informally at any stage in the process prior to convening a Standards Committee hearing.

6. INVESTIGATION

6.1 If the Monitoring Officer, in consultation with the Independent Person, decides that the complaint should be investigated, an Investigating Officer will be appointed to undertake the investigation. The Investigating Officer will usually be an internal appointment. In exceptional cases, the Monitoring Officer may decide to appoint an external Investigating Officer.

6.2 Within 10 days of appointing the Investigating Officer, the Monitoring Officer will inform the Complainant and the Subject Member of the appointment.

6.3 The complaint will be investigated by the Investigating Officer in accordance with the Investigation Procedure set out at Appendix 2.

7. STANDARDS COMMITTEE HEARING

7.1 If the Monitoring Officer, in consultation with the Independent Person, considers that informal resolution is not appropriate, a meeting of the Standards Committee will be convened to determine the outcome of the complaint. The procedure for the Standards Committee hearing is set out at Appendix 3.

8. WITNESSES

8.1 Both the Investigating Officer and the Subject Member may call upon witnesses to provide written evidence or to appear at the Standards Committee. Although witnesses should be prepared to be questioned at the Standards Committee hearing, they should be treated with courtesy and respect.

- 8.2 Witnesses, for either the Subject Member or the Investigating Officer, cannot be compelled to attend the Standards Committee hearing.
- 8.3 Although the Subject Member is entitled to call any witnesses he or she wants, the Standards Committee may limit the number of witnesses if it believes the number called is unreasonable.

SANCTIONS

- 9.1 Where a Subject Member is found by the Standards Committee to have breached the Member's Code of Conduct, appropriate sanctions may be applied.

10. APPEAL

- 10.1 There is no right of appeal for either the Complainant or Subject Member against decisions of the Monitoring Officer or the Standards Committee.

DRAFT

APPENDIX 1

MEMBERS' CODE OF CONDUCT COMPLAINT PROCEDURE

1. PRELIMINARY TESTS

1.1 The complaint will be assessed by the Monitoring Officer, in consultation with the Independent Person, and the following assessment criteria applied:

- a) Did the alleged conduct occur before the adoption of the Members' Code of Conduct?
- b) Was the person complained of a Member of the Council or Parish Council at the time of the alleged conduct?
- c) Was the person complained of acting in an official capacity at the time of the alleged conduct?
- d) Did the alleged conduct occur when the person complained of was acting as a Member of another authority?
- e) If the facts could be established as a matter of evidence, could the alleged conduct be capable of a breach of the Code of Conduct?
- f) Is the complaint about dissatisfaction with the Council's or Parish Council's decisions, policies and priorities, etc?
- g) Is the complaint submitted in writing?
- h) Is the Subject Member of the complaint named?
- i) Is the complaint a 'repeat complaint', or supported by new or further evidence substantiating or indicating that the complaint is exceptionally serious or significant?
- j) Is the complaint anonymous, or supported by independent documentary evidence substantiating or indicating that the complaint is exceptionally serious or significant?
- k) Is there sufficient information/evidence to substantiate the complaint has been submitted by the Complainant?
- l) Is the complaint malicious, trivial, politically motivated or retaliatory?
- m) Is the Complainant unreasonably persistent, malicious and/or vexatious?
- n) Did the alleged misconduct happen more than 6 months ago?
- o) Is the complaint relatively minor and would dealing with the complaint have a disproportionate effect on both public money and officers' and Members' time?
- p) Have the circumstances changed so much that there would be little benefit arising from an investigation or other action?
- q) Has the complaint been the subject of an investigation or other action and there is nothing more to be gained by further action being taken?

- r) Is the complaint 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?
 - s) Is the complaint about a deceased person?
 - t) Is the complaint about a person who is no longer a Councillor or Parish Councillor or Co-opted Member?
 - u) Is the complaint about a Council employee?
- 1.5 The Monitoring Officer will determine whether the complaint is accepted or rejected. If the complaint is rejected, the Complainant will be notified accordingly, with reasons, normally within 10 working days of receipt of the complaint by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision.
- 2. NOTIFICATION OF COMPLAINT TO SUBJECT MEMBER**
- 2.1 Subject to any representations from the Complainant on confidentiality (see paragraph 5 below), the Monitoring Officer will notify the Subject Member (and, if applicable, the Parish Clerk). The Monitoring Officer may also notify the Subject Member's Group Leader, if appropriate.
- 2.2 The Monitoring Officer may invite the Subject Member (and, if applicable, the Parish Clerk) to submit initial views on the complaint, which will be taken into account by the Monitoring Officer when they decide how to deal with the complaint (see paragraph 4 below).
- 3. REQUEST FOR ADDITIONAL INFORMATION**
- 3.1 The Monitoring Officer may ask the Complainant and the Subject Member (and, if applicable, the Parish Clerk) for additional information before deciding how to deal with the complaint.
- 4. INFORMAL RESOLUTION OR INVESTIGATION AND/OR NO ACTION**
- 4.1 The Monitoring Officer may seek to resolve the complaint informally, without the need for an investigation, or following an investigation, (see paragraph 6 below). Where the Subject Member or the Monitoring Officer or the Council or Parish Council make a reasonable offer of informal resolution, but the Complainant is not willing to accept this offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.
- 4.2 The Monitoring Officer, in consultation with the Independent Person, may refer the complaint for investigation when:
- a) It is serious enough, if proven, to justify the range of sanctions available to the Standards Committee (see Appendix 3 to these Arrangements).
 - b) The Subject Member's behaviour is part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the Council or Parish Council and there is no other avenue left to deal with it, short of investigation, and, in considering this, the Monitoring Officer may take into account the time that has passed since the alleged conduct occurred.

- 4.3 Where the complaint is referred for investigation, the Monitoring Officer may appoint an Investigating Officer who will conduct the investigation in accordance with the procedure at Appendix 2 to these Arrangements.
- 4.4 If the complaint identifies criminal conduct or breach of other regulations by the Subject Member or any other person, the Complainant will be advised by the Monitoring Officer to report the complaint to the police or other prosecuting or regulatory authority. Alternatively, the Monitoring Officer will consider the complaint against the legal jurisdiction criteria test and, if the complaint passes that test, he may pass the complaint to the police. Where a Complainant has been advised to refer a matter to the police, or the Monitoring Officer has referred the matter to the police, the complaints process under these Arrangements will be suspended, pending a decision/action by the police or other prosecuting or regulatory authority. Where the police or other prosecuting or regulatory authority decide to take no action on the complaint, the Monitoring Officer will lift the suspension and in consultation with the Independent Person will apply the local assessment criteria test in paragraph 1.4 above.
- 4.5 The Monitoring Officer in consultation with the Independent Person, will take no action on the complaint when one or more of the following apply:
- a) On-going criminal proceedings or a police investigation into the Subject Member's conduct.
 - b) Investigation cannot proceed without investigating similar alleged conduct or needing to come to conclusions of fact about events which are also the subject of some other investigation or court proceedings.
 - c) The investigation might prejudice another investigation or court proceedings.
 - d) On-going investigation by another prosecuting or regulatory authority.
 - e) Genuine long term (3 months or more) unavailability of a key party.
 - f) Serious illness of a key party.

5. CONFIDENTIALITY

- 5.1 If the Complainant has asked for their identity to be withheld, this request will be considered by the Monitoring Officer in consultation with the Independent Person when they initially assesses the complaint.
- 5.2 As a matter of fairness and natural justice, the Subject Member will usually be told who the Complainant is and will also receive details of the complaint. However, in exceptional circumstances, it may be appropriate to keep the Complainant's identity confidential or not disclose details of the complaint to the Subject Member during the early stages of an investigation. 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 other person (e.g. a witness):
- a) Is either vulnerable or at risk of threat, harm or reprisal.
 - b) May suffer intimidation or be victimised or harassed.
 - c) Works closely with the Subject Member and are afraid of the consequences, for example, fear of losing their job.

- d) Suffers from a serious health condition and there are medical risks associated with their identity being disclosed (medical evidence will need to be provided to substantiate this).
- e) May receive less favourable treatment, because of the seniority of the person they are complaining about, in terms of any existing Council or Parish Council service provision or any tender/contract they may have with, or are about to submit to the Council or Parish Council.

OR where early disclosure of the complaint:

- a) May lead to evidence being compromised or destroyed; or
- b) May impede or prejudice the investigation; or
- c) Would not be in the public interest.

5.3 Relevant public interest factors favouring disclosure (not an exhaustive list) include:

- a) To facilitate transparency and ethical governance accountability: recognising that decision-making may be improved by constructive contributions from others.
- b) To raise public awareness: disclosing the complaint or part of it may inform the community about matters of general concern.
- c) Justice to an individual: the balance of the public interest may favour disclosure of the complaint to the Subject Member when it may not be in the public interest to disclose it to the world at large.
- d) Bringing out in the open serious concerns about the behaviour/conduct of an individual.

5.4 The Monitoring Officer, in consultation with the Independent Person, will balance whether the public interest in accepting the complaint outweighs the Complainant's wish to have their identity (or that of another person) withheld from the Subject Member. If the Monitoring Officer decides to refuse the Complainant's request for confidentiality, they will offer the Complainant the option to withdraw their complaint. The Complainant will be notified of the Monitoring Officer's decision, with reasons, by the Monitoring Officer. There is no right of appeal against the Monitoring Officer's decision to refuse the Complainant's request for confidentiality.

6. INFORMAL RESOLUTION

6.1 The Monitoring Officer may, in consultation with the Independent Person, seek to resolve the complaint informally, without the need for an investigation or a hearing (following an investigation). The Monitoring Officer will consult with the Complainant and the Subject Member to seek to agree what they consider to be a fair resolution which will help to ensure higher standards of conduct for the future.

6.2 Informal resolution may be the simplest and most cost effective way of resolving the complaint and may be appropriate where:

- a) The Subject Member appears to have a poor understanding of the Code of Conduct and/or related Council or Parish Council procedures; or
- b) There appears to be a breakdown in the relationship between the Complainant and the Subject Member; or

- c) The conduct complained of appears to be a symptom of wider underlying conflicts which, if unresolved, are likely to lead to further misconduct or allegations of misconduct; or
- d) The conduct complained of appears common to a number of Members of the Council or Parish Council, demonstrating a lack of awareness, experience or recognition of the particular provisions of the Code of Conduct and/or other Council or Parish Council procedures, etc; or
- e) The conduct complained of appears to the Monitoring Officer not to require a formal censure; or
- f) The complaint appears to reveal a lack of guidance, protocols and procedures within the Council or Parish Council; or
- g) The complaint consists of allegations and retaliatory allegations between Councillors; or
- h) The complaint consists of allegations about how formal meetings are conducted; or
- i) The conduct complained of may be due to misleading, unclear or misunderstood advice from officers.

6.3 Informal resolution may consist of one or more, (but not limited to), of the following actions, which do not have to be limited to the Subject Member, but may extend to other Councillors, including the whole Council or Parish Council, where it may be useful to address systemic behaviour:

- a) Training.
- b) Conciliation/mediation.
- c) Mentoring.
- d) Apology.
- e) Implementing changes to the Council's or Parish Council's procedures.
- f) Conflict management.
- g) Development of the Council's or Parish Council's protocols.
- h) Other remedial action by the Council or Parish Council.
- i) Other steps (other than investigation), if it appears appropriate to the Monitoring Officer in consultation with the Independent Person.

6.4 If the Subject Member is agreeable to, and complies with, the informal resolution process, the Monitoring Officer will report the matter to the Standards Committee and, if applicable, the Parish Council for information, but will take no further action against the Subject Member.

6.5 Where the Subject Member will not participate in the informal resolution process or if, having agreed to one or more actions under the informal resolution process, the Subject Member refuses or fails to carry out any agreed action, the Monitoring Officer will report the matter to the Standards Committee.

APPENDIX 2

INVESTIGATION PROCEDURE

1. PRELIMINARIES

- 1.1 The Investigating Officer will be appointed by the Monitoring Officer and will be aware of their obligations under the Data Protection Act 1998, Equalities Act 2010, the Human Rights Act 1998 and other relevant legislation.
- 1.2 The Investigating Officer is responsible for gathering all the facts, documents and, where applicable, for interviewing witnesses with knowledge of the facts, and they should remain objective, impartial and unbiased at all times.
- 1.3 Witnesses will be identified at the investigation stage and their evidence supported by signed and dated witness statements and/or notes of interview with the Investigating Officer. The Investigating Officer cannot compel the attendance of witnesses or their co-operation.
- 1.4 The Investigating Officer will not make recommendations on sanctions, but may be asked to suggest possible sanctions.
- 1.5 Within 10 working days of being appointed, the Investigating Officer will contact the Subject Member and the Complainant and:
 - a) Detail the procedure to be followed in respect of the investigation and the relevant timescales for responses and concluding the investigation.
 - b) Detail the sections of the Members' Code of Conduct that appear to be relevant to the complaint.
 - c) Request contact details of any potential witnesses.
 - d) Require that confidentiality is maintained and that the complaint not be disclosed, Members or otherwise, as may be required by law or regulation – the fact that an investigation is being conducted does not need to remain confidential.
- 1.6 It is strongly recommended that the Subject Member engages in the investigation process. If the Subject Member declines to participate in the process, the investigation will proceed in their absence.
- 1.7 It may be necessary for the Investigating Officer to agree with the Subject Member which documents will be submitted in evidence. This will generally include documents that will be relied on, or in support of, the Subject Member's case and which are relevant to the complaint.
- 1.8 The Investigating Officer may terminate their investigation at any point, where they are satisfied that they have sufficient information to enable them to report to the Monitoring Officer or Standards Committee.

2. DRAFT REPORT

- 2.1 On the conclusion of their investigation and/or when the Investigating Officer is satisfied that they have sufficient information, or has obtained as much information as is likely to be reasonably capable of being obtained, the Investigating Officer will issue a draft report (clearly labelled DRAFT), to the Monitoring Officer, for review.

2.2 Following review of the draft report by the Monitoring Officer, within 5 working days of receipt, the draft report will be sent in confidence to the Subject Member and the Complainant (not witnesses) for comment. The draft report will be marked 'confidential' and will detail:

- a) The relevant provisions of the law and the relevant paragraphs of the Code of Conduct.
- b) A summary of the complaint.
- c) The Subject Member's response to the complaint.
- d) Relevant information, explanations, etc, which the Investigating Officer has obtained in the course of the investigation.
- e) A list of any documents relevant to the matter.
- f) A list of those persons/organisations who have been interviewed.
- g) A statement of the Investigating Officer's draft findings of fact and reasons.
- h) The Investigating Officer's conclusion as to whether the Subject Member has or has not failed to comply with the Members' Code of Conduct.
- i) That the Investigating Officer will present a final report once they have considered any comments received on the draft.

2.3 The Subject Member and Complainant will have 5 working days in which to consider the draft report and submit a response to the Investigating Officer.

2.4 Once the Investigating Officer has considered all responses received from the Subject Member and/or the Complainant, they will finalise the draft report and make their final conclusions and recommendations to the Monitoring Officer, within 5 working days. The report will be clearly labelled FINAL.

3. FINAL REPORT

3.1 The Monitoring Officer will review the Investigating Officer's final report and any comments submitted by the Parties, in consultation with the Independent Person.

3.2 Where, on the basis of the Investigating Officer's report, the Monitoring Officer, having consulted with the Independent Person, concludes that there is no evidence of a failure to comply with the Members' Code of Conduct, they will inform the Parties, in writing, that no further action is considered necessary. There is no right of appeal against the Monitoring Officer's decision.

3.3 Where, on the basis of the Investigating Officer's report, the Monitoring Officer, having consulted with the Independent Person, concludes that there is evidence of a failure to comply with the Members' Code of Conduct, they will either take no action or seek informal resolution or refer the matter for consideration by the Standards Committee in accordance with the relevant procedure detailed in this Appendix 2.

3.4 The Monitoring Officer, in consultation with the Chair of the Standards Committee, will convene a meeting of the Standards Committee no earlier than 14 working days and no later than 28 Days after the Investigating Officer's final report has been copied to the Complainant and Subject Member. The Investigating Officer will be invited to present their final report to the Standards Committee.

APPENDIX 3

STANDARDS COMMITTEE HEARING PROCEDURE

1. PROCEDURE RULES

- 1.1 These procedure rules shall apply to the Standards Committee when considering the Investigating Officer's report under these arrangements.
- 1.2 The Standards Committee comprises 9 Elected Members and, if required, 2 Parish Councillors.
- 1.3 The quorum for a meeting of the Standards Committee is 3.
- 1.4 The purpose of the hearing is for the Standards Committee to consider, on the evidence provided, whether the Subject Member has breached the Members' Code of Conduct. The conduct of others, for example officers, would be dealt with through another process.
- 1.5 The Independent Person's views must be sought and taken into consideration before the Standards Committee takes any decision on whether the Subject Member's conduct constitutes a failure to comply with the Members' Code of Conduct and as to any sanction to be taken following a finding of failure to comply with the Members' Code of Conduct. The Independent Person will be invited to attend and participate in the Standards Committee meeting but will not have voting rights.
- 1.6 The legal requirements for publishing agendas, minutes and calling meetings, will apply to the Standards Committee. The hearing will be held in public no earlier than 14 working days and no later than 28 days after the Monitoring Officer has copied the Investigating Officer's final report to the complainant and the Subject Member. Schedule 12A of the Local Government Act 1972 (as amended) will be applied where it is necessary to exclude the public and press from meetings of the Standards Committee, where it is likely that confidential or exempt information will be disclosed.
- 1.7 The Monitoring Officer, in consultation with the Chair of the Standards Committee, will convene a meeting of the Standards Committee.
- 1.8 If the Subject Member is unavailable for the proposed date, the Monitoring Officer, in consultation with the Chair of the Standards Committee, will determine whether the meeting can be arranged outside of the prescribed timescale.
- 1.9 All matters/issues before the Standards Committee will be decided by a simple majority of votes cast, with the Chair having a second or casting vote.
- 1.10 Where the Subject Member fails to attend the Standards Committee and where the Standards Committee is not satisfied with their explanation for their absence from the hearing, the Standards Committee may, in the first instance, have regard to any written representations submitted by the Subject Member, and/or the Investigating Officer's report and may resolve to proceed with the hearing in the Subject Member's absence and make a determination or, if satisfied with the Subject Member's reasons for not attending the hearing, adjourn the hearing to another date. The Standards Committee may resolve in exceptional circumstances, that it will proceed with the hearing on the basis that it is in the public interest to hear the allegations expeditiously.

2. RIGHT TO BE ACCOMPANIED BY A REPRESENTATIVE

2.1 The Subject Member may choose to be accompanied and/or represented at the Standards Committee by a fellow councillor, friend or colleague. The Subject Member will not be entitled to be represented by a solicitor or other legal representative.

3. THE HEARING

3.1 Subject to paragraph 3.2 below, the order of business will be as follows:

- a) Apologies for absence.
- b) Declarations of interests.
- c) Approval of Minutes of the previous meeting.
- d) In the absence of the Subject Member, consideration as to whether to adjourn or to proceed with the hearing (refer to paragraph 1.9 above).
- e) Introduction by the Chair, of Members of the Standards Committee, the Independent Person, Monitoring Officer, Investigating Officer, Democratic Services Officer, the Council's Legal Advisor, complainant and the Subject Member and their representative.
- f) Receive representations from the Monitoring Officer and/or Subject Member as to whether any part of the hearing should be held in private and/or whether any documents (or parts thereof) should be withheld from the public/press.
- g) 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.

3.2 The Chair may exercise their discretion and amend 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.

3.3 The Standards Committee may adjourn the hearing at any time.

3.4 Witnesses:

- a) The process of the hearing is inquisitorial, and not adversarial. Witnesses should not be made to feel uncomfortable or that their integrity is being questioned. The purpose of the hearing is to establish the facts.
- b) All questions to witnesses should be made through the Chair.

3.5 Presentation of the complaint:

- a) The Investigating Officer presents their report including any documentary evidence or other material and calls his/her witnesses. No new points will be permitted.
- b) The Subject Member or their representative may question the Investigating Officer and any witnesses called by the Investigating Officer.
- c) The Standards Committee may question the Investigating Officer upon the content of his/her report and any witnesses called by the Investigating Officer.

3.6 Presentation of the Subject Member's case:

- a) The Subject Member or their representative presents their case and calls their witnesses.
- b) The Investigating Officer may question the Subject Member and any witnesses called by the Subject Member.
- c) The Standards Committee may question the Subject Member and any witnesses called by the Subject Member.

3.7 Summing up:

- a) The Investigating Officer sums up the complaint.
- b) The Subject Member or their representative sums up their case.

3.8 Deliberations of the Standards Committee:

- 3.8.1 Having heard the representations/views of all parties, the Standards Committee will adjourn the hearing 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 Members' Code of Conduct, and if so, what sanctions should be applied.
- 3.8.2 Prior to reaching a decision, the Standards Committee will consider the views expressed by the Independent Person, including any views on sanctions to be applied and/or recommendations to the Council or Parish Council or Monitoring Officer.
- 3.8.3 Where the complaint has a number of aspects, the Standards Committee may reach a finding, apply a sanction and/or make a recommendation on each aspect separately.
- 3.8.4 The Standards Committee will make its decision on the balance of probability, based on the evidence before it during the hearing.
- 3.8.5 The Standards Committee may at any time come out of private session and reconvene the hearing in public, in order to seek additional evidence from the Investigating Officer, the Subject Member or the witnesses. If further information, to assist the Committee, cannot be presented, then the Committee may adjourn the hearing and issue directions as to the additional evidence required and by whom.
- 3.8.6 If evidence presented to the Standards Committee highlights other potential breaches of the Council's or Parish Council's Members' Code of Conduct, then the Chair will outline the Committee's concerns and recommend that the matter be referred to the Monitoring Officer as a new complaint.
- 3.8.7 Having deliberated on its decision and/or recommendations and the application of any sanctions, the Standards Committee will reconvene the hearing in public and the Chair will announce:
 - a) the Standards Committee decision as to whether or not the Subject Member has failed to comply with the Members' Code of Conduct, detailing the breaches, and the principal reasons for the decision;

- b) the sanctions (if any) to be applied;
- c) the recommendations (if any) to be made to the Council or Parish Council or Monitoring Officer;
- d) that there is no right of appeal against the Standards Committee decision and/or recommendations.

4. POSSIBLE SANCTIONS

4.1 Subject to paragraph 4.4 below, where the Standards Committee determines that the Subject Member has failed to comply with the Members' Code of Conduct, any one or more of the following sanctions may be applied/recommended:

- a) Recommend to the Council or Parish Council that the Subject Member be issued with a formal censure (i.e. the issue of an unfavourable opinion or judgement or reprimand) by motion.
- b) Issue an instruction that the Subject Member is removed from specified committees or sub-committees of the Council.
- c) Recommend to the Mayor that the Subject Member be removed from the Executive or removed from particular Portfolio responsibilities.
- d) Instruct the Monitoring Officer, or the Parish Council, to arrange training for the Subject Member.
- e) Recommend to the Council, or Parish Council, that the Subject Member is removed from all outside appointments to which they have been appointed or nominated by the Council, Executive or Parish Council.
- f) Instruct the Monitoring Officer, or Parish Council, to withdraw facilities provided to the Subject Member by the Council, or Parish Council, such as a computer, website and/or email and internet access.
- g) Instruct the Monitoring Officer or Parish Council, to implement a Communications Plan for the Subject Member.
- h) Instruct the Monitoring Officer, or Parish Council, to exclude the Subject Member from the Council or Parish Council's offices or other premises, with the exception of meeting rooms as necessary for Council or Parish Council committee and sub-committee meetings.
- i) Instruct the Monitoring Officer, or Parish Council, to apply the informal resolution process.
- j) Instruct the Monitoring Officer, or Parish Council, to issue a press release or other form of publicity.

4.2 The Standards Committee has no power to suspend or disqualify the Subject Member or to withdraw basic or special responsibility allowances.

4.3 The Standards Committee may specify that any sanction takes effect immediately or takes effect at a later date and that the sanction be time-limited.

4.4 When deciding whether to apply one or more sanctions referred to in paragraph 4.1 above, the Standards Committee will ensure that the application of any sanction is reasonable and proportionate to the Subject Member's behaviour. The Standards

Committee will consider the following questions along with any other relevant circumstances or other factors specific to the local environment:

- a) What was the Subject Member's intention and did they know that they were failing to follow the Council's or Parish Council's Members' Code of Conduct?
- b) Did the Subject Member receive advice from officers before the incident and was that advice acted on in good faith?
- c) Has there been a breach of trust?
- d) Has there been financial impropriety, for example: improper expense claims or procedural irregularities?
- e) What was the result/impact of failing to follow the Council's or Parish Council's Members' Code of Conduct?
- f) Was there an impact on others?
- g) How serious was the incident?
- h) Does the Subject Member accept that they were at fault?
- i) Did the Subject Member apologise to the relevant persons?
- j) Has the Subject Member previously been reprimanded or warned for similar misconduct?
- k) Has the Subject Member previously breached the Council's or Parish Council's Members' Code of Conduct?
- l) Is there likely to be a repetition of the incident?

5. PUBLICATION AND NOTIFICATION OF THE STANDARDS COMMITTEE DECISION AND RECOMMENDATIONS

5.1 Within 5 working days of the Standard Committee's announcement of its decision and recommendations, the Monitoring Officer will publish the name of the Subject Member and a summary of the Standards Committee's decision and recommendations, and reasons for the decision and recommendations, on the Council's website.

5.2 Within 5 working days of the announcement of the Standards Committee's decision, the Monitoring Officer will provide a full written decision and the reasons for the decision, including any recommendations, to:

- a) The Subject Member.
- b) The Complainant.
- c) The Clerk to the Parish Council (if appropriate).



CODE OF CONDUCT - COMPLAINT FORM

Please complete this form if you wish to complain about the conduct of an elected Member (Councillor) serving on Middlesbrough Council, Stainton & Thornton Parish Council, or Nunthorpe Parish Council. This form should also be used for complaints about non-elected members of the Council, such as co-opted members of Scrutiny Panels.

Please note:

- ⇒ we will accept complaints in writing, by e-mail, or a scanned and e-mailed copy of this form.
- ⇒ we are unlikely to be able to keep your identity confidential if you make a complaint (see Section 5 below)

SECTION 1: YOUR CONTACT DETAILS

First name: _____ Surname or family name: _____ Title: _____
 (Mr/Mrs/Ms Councillor/other)

Address: _____

Postcode _____

Telephone: _____ Daytime: _____ Evening: _____

e-mail address: _____

SECTION 2: ABOUT YOU – ARE YOU COMPLAINING AS?

An officer of the Council?

A member of Middlesbrough Council?

A member of a Parish Council?

A member of the public?

SECTION 3: WHO ARE YOU COMPLAINING ABOUT?

A member of Middlesbrough Council?

A member of a Parish Council?

A Co-opted member?

SECTION 4: WHAT YOU ARE COMPLAINING ABOUT?

Please tell us what your complaint is about. Try to be specific. For example, it is not sufficient to say "Councillor insulted me". You should tell us who the person is that you are complaining about, what was said, where and in what context. It will help if you can

- ⇒ Provide dates (or approximate dates) of alleged incidents
- ⇒ Provide the names and contact details of any witnesses
- ⇒ Provide any background information directly relevant to this complaint

Clearly, what you can provide us with will depend on the nature of your complaint.

SECTION 5: CONFIDENTIALITY: Only complete this section if you want your complaint to be dealt with in confidence

We are unlikely to be able to keep your identity confidential if you make a complaint. However, there may be circumstances where your complaint might be treated in confidence. The Councillor about whom the complaint is being made will IN ALMOST ALL CASES be given a summary of the complaint, and informed who made the complaint. Details would only be withheld if, for example, informing the Councillor of the complaint might undermine the investigation. The complainant's name would only be withheld if, for example, the Council considered that the person making the complaint might be at risk if the Councillor is informed.

If you wish your name to be withheld please give reasons below:-

Signed:

Dated:

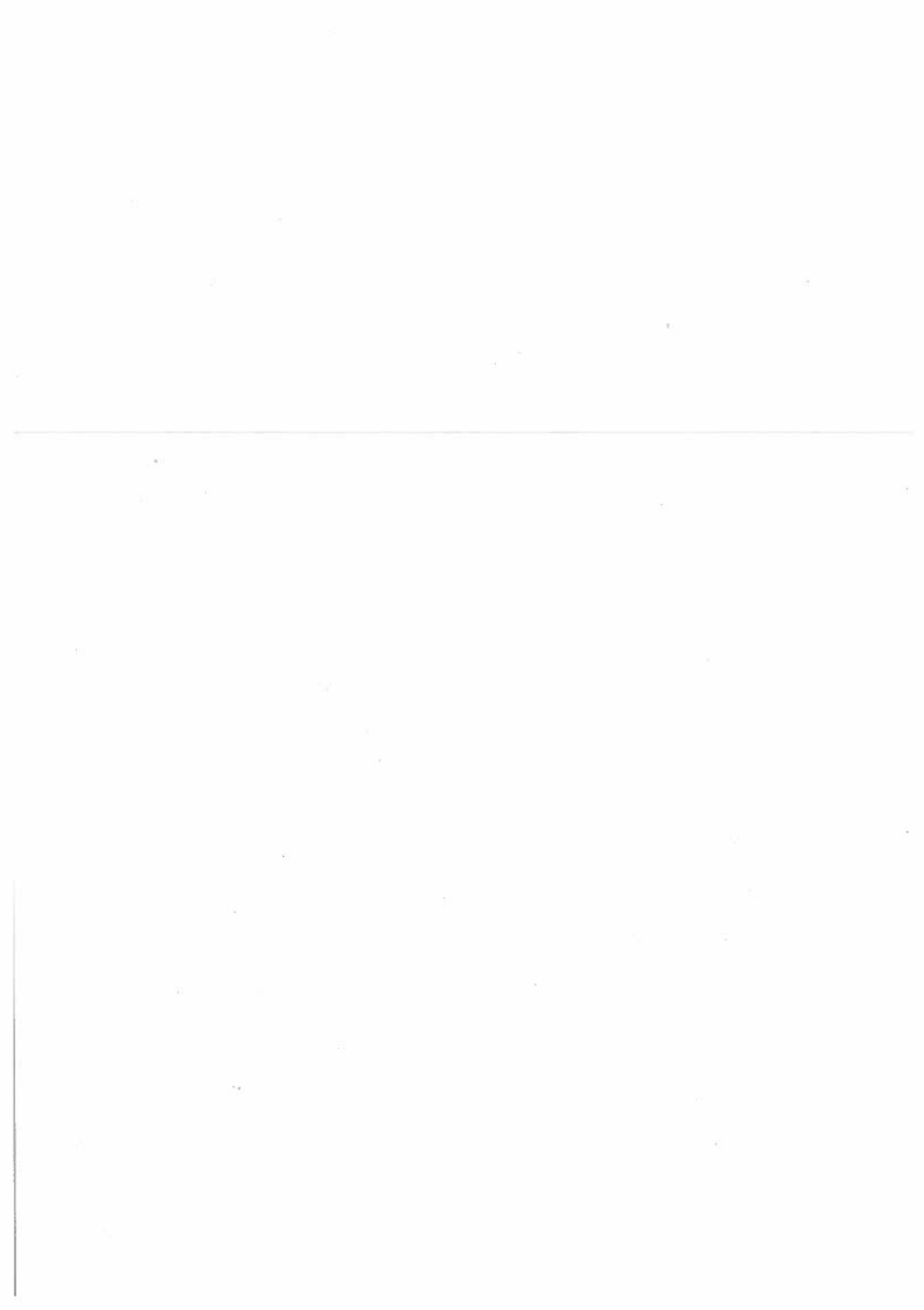
Please return the completed form to: The Corporate Complaints Manager, Performance and Policy, PO Box 503, Town Hall, Middlesbrough, TS1 9FX.,

TIMESCALE FOR DEALING WITH MEMBER'S CODE OF CONDUCT COMPLAINTS

| ACTION | NUMBER OF WORKING DAYS |
|---|--|
| Receipt of complaint acknowledged by Complaints Team | 3 (from receipt of complaint) |
| Monitoring Officer consults Independent Person | 5 (from receipt of complaint) |
| Monitoring Officer appoints Investigating Officer and informs Complainant and Subject Member | 10 (from MO consulting IP) |
| Investigating Officer sends draft report to Monitoring Officer | 20 (from IO being appointed) |
| Monitoring Officer sends draft report to Complainant and Subject Member for comment, allowing 5 days for responses | 5 (from receipt of report from IO) |
| Subject Member and Complainant responds to report and provides names of witnesses | 5 (from date of issue from MO) |
| Investigating Officer reviews responses from Complaint and Subject Member in respect of draft report and finalises report | 5 (from receipt of responses) |
| Monitoring Officer consults Chair of Standards Committee and convenes a meeting of the Standards Committee | <i>After 14 days but within 28 days of receipt of the final report by MO</i> |
| Monitoring Officer issues decision to Complainant and Subject Member and publishes notice | 5 days after Standards Committee |
| Maximum timescale | 86 days |

Where a complaint is rejected by the Monitoring Officer:

| ACTION | NUMBER OF WORKING DAYS |
|---|------------------------|
| Monitoring Officer informs Complainant that complaint has been rejected | 10 |



ARRANGEMENTS FOR DEALING WITH MEMBER'S CODE OF CONDUCT COMPLAINTS

APPENDIX 6

