

APPENDIX 1

MEMBERS' CODE OF CONDUCT COMPLAINT PROCEDURE

1. GENERAL

APPOINTMENT OF AND ROLE OF THE INDEPENDENT PERSON

1.1 The Council shall appoint an Independent Person or Persons, in accordance with the requirements of Section 28 of the Localism Act 2011. Middlesbrough Council has appointed two Independent Persons.

1.2 The Independent Person must be consulted by the Monitoring Officer and have his or her views taken into account to assess the appropriate course of action with regard to the complaint, at each decision-making stage. The Monitoring Officer may consult the Independent Person at any stage of the process.

2. COMPLAINT RECEIVED

2.1 The Council will acknowledge receipt of a complaint in writing within 3 working days of receipt and send a copy of the complaint to the Monitoring Officer for consideration.

3. CONFIDENTIALITY

3.1 If the Complainant has asked for their identity to be withheld, the Monitoring Officer in consultation with the Independent Person will consider this request when they initially assesses the complaint.

3.2 As a matter of fairness and natural justice, the Subject Member will usually be told who the Complainant is and will also receive a summary 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 demonstrated 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 in circumstances when, in the judgment of the Monitoring Officer 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.

3.3 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.

3.4 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 Monitoring Officer will notify the Complainant of the Monitoring Officer's decision, with reasons. There is no right of appeal against the Monitoring Officer's decision to refuse the Complainant's request for confidentiality.

4. PRELIMINARY TESTS

4.1 The complaint will be assessed by the Monitoring Officer, in consultation with the Independent Person, and will take the form of a two stage test:

4.1.1 Initial Criteria:

The first step will assess whether:

- a) the complaint is against one or more named members of the authority or of a parish council the authority is responsible for;
- b) the named Member was in office at the time of the alleged conduct;
- c) the complaint relates to matters where the Member was acting as a representative of the authority and it is not a private matter;
- d) the complaint, if proven, would be a breach of the Code under which the Member was operating at the time of the alleged misconduct.

If the complaint fails one or more of these jurisdictional tests it cannot be investigated as a breach of the Code, and the complainant must be informed that no further action will be taken in respect of the complaint.

4.1.2 Secondary Criteria:

If the complaint passes the jurisdictional test, the following criteria each be considered by the Monitoring Officer in consultation with the Independent Person to determine whether to accept or reject the complaint:

- a) Does the complaint contain sufficient evidence to demonstrate a potential breach of the Code?
- b) Are there alternative, more appropriate, remedies that should be explored first?
- c) Where the complaint is by one member of the council against another, a greater allowance for robust political debate (but not personal abuse) may be given, bearing in mind the right to freedom of expression;
- d) Is the complaint in the view of the authority malicious, politically motivated, or 'tit for tat'?
- e) Whether an investigation would not be in the public interest or the matter, even if proven, would not be serious enough to warrant any sanction;
- f) Whether a substantially similar complaint has previously been considered and no new material evidence has been submitted within the current administration;

- g) Whether a substantially similar complaint has been submitted and accepted;
- h) Does the complaint relate to conduct in the distant past? This would include consideration or any reason why there had been a delay in making the complaint;
- i) Was the behaviour that is the subject of the complaint already dealt with? For example, through an apology at the relevant meeting;
- j) Does the complaint actually relate to dissatisfaction with a local authority decision rather than the specific conduct of an individual? And
- k) Is it about someone who is no longer a member of the council or who is seriously ill?

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.**

- 4.2 Where the complaint is accepted the Complainant will be notified accordingly, with the next steps outlined, normally within 10 working days of receipt of the complaint by the Monitoring Officer.

5. NOTIFICATION OF COMPLAINT TO SUBJECT MEMBER

- 5.1 Subject to any representations from the complainant on confidentiality, the Monitoring Officer will notify the Subject Member (and, if applicable, the Parish Clerk) of the complaint and a summary of the alleged breach. The Monitoring Officer may also notify the Subject Member's Group Leader, if appropriate. This information is given in confidence and the Subject Member is expected to respect that confidence.
- 5.2 The Monitoring Officer may invite the Subject Member (and, if applicable, the Parish Clerk) to submit initial views on the complaint, usually within 7 days, which will be taken into account by the Monitoring Officer when they decide how to deal with the complaint.

6. REQUEST FOR ADDITIONAL INFORMATION

- 6.1 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.

7. DECISION ON HOW TO PROCEED

- 7.1 The Monitoring Officer, in consultation with the Independent Person will decide how to deal with the complaint. This will be by way of:
- a) Informal Resolution (with/without an investigation) – See section 8; or
 - b) Investigation – See section 9; or
 - c) Criminal Conduct – See section 10; or
 - d) No action – See section 11

8. INFORMAL RESOLUTION

- 8.1 The Monitoring Officer will, in consultation with the Independent Person, determine whether the complaint can be resolved through informal resolution.
- 8.2 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.
- 8.3 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.

8.4 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, written/verbal;
- e) Implementing changes to the Council 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; or
- i) Other steps (other than investigation), if it appears appropriate to the Monitoring Officer in consultation with the Independent Person.

8.5 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.

8.6 If the Subject Member 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.

8.7 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.

9. INVESTIGATION

9.1 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, if the allegations are proven to be a breach of the code of conduct 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. In considering this, the Monitoring Officer may take into account the time that has passed since the alleged conduct occurred.

9.2 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.

10. CRIMINAL CONDUCT

10.1 Where a complaint against a Member relates to conduct of a criminal nature and which is perceived to be valid, and 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 may be suspended, pending a decision/action by the police or other prosecuting or regulatory authority.

10.2 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 4 above

10.3 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.
- 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.

10.4 Where a complaint against a Member relates to conduct of a criminal nature as defined in paragraphs a) to f) above, and which is perceived to be valid, the Monitoring Officer will report the complaint to the police or other prosecuting or regulatory authority. 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 may 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 4 above.

11. NO ACTION

11.1 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) Genuine long-term (3 months or more) unavailability of a key party.
- b) Serious illness of a key party.

11.2 The Monitoring Officer in consultation with the Independent Person, may suspend any actions within these arrangements, at any time, 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.

12. COMPLAINT CONCLUDED

12.1 The subject member will be notified in writing of the outcome of the complaint.

12.2 There is no right of appeal for either the Complainant or Subject Member against decisions of the Monitoring Officer or 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, Equality 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 in writing 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; and
 - 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.
- 1.9. Subject to any unforeseeable delays, investigations and reports will aim to be completed within a six-month period of the original complaint being referred for an investigation.
- 1.10. It is for the Monitoring Officer to determine whether any conflict of interest does or may exist. The Monitoring Officer should consider the possibility of a potential conflict arising during the investigation and the hearing. Should a conflict arise, the Monitoring Officer **must** step down and another Monitoring Officer will be appointed either internally or externally at the Council's discretion.

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 The draft report will be marked 'CONFIDENTIAL' and watermarked with the name of the addressee, 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; and
 - i) that the Investigating Officer will present a final report once they have considered any comments received on the draft.

- 2.3 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.
- 2.4 The Subject Member and Complainant will have 5 working days in which to consider the draft report and submit any comments to the Investigating Officer.
- 2.5 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, marked CONFIDENTIAL, and watermarked with the name of the addressee.

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, to consider if there is evidence of a failure to comply with the Members' Code of Conduct.
- 3.2. Where, based on 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, and will report the outcome to the standards committee. 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

These procedure rules shall apply to the Standards Committee when considering the Investigating Officer's report under these arrangements.

- 1.1.** The Standards Committee comprises 9 Elected Members and, if required, 2 Parish Councillors.
- 1.2.** The quorum for a meeting of the Standards Committee is 3.
- 1.3.** 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.
- 1.4.** The Independent Person will be invited to attend and participate in the Standards Committee meeting but will not have voting rights.
- 1.5.** 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.
- 1.6.** The Monitoring Officer, in consultation with the Chair of the Standards Committee, will convene a meeting of the Standards Committee.
- 1.7.** 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. If a meeting cannot be arranged within the prescribed timescale the Subject Member may be requested to provide a reasonable explanation to the Chair, along with any appropriate evidence of his/her unavailability.
- 1.8.** 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.
- 1.9.** 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. Alternatively, if the Standards Committee is satisfied with the Subject Member's reasons for not attending the hearing, it may 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. Standards Committee hearings shall only be adjourned once, if the Subject Member fails to attend a second scheduled meeting without exceptional circumstances, the meeting shall proceed in the Subject Member's absence.

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, or by any Officer of the Council.

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) If the Subject Member is absent, consider 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, Committee's Legal Advisor and/or 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. When the public/press are excluded from any part of the meeting, filming, photography and/or audio recordings of the meeting will be prohibited in accordance with the provisions of the Council's Constitution (page 174).

h) Consider the report of the Investigating Officer and determine the matter.

3.1 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.

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

3.3 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.

3.4 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, the Independent Person, the Advisory Officer, and any witnesses called by the Investigating Officer, upon the contents of his/her report.

3.5 Presentation of the Subject Member's response:

a) The Subject Member or their representative presents their response to the Investigating Officer's report, 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, the Independent Person, the Advisory Officer, and any witnesses called by the Subject Member.

3.6 Summing up:

a) The Investigating Officer sums up the report.

b) The Subject Member or their representative sums up their response to the Investigating Officer's report.

3.7 Deliberations of the Standards Committee:

a) 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.

- b) 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.
- c) 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.
- d) The Standards Committee will make its decision on the balance of probability, based on the evidence before it during the hearing.
- e) 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.
- f) 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.
- g) 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:
 - i. 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
 - ii. the sanctions (if any) to be applied;
 - iii. the recommendations (if any) to be made to the Council or Parish Council or Monitoring Officer; and
 - iv. 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 sanctions below or any further sanctions deemed appropriate by the Standards Committee 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; or
- k) Instruct the Monitoring Officer, or Parish Council, to restrict the Subject Member's access to confidential or exempt information.

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. If the sanctions are not complied with within the timescale directed by the Standards Committee, the Monitoring Officer will report the fact to the Chair of the Standards Committee, wherein further sanctions may be considered by the Standards Committee.

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; and
- c) The Clerk to the Parish Council (if appropriate).

APPENDIX 4

Members' Code of Conduct - Complaint Form

NEW FORM TO BE ADDED

APPENDIX 5

Witness Guidance

1. "Witness" is a general term incorporating those that may have either witnessed an event or be able to provide information/knowledge relating to an issue/subject. Witnesses may be internal to the organisation e.g. colleagues or other members of staff, or on occasion, external to the organisation e.g. complainants, or relatives or experts in a particular field related to the investigation.
2. Witnesses may be identified by the complainant, the subject member or as part of investigation process. Witnesses cannot be compelled to attend or to give a statement. Council Officers may have a duty within their Contract of Employment and any Codes of Conduct by which they are bound to support the process.
3. Witness evidence often forms part of the bundle of evidence considered at a Standards Committee hearing, and witnesses are on occasions requested to give evidence in person at a hearing.
4. The witness will be briefed as to the process/proceeding that will follow, either by a Democratic Services Officer or by the Investigating Officer. .
5. Witnesses play an important role in clarifying any points of fact previously raised during an investigation, and may be asked to answer questions relating to their evidence/information.
6. A witness is there as an independent party, to provide factual information. This can be provided either via an interview with an Investigating Officer, a written statement and/or by attending the formal hearing.
7. Reasonable support in relation to a disability or language skills (e.g.: where English is not the first language), will be considered if raised in advance of the meeting/hearing.

8. Following interview with the Investigating Officer, a copy of a witness's statement will be sent, confirming what they have to do next with the statement. However, if a signed copy is not returned within the date specified in the letter the original version may be included in the investigation report.
9. Witnesses are expected to treat their statement as confidential and not to discuss it with the other parties.
10. Once the investigation is complete, the investigating officer submits their report to the Monitoring Officer and the Council's Independent person, who will determine whether the case should be progressed to a Standards Committee hearing.
11. Should a Standards Committee hearing be convened and witnesses required to attend, then witnesses will be informed of the time and the date of the meeting. Hearings are generally held in the public domain however, the Committee will determine on the day whether the hearing should be held in private (subject to schedule 12A of the Local Government Act 1972).
12. The Investigating Officer, the Committee or the Subject Member should be given a reasonable opportunity to call relevant witnesses and ask questions of witnesses to raise any points about information provided by them. Any such witnesses must be identified during the investigation process so that the investigating officer can include this in their investigation.
13. There may be a difference between witnesses called to the hearing by the Investigating Officer/Committee and the Subject Member. The Subject Member wishing to call any witnesses should make arrangements to invite the witnesses themselves.
14. During the investigation interview and prior to disclosing a witness statement the investigator will advise the witness that it may be disclosed to the subject of the investigation e.g. if the case goes to a hearing. In exceptional circumstances e.g. where there may be fear of reprisals and the witness has requested anonymity, an assessment

will be made by the investigating officer and where possible the identity of the witness will not be divulged.

15. If a situation arises where the organisation is not able to resolve the concern without revealing a witness' identity it will be discussed with them prior to any disclosure. Ultimately, the Investigating Officer in conjunction with Monitoring Officer will make a reasoned decision about whether or not to disclose a witness statement or whether it can be released in an anonymised format. This will involve balancing the witness' right to privacy against the Subject Member's right to know what information is held about him or her.
16. It is usual, where there is a case to be answered, for all witness statements to be passed to the subject member so they can produce a full defence to the allegations raised against them and question the witnesses in relation to their evidence.
17. Witnesses will be offered the opportunity to read through and check their statement for accuracy once it has been typed, before signing and returning it. The statement will then be included in the report relating to the matter, which will be forwarded to the Monitoring Officer to consider the next steps e.g., whether a Standards Committee hearing is to be convened.
18. If the witness wishes to add any further information, they can do this through an addendum or via a further interview. Confidentiality must be maintained by the witnesses and those supporting them relating to matters discussed at interview.
19. During a formal hearing, witnesses may be asked by the Committee to clarify any issues as appropriate or to answer questions from any of the parties present. The Chair of the Standards Committee may instruct that questions be posed through the Chair. All parties to the process are required to treat witnesses with courtesy and respect.
20. The Committee/Subject Member are only entitled to ask witnesses questions that are relevant to the matters in question and/or which could elicit a response which may assist the Committee in determining whether or not there has been a breach of the Code of

Conduct. It will be for the Standards Committee to determine whether to allow the question.

21. The party calling the witness should not put leading questions to the witness unless they are introductory matters or facts that are not in dispute. The Standards Committee can choose to disregard any evidence elicited from a leading question. Leading questions are ones that prompt the answer wanted, suggest a particular answer, or contain information the person asking the question is looking to have confirmed. In general you will not be allowed to ask leading questions when asking your witnesses questions.
22. Questions should be asked in a fair manner. The Standards Committee will not permit witnesses to be harassed or badgered by either party.

Attending a Hearing

Below are some useful tips for those who are called to attend a formal hearing:

- ❖ Witnesses attending a Standards Committee hearing will be asked to wait in another room until called.
- ❖ When entering the room where the hearing is being held it can be quite intimidating to see many people in attendance. Introductions will be made and the process being followed will be confirmed to each witness when they attend.
- ❖ The room layout will be formal and some or all of the following will be present; Committee Members, the Independent Person, the Subject Member and their representative, the Investigating Officer, Democratic/Legal support staff, the press and the public.
- ❖ Witnesses who are required to attend a Standards Committee hearing will be advised of the date and venue of the hearing. The hearing may take longer than expected and witnesses may well need to wait beyond the allocated time.

- ❖ Witnesses may like to bring along notes to help them recall the events and the copy of the statement given to them, which they may refer to at the hearing.
- ❖ It is important for the witness to listen carefully to the question and if it is not understood, to ask for it to be repeated or clarified.
- ❖ Witnesses should take time to consider the question, it is important not to feel rushed into answering; if unable to remember certain facts, the witness should say so.
- ❖ If additional time to think is needed the witness should say so, as this can be allowed.

- ❖ In closed sessions, principles of confidentiality apply to what is heard or observed at the hearing.
- ❖ Witnesses are advised to contact the Investigating Officer or the Democratic Services Officer if they have any queries regarding the process or their availability for the hearing.

- ❖ Whilst witnesses may wish to refuse to attend a Standards Committee hearing, their statement will be used anyway. Council Officers may have a duty within their Contract of Employment and any Codes of Conduct by which they are bound to support the process.

- ❖ It is appreciated that giving evidence as a witness may not be easy. However, witness evidence is important and the Council is grateful for the assistance of witnesses and would like to thank them for their input.

- ❖ It is essential that the matter is kept confidential and not discussed with colleagues or other parties and in particular the subject of the complaint. If there are any questions or concerns, these should be raised with the Monitoring Officer.

- ❖ Once a witness has given evidence, they may leave the hearing. Alternatively if the hearing is held in public witnesses may sit in the public seating area.