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A meeting of **Standards Committee** will be held in East Pallant House, 1 East Pallant, Chichester, West Sussex, PO19 1TY on **Thursday 10 September 2015 at 11.30 am**

MEMBERS: Mrs P Hardwick (Chairman), Mrs C Apel (Vice-Chairman),
Mr M Dunn, Mr G Hicks, Mr P Jarvis, Mrs C Purnell and
Mrs J Tassell

PARISH REPRESENTATIVE: Ms E Kenney and Mr D Ribbens and one vacancy

INDEPENDENT PERSON: Mr R J Newman and Mr A J Plytas

AGENDA

1 **Chairman's Announcements**

Any apologies for absence which have been received will be noted at this stage.

There will be announced at this stage any urgent items which, due to special circumstances, will be dealt with as late items under agenda item 7.

2 **Approval of Minutes** (Pages 1 - 7)

The Standards Committee will be asked to approve the minutes of the previous meeting which took place on Monday 6 June 2011.

3 **Declarations of Interests**

Members are to make any declarations of disclosable pecuniary, personal and/or prejudicial interests which they might have in respect of matters on the agenda for this meeting.

4 **Public Question Time**

Questions submitted by members of the public in writing by 12:00 noon on the previous working day namely Wednesday 9 September 2015 (the maximum time allowed is 15 minutes)

5 **Terms of Reference of the Standards Committee** (Page 8)

The Standards Committee is asked to note the attached terms of reference and to consider in the light of them whether there are any matters not listed on this agenda which it wishes to discuss at this meeting.

6 **Review of Complaints Procedure** (Pages 9 - 27)

The Standards Committee is requested to consider the agenda report and its appendix and to recommend to the Council that the Council's *Arrangements for Dealing with Standards Allegations under the Localism Act 2011* is amended as shown in the appendix and that the Monitoring Officer is given all delegated powers specified therein.

7 **Late Items**

The Standards Committee will consider any late items as follows:

(a) Items added to the agenda papers and made available for public inspection

(b) Items which the chairman has agreed should be taken as matters of urgency by reason of special circumstances to be reported at the meeting

8

Exclusion of the Press and Public

There are no restricted items for consideration.



Minutes of a meeting of the **Standards Committee** held in Committee Room One East Pallant House East Pallant Chichester West Sussex on Monday 6 June 2011 at 14:30

Members (17 with six vacancies)

Chichester District Council Members (5)

Mrs E P Lintill
 Mr D J Myers
 Mr M Woolley (also a member of Chichester City Council)

Independent Members (3 with three vacancies)

Mr A Deller (Vice-Chairman)
 Mr C Evans (Chairman)
 Mrs J V Radley

Parish Council Members (3 with three vacancies)

Mr B Norris (Earnley Parish Council)

were present (7)

Apologies for Absence

Mr J Cottam (Fernhurst Parish Council)
 Mr D Ribbens (Plaistow and Ifold Parish Council)
 Mrs J A E Tassell (Chichester District Council)
 Mrs B A Tinson (Chichester District Council)

Officers Present for All or Specific Items

Mr J Mildred – Corporate Policy Manager (agenda item 9)
 Mr G Thrussell – Senior Member Services Officer
 Mrs V J Williams – District Solicitor and Monitoring Officer

Chichester District Council Members Present as Observers

Mrs C Purnell (Selsey North Ward Member)

1 Opening by the District Solicitor and Monitoring Officer

Mrs Williams greeted everyone present to the committee's first meeting of the 2011-2015 Council. She welcomed in particular the new members on the Standards Committee and she hoped they would find their role very rewarding. She outlined the emergency evacuation arrangements.

2 Election of Chairman

Mrs Williams invited nominations for the chairman of the committee, for which position only the independent members were eligible.

Mr Evans was proposed by Mrs Lintill and seconded by Mrs Radley to be the chairman. There were no other nominations.

RESOLVED

That Mr Evans is elected as the chairman of the Standards Committee for 2011-2012.

3 Appointment of Vice-Chairman

Mr Evans invited nominations for the vice-chairman of the committee, for which position only the independent members were eligible.

Mr Deller was proposed by Mr Evans and seconded by Mr Myers to be the vice-chairman. There were no other nominations.

RESOLVED

That Mr Deller is appointed as the vice-chairman of the Standards Committee for 2011-2012.

Mr Evans welcomed the new members. He mentioned the good atmosphere on this committee and the interesting, varied nature of its work, especially the sub-committees.

Mr Evans referred to the valued contributions made by the several members who had left the committee following the May 2011 District elections, namely Mrs M E Elliott, Mr R H Field, Mr A G F Moss, Mr A J Ryan and Mr C Wood. Mr Evans proposed and it was agreed that a letter of appreciation should be sent to each of those former members.

4 Apologies for Absence

Apologies for absence had been received from Mr Cottam, Mr Ribbens, Mrs Tassell and Mrs Tinson.

5 Approval of Minutes

RESOLVED

That the minutes of the meeting on Monday 29 June 2009 are approved without amendment and the chairman shall sign and date them as a correct record.

6 Urgent Items

There were no urgent items for consideration at the meeting.

7 Declarations of Interests

There were no declarations of interests made at this meeting.

8 Public Question Time

No public questions had been submitted.

9 Update on Equalities

The committee considered the report circulated with the agenda (copy attached to the official minutes).

Mr Mildred presented the report with reference to (a) how the responsibility for equalities issues was organised at Chichester District Council, (b) the Equality Act 2010 as a piece of consolidating legislation, (c) the nine 'protected characteristics' enshrined in the statute, (d) the need to ensure that when, for example, commissioning services the Council did not overlook groups not specified in the legislation eg people living in rural isolation, (e) the three aims or arms of the general equality duty, (f) the specific equality duty and (g) the implications for service managers. With respect to (f) Mr Mildred advised that in the case of the first duty (namely to publish sufficient information to demonstrate compliance with the general equality duty across all the Council's functions) the deadline had been extended from 31 July 2011 to 31 December 2011.

The following two points were addressed during the committee's discussion:

- (a) As to the existence of any specific duties regarding the travelling community that were not specifically identified in the report, these would fall within the protected characteristic of race. The Council's housing and planning sections would be involved in developing policies in this area.
- (b) As to an example of when the committee might wish to request a report on a specific item on equalities (para 5.2 of the report refers), this was mentioned in the report simply because over the years equalities had been referred to the committee even though the subject did not fall within its terms of reference. Since equalities related to the way the Council delivered its services and not to the conduct of members, it was appropriate that in future reports on this subject went to the Council and, perhaps, the Overview and Scrutiny Committee instead of this committee. Nevertheless a particular issue could always be referred to this committee if appropriate.

The committee had no particular comments to make on how the requirements set out in the Equalities Act 2010 were being implemented at Chichester District Council.

RESOLVED

- (1) That the changes to the requirements on equalities as set out in the Equalities Act 2010 be noted.
- (2) That in future the reporting on equalities should revert to the Council.

10 Bribery Act 2010

The committee considered the report circulated with the agenda (copy attached to the official minutes).

Mrs Williams presented the report, which was for the committee to note. She explained the nature, objectives and principal provisions of this consolidating legislation and she summarised the six principles contained in the related guidance that had been published. She explained how a local authority could be vicariously liable for failing to prevent an act

of bribery committed by one of its employees (section 7 of the Bribery Act 2010). Of the four new offences created by the statute, this was the one that was of particular relevance to the Council.

The committee had no questions or points to raise on this subject.

RESOLVED

- (1) That the report on the Bribery Act 2010 is noted.
- (2) That in the event that Chichester District Council adopts a voluntary code of conduct for its members after the Localism Bill is enacted, that code should refer to the Bribery Act 2010.

11 Minutes of Previous Meetings of the Assessment Sub-Committee, the Review Sub-Committee, the Report Sub-Committee and the Hearing Sub-Committee

Mr Evans had chaired a number of the 13 sub committee meetings listed on the face of the agenda, including the two occasions on which the Hearing Sub-Committee had met. He commented on both the process and, by way of illustration, some of the complaints for the benefit particularly of members who had yet to sit on a sub-committee.

RESOLVED

That the minutes of the following meetings be received:

- (1) Assessment Sub-Committee – Wednesday 22 July 2009
- (2) Assessment Sub-Committee – Wednesday 16 September 2009
- (3) Report Sub-Committee - Wednesday 4 November 2009
- (4) Review Sub-Committee – Monday 30 November 2009
- (5) Hearing Sub-Committee – Friday 11 December 2009
- (6) Report Sub-Committee – Friday 22 January 2010
- (7) Assessment Sub-Committee – Friday 22 January 2010 (two meetings)
- (8) Assessment Sub-Committee – Friday 30 April 2010
- (9) Report Sub-Committee – Friday 30 April 2010
- (10) Hearing Sub-Committee – Friday 19 November 2010
- (11) Assessment Sub-Committee – Friday 25 March 2011 (one of two meetings only)
- (12) Review Sub-Committee – Friday 25 March 2011

12 Re-establishment of the Sub-Committees of the Standards Committee

The committee considered the report circulated with the agenda (copy attached to the official minutes), which was presented by the District Solicitor and Monitoring Officer.

Mrs Williams explained that unless and until the current standards regime had been abrogated the four sub-committees needed to be re-established. Mr Evans explained the rotation method used for selecting members to sit on a particular sub-committee.

RESOLVED

That the Assessment Sub-Committee, Review Sub-Committee, Report Sub-Committee and Hearing Sub-Committee shall be re-established for the Council Year 2011-2012 to deal with complaints of alleged breaches of the Members' Code of Conduct and that the membership, terms of reference and quorum of each sub-committee set out in appendices 1 to 4 to the report are approved.

13 The Localism Bill - The Future of Standards

The committee considered the report circulated with the agenda (copy attached to the official minutes), which was presented by the District Solicitor and Monitoring Officer.

Mrs Williams said that the proposals as currently contained in the Localism Bill constituted a major turning point for the standards regime in local government. It was far from clear how the proposals in the Bill would work, although it was hoped that greater clarity would be afforded by published guidance and regulations. She summarised (a) the transitional arrangements in the Bill, (b) predetermination, (c) how to implement the duty to promote and maintain standards of conduct by members and co-opted members (clause 15 of the Bill), (d) the removal of a mandatory requirement for either a standards committee or a code of conduct (clause 16 of the Bill concerns voluntary codes of conduct), (e) how complaints will be investigated if a local authority chooses to adopt a code of conduct, (f) what sanctions might be available, (g) the proposed criminal offence of failing to register interests and (h) the abolition of Standards for England. She was aware that a draft voluntary code of conduct was being circulated amongst London local authorities. She would obtain a copy and forward it to members for their consideration and comment. For the sake of consistency and certainty, it was obviously highly desirable to have a single voluntary code rather than several or even many local variations. Under the new regime monitoring officers would have no responsibility for parish councils, which was a serious cause for concern as to how complainants could or would have their grievances handled. It was very clear that for many local authorities the vast majority of complaints related to parish councillors. She referred members to a Local Government Association e-mail and a Local Government Group/Association of Council Secretaries and Solicitors briefing paper, both of which were appended to the report.

Before the committee considered the specific matters listed in para 5 of the report regarding the future of standards in Chichester, members held a general discussion. They expressed grave concerns in particular about (a) the vacuum that would be created by the abolition of the existing standards regime and (b) the casting adrift of parish councils and those who wished to complain against their members, leaving complainants with few and expensive remedies eg judicial review and parish councils to contend largely unaided with persistent, even vexatious complainants. The Code of Conduct itself was in many ways a suitable, even admirable document. However, undeniably the process for the local assessment of complaints had proved to be cumbersome, bureaucratic and costly in several respects (as some of the cases considered by this Council's sub-committees had demonstrated). The answer to this was not, however, to abandon the control of standards to local choice or whim. It was essential for elected members to be very clear about their individual responsibilities and without such a standards framework, which was a long-held practice both in local government and in many other organisations, there would be an unmanageable situation with regard to upholding standards of conduct. Local residents dissatisfied with their parish councillors could always stand against them at elections.

The committee then expressed its initial views on the decisions that would need to be made regarding the future standards regime at Chichester District Council as set out at A to E in para 5 of the report. These views would be reported to the Corporate Governance and Audit Committee at its next meeting on Thursday 30 June 2011.

- (a) Chichester District Council should have a code of conduct after the Localism Bill had been enacted.
- (b) The replacement code could be the existing statutory Code of Conduct. If at all possible it was desirable to achieve consistency with codes used by other councils.
- (c) It was not sensible or possible at this stage to express detailed views on the procedure for the investigation of complaints. Other than the obvious need to achieve simplicity of process, this must await the provisions of the primary and secondary legislation and associated guidance published by the government.
- (d) It would be strongly advantageous in the post-abolition era that standards committees continued to have independent members, who should have full, equal voting rights, as they did at present, alongside their district and parish council colleagues.
- (e) Sanctions should not consist solely of censure, which would be wholly inadequate and bring any system for the local investigation of complaints into disrepute. It would have little or no effect on a recalcitrant offender and would fail to deal with a range of issues and situations for which a more robust sanction would be required. It was unclear what other sanctions would be available to voluntary standards committees, but at the very least there should be the option of withdrawing for a period of time resources from and/or the payment of allowances to a member in breach of the code of conduct.

RESOLVED

- (1) That the report on The Localism Bill – The Future of Standards is noted.
- (2) That the views of the Standards Committee on the future for standards in Chichester District Council following the enactment of the Localism Bill both generally and specifically at (a) to (e) above should be reported to the Corporate Governance and Audit Committee at its next meeting.

14 Standards Training

Mrs Williams referred to the six subsisting vacancies for independent and parish members and said that it was not proposed to fill those vacancies in view of the pending abolition of the existing standards framework and the fact that the previous committee had been able to function adequately with the same number of vacancies. With six new members across the three categories, it was appropriate to arrange training for them and also refresher training for the experienced members. She invited views on the sort of training members would like to receive. Mr Evans remarked that when sitting on a sub-committee members would receive comprehensive and sound advice from the officers.

Having discussed the matter, the committee was in favour of having a half-day training session during which the Standards for England DVD *Assessment made clear* could be viewed, case studies and/or past sub-committee papers examined and, perhaps, a mock sub-committee meeting held. Mrs Williams noted this request. The training session would be arranged in due course.

15 Late Items

As recorded in minute 6, there were no late items for consideration at this meeting.

[Note The meeting ended at 16:08]

CHAIRMAN

Date _____

Agenda Item 5

Terms of Reference of the Standards Committee

The following terms of reference are extracted from Part 3 (pages 59 and 60) of the *Constitution* of Chichester District Council

'Constitution: 7 members of the Council

3 parish councillors are co-opted in a non-voting capacity

The Independent Person(s) appointed by the Council in accordance with section 28(7) of the Localism Act 2011 are invited to attend meetings of the Committee in an advisory capacity

Terms of Reference

1. To advise the Council on the implementation of its duty to promote and maintain high standards of conduct by members and co-opted members of the authority (section 27 of the Localism Act 2011).
2. To advise the Council as to the adoption and interpretation of a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity. To review from time to time that code of conduct and make recommendations to the Council as to its revision or replacement where appropriate.
3. To provide advice to parish councils in the Chichester District as to their obligations in respect of 1 and 2 above.
4. To advise the Council on the implementation of its duty to have in place arrangements under which allegations that a member or co-opted member of the authority or of a parish council in the District has failed to comply with the relevant authority's code of conduct can be investigated and decided upon.
5. To consider and determine, through its Assessment Sub-Committee and Hearing Sub-Committee, allegations that a member or co-opted member of the authority or of a parish council in the District has failed to comply with the relevant authority's code of conduct. In so doing, to seek and take into account the views of an Independent Person appointed by the Council in accordance with section 28 (7) of the Localism Act 2011.
6. To advise on the training of members of the Council and of parish councils in the Chichester District in matters of conduct, and the provision of advice to such members on such issues as the registration and disclosure of interests and general conduct issues.'

Chichester District Council

Standards Committee

Thursday 10 September 2015

Review of Complaints Procedure

1. Contact

Nicola Golding - Principal Solicitor and Monitoring Officer
Telephone: 01243 534659
E-mail: ngolding@chichester.gov.uk

2. Recommendation

- 2.1 **To recommend to the Council that the Council's *Arrangements for Dealing with Standards Allegations under the Localism Act 2011* is amended as shown in the appendix to this report and that the Monitoring Officer is given all delegated powers specified therein.**

3. Background

- 3.1 Section 28 (6) and (7) of the *Localism Act 2011* provide that Chichester District Council (the Council) must have in place 'arrangements' under which an allegation that a member or co-opted member of the Council or a parish council for which the Council is the principal authority or of a committee or sub-committee of the Council has failed to comply with the Council's or the relevant parish council's code of conduct can be investigated and decision made on such allegations.

The Council adopted its Code of Conduct and its arrangement for dealing with standards allegations under the *Localism Act 2011* on 9 October 2012.

It is now appropriate to review the complaints procedure and amend if considered necessary. This report sets out certain amendments recommended by the Monitoring Officer.

4. Outcomes to be Achieved

- 4.1 The complaints procedure is to be reviewed and, in the light of experience of the last three years, amended to improve its workability.

5. Proposal/Points for Consideration

- 5.1 At the time of writing this report twenty three complaints had been received under this complaints procedure since its adoption on 9 October 2012. Eight of these matters proceeded to the Assessment Sub-Committee and one proceeded to a formal investigation and a hearing.
- 5.2 Fifteen cases were discontinued by the Monitoring Officer without reference to the Assessment Sub-Committee.

- 5.3 In eight of these cases a letter was sent to the complainant informing them that the Monitoring Officer had not considered their complaint to be a code of conduct matter. Seven cases proceeded to a formal initial assessment, with the Monitoring Officer consulting with one of the Council's two independent persons and the complainants were informed that referral to the Assessment Sub-Committee was not justified.
- 5.4 It is suggested that the Monitoring Officer's decision to dismiss the complaint before the initial assessment stage should be included within the procedure in the interests of openness and transparency and an additional section headed 'Validation' has been drafted.
- 5.5 Many complaints are related to the consideration of planning applications and, in particular, statements made by members in the debate at parish and Chichester District Council meetings. Such complaints have been made by applicants who have had their planning application refused. The complainants alleged that members, by their statements, have brought their office or the Council into disrepute.
- 5.6 It is not generally considered that this is the best or appropriate use of the complaints procedure under the relevant code of conduct and the sanctions available do not assist the planning process. It is, therefore, suggested that general statements to reflect this are included in the procedure.
- 5.7 Clearly, if a complainant alleges that a member has not declared an interest in a planning application, then this is a conduct matter that should be considered under this procedure.
- 5.8 Complainants are informed that their completed complaint form and any supporting documents are sent to the member the subject of their complaint. Such member may submit written representations to the Monitoring Officer before the matter is considered further.
- 5.9 On reflection, it is considered that the complainant should be given a copy of such representations and an opportunity to have the final say on the matter, without repeating points already made. Therefore an amendment to reflect this is suggested.
- 5.10 One amendment is proposed to the Hearing Sub-Committee procedure. It is considered that the same independent person who has previously been involved in the matter may attend the hearing.

6. Alternatives Considered

- 6.1 The procedure note could remain unaltered but the amendments are being suggested to improve its openness, transparency and fairness to all parties involved.

7. Resource and Legal Implications

- 7.1 None

8. Consultation

8.1 None

9. Community Impact and Corporate Risks

9.1 None

10. Other Implications

Crime and Disorder	Yes	No
Climate Change	Yes	No
Human Rights and Equality Impact As previously reported to Cabinet in March 2013	Yes	No
Safeguarding	Yes	No

11. Appendix

Appendix 1 - Proposed amendments to the *Arrangements for Dealing with Standards Allegations under the Localism Act 2011*

12. Background Papers

None

Chichester District Council

Arrangements for Dealing with Standards Allegations under the Localism Act 2011

1 Context

These **Arrangements** set out how you may make a complaint that an elected or co-opted member of this authority or of a Parish Council within the District has failed to comply with the authority's code of conduct, and set out how the authority will deal with allegations of a failure to comply with the authority's code of conduct.

Under section 28 (6) and (7) of the Localism Act 2011, the Council must have in place 'arrangements' under which allegations that a member or co-opted member of the authority or Parish Council or of a committee or sub-committee of the authority has failed to comply with that authority's code of conduct can be investigated and decisions made on such allegations.

Such arrangements must provide for the authority to appoint at least one 'independent person', whose views must be sought by the authority before it takes a decision on an allegation which it has decided shall be investigated and whose views can be sought by the authority at any other stage, or by a member against whom an allegation as been made.

2 The Code of Conduct

The Council has adopted a Code of Conduct for members, which is attached as **appendix one** to these **Arrangements** and available for inspection on the authority's website and on request from the reception desk at Chichester District Council East Pallant House 1 East Pallant Chichester.

3 Making a complaint

If you wish to make a complaint, please write or e-mail to:

Ms Nicola Golding
Monitoring Officer
Chichester District Council
East Pallant House
1 East Pallant
Chichester
West Sussex
PO19 1TY

ngolding@chichester.gov.uk

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

In order to ensure that we have all the information which we need to be able to process your complaint, please complete and send us the complaint form, which can be downloaded from the authority's website, next to the Code of Conduct, and is available on request from the reception at Chichester District Council East Pallant House 1 East Pallant Chichester.

Please do provide us with your name and a contact address or e-mail address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. A full copy of your complaint form and supporting documents will be sent to the member against whom your complaint is about (the subject member). The authority does not normally investigate anonymous complaints, unless there is a clear public interest in doing so. If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form. We will consider your request and if we decide to agree to it we will not disclose your name and address to the member against whom you make the complaint without your prior consent. If we refuse your request you will be notified and given the opportunity to decide whether or not you wish to proceed with your complaint.

The subject member may provide his/her written comments about your complaint to the Monitoring Officer. You will be sent a copy of such comments and may send a response if you feel that you have new points to make.

The subject member will have the opportunity to consult, at this stage, with an Independent Person.

4 Validation

Your complaint will be considered by the Monitoring Officer. If she is of view that it does not fundamentally relate to a code of conduct matter she will decline to process it further under this procedure. You will be informed of this and, if possible, other options open to you will be suggested. It is generally considered that complaints about statements made in respect of planning applications will not be dealt with under this procedure. The planning system itself is considered to give all parties a fair opportunity to express their views and comment upon the views of others. The code of conduct complaints procedure will not produce an outcome that will assist in the planning process.

Once validated by the Monitoring Officer, your complaint will proceed to the Initial Assessment.

54 Will your complaint be investigated?

Monitoring Officer's Initial Assessment

The Monitoring Officer will carry out an initial assessment of every complaint received and, after consultation with the Independent Person, may take a decision as to whether it should proceed to the Assessment Sub-Committee stage. The details given in your complaint form together with any supporting documents that you have submitted, together with any comments that the subject member has made and any further response from you, will be taken into consideration.

The Monitoring Officer may decide a complaint does not proceed if:

- It is about someone who is no longer a member of the Council
- There has been a long delay before the complaint was made
- The complaint appears to be minor, politically motivated, malicious or not sufficiently serious to warrant further action
- Whilst framed as a code of conduct matter, is fundamentally about the assessment of a planning application
- In order to resolve the matter, you are prepared to accept and the subject member has given a written apology
- Both you and the subject member are prepared to resolve the matter by having a mediation / conciliation meeting

This list is not intended to be exhaustive and the Monitoring Officer in consultation with the Independent Person may decide that a complaint does not merit further consideration for any other reason which appears to them to be relevant.

If you are a parish councillor and the subject member (or one of them) is a member of the same parish council, the Monitoring Officer may, in consultation with the Independent Person, refer the matterentire complaint to the Sussex Associations of Local Councils (SALC). SALC will appoint a Panel to hear your complaint and decide whether it is sufficiently serious to be put through the procedure set out below or whether it should be settled in some other way within the parish council.

Where the Monitoring Officer has taken the decision that the complaint does not merit further consideration or is to be referred to SALC for mediation / conciliation, the Monitoring Officer will inform you of his/her decision and the reasons for that decision.

Assessment Sub Committee

The Assessment Sub-Committee will consist of three members of the Council's Standards Committee. If the subject member is a parish councillor, a parish councillor who is a co-opted member of the Standards Committee will also attend in an advisory capacity. The Monitoring Officer will refer the complaint to the Assessment Sub-Committee provided she considers it is appropriate to do so (see above: Monitoring Officer's Initial Assessment).

The complaint form and any supporting documents that have been submitted will be copied to all members of the Sub Committee.

Having received a copy of the complaint form the subject member may have submitted written comments to the Monitoring Officer. Such comments will also be copied to all members of the Assessment Sub-Committee, together with any further response from you.-

The Assessment Sub-Committee is likely to be held in private and therefore neither you nor the subject member may attend. The Monitoring Officer and the Independent Person will attend and, if required, give advice.

The Assessment Sub-Committee may decide:

- (i) To take no further action on the complaint
- (ii) To ask for further information
- (iii) To refer the complaint to the Monitoring Officer to arrange for an investigation to be carried out
- (iv) To refer the matter to the Monitoring Officer for other steps eg for a written apology from the subject member to be sent to the complainant or to request mediation / conciliation or training for the member
- (v) To refer the complaint to the police or other regulatory agency if the complainant identifies potential criminal conduct or breach of other regulation.

Where the Monitoring Officer or the Assessment Sub-Committee requires additional information in order to come to a decision, you may be asked to provide such information or the Assessment Sub-Committee may request information from the subject member against whom your complaint is directed.

As stated above, the Assessment Sub-Committee may request that the Monitoring Officer attempts to resolve the matter informally, without the need for a formal investigation. Such informal resolution may involve the member accepting that his/her conduct was unacceptable and offering an apology or other remedial action by the authority.

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

The complainant and the subject member will be notified of the Assessment Sub-Committee's decision with reasons.

65 How is the investigation conducted?

The Council has adopted a procedure for the investigation of misconduct complaints, which is attached as **appendix two** to these **Arrangements**.

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

The Investigating Officer would normally write to the subject member and ask that member to provide his/her explanation of events, and to identify what documents they need to see and who they need to interview. In exceptional cases, where it is appropriate to keep your identity confidential or where disclosure of details of the complaint to the member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the member or delay notifying the member until the investigation has progressed sufficiently.

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

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

6 **7** **What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?**

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The Monitoring Officer will review the Investigating Officer's report and, if satisfied, in consultation with the Independent Person, that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the subject member, notifying you that they are satisfied that no further action is required, and give you both a copy of the Investigating Officer's final report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, the Investigating Officer may be asked to reconsider the report.

7 **8** **What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?**

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The Monitoring Officer will review the Investigating Officer's report and will then refer the matter for local hearing before the Hearing Sub-Committee.

The Hearing Sub-Committee will conduct a local hearing before deciding whether the member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the member.

The Council has agreed a procedure for local hearings, which is attached as **Appendix Three** to these **Arrangements**.

Essentially, the Monitoring Officer will conduct a pre-hearing process, requiring the member to give his/her response to the Investigating Officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing. At the hearing, the Investigating Officer will present his/her report, call such witnesses as considered necessary and make representations to substantiate his/her conclusion that the member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask you as the complainant to attend and give evidence to the Hearing Sub-Committee. The subject member will then have an opportunity to give his/her evidence, to call witnesses and to make

representations to the Hearing Sub Committee as to why they consider that they did not fail to comply with the Code of Conduct.

The Hearing Sub-Committee, with the benefit of any advice from the Independent Person, may conclude that the member did not fail to comply with the Code of Conduct, and so dismiss the complaint. If the Hearing Sub-Committee concludes that the member did fail to comply with the Code of Conduct, it will then consider what action, if any, the Hearing Sub-Committee should take as a result of that failure to comply. In doing this, the Hearing Sub-Committee will give the subject member an opportunity to make representations and will consult the Independent Person, and will then decide what action, if any, to take in respect of the matter.

8 9 What action can the Hearing Sub-Committee take where a member has failed to comply with the Code of Conduct?

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The Standards Committee has delegated to the Hearing Sub-Committee such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly the Hearing Sub-Committee may:

8.43.1 9.1 Publish its findings in respect of the member's conduct.

8.23.2 9.2 Write a formal letter of censure to the councillor found to have breached the Code of Conduct.

8.33.3 9.3 Report its findings to the Council meeting for information.

8.43.4 9.4 Recommend to the member's group leader or the parish council (or in the case of un-grouped members recommend to the Council meeting) that they be removed from any or all committees or sub-committees of the Council.

8.53.5 9.5 Recommend to the Leader of the Council or the parish council that the member be removed from the Cabinet or be removed from particular portfolio responsibilities.

8.63.6 9.6 Recommend to the relevant Council to arrange training or mediation / conciliation or other appropriate remedy for the member.

8.7 9.7 Accept the written apology of the subject member to you.

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

9 10 What happens at the end of the hearing?

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

As soon as reasonably practicable thereafter, a formal decision notice will be issued and a copy will be sent to you, to the subject member and the clerk to any relevant

parish council. The decision notice will be available for public inspection at the Council's offices and the decision may be reported to the next meeting of the Council.

40 | **11** Who sits on the Hearing Sub-Committee?

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The Hearing Sub-Committee is a sub-committee of three (3) members of the Council's Standards Committee. The Hearing Sub-Committee will elect one of its members to act as chairman.

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

44 | **12** Who is the Independent Person?

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The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is then appointed by the Council. The definition of an Independent Person can be found in section 28 of the Localism Act 2011.

42 | **13** Revision of these arrangements

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The Council may by resolution agree to amend these **Arrangements**, and has delegated to the Monitoring Officer the right to depart from these **Arrangements** where she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

43 | **14** Appeals

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There is no right of appeal for you as complainant or for the subject member against a decision of the Monitoring Officer or of the Assessment Sub-Committee or Hearing Sub Committee.

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

Code of Conduct

Appendix Two

Investigations Procedure

Introduction

This document sets out the procedure which will be followed once a decision has been taken that an allegation of misconduct by a member should be investigated.

It should be read in conjunction with the document **Arrangements for Dealing with Standards Allegations under the Localism Act 2011** [link].

The appointment of the Investigating Officer

Upon deciding to refer an allegation for investigation, the Monitoring Officer will appoint an Investigating Officer and instruct him/her to conduct an investigation of the allegation and report on it. The Monitoring Officer may appoint a replacement if the Investigating Officer is unable to complete the investigation. The Investigating Officer may be an officer of the authority or another authority or an external investigating officer. They should not be connected with the Standards Committee.

The role of the Investigating Officer

The role of the Investigating Officer is to ensure, as far as possible, that all the information which is relevant to the allegation is identified and presented in their report.

Subject to the agreement of the Monitoring Officer, the Investigating Officer may appoint a person(s) to assist him/her in the conduct of his/her functions and may obtain such professional advice as may be necessary for the conduct of the investigation.

Notification requirements

Once an Investigating Officer has been appointed, the Monitoring Officer will notify the subject member against whom the allegation has been made that the matter is being referred for investigation and inform him/her who is conducting the investigation.

The Monitoring Officer will notify the complainant that an investigation will take place and that they may be contacted in relation to that investigation.

Conduct of the investigation

The Investigating Officer shall have a broad discretion as to how to conduct the investigation.

They may require the subject member and the complainant to provide them with information and/or documents which are relevant to the investigation. They may require them to provide details of other people who may be able to assist with the investigation.

The Investigating Officer may request any person to attend an interview with him/her and/or provide him/her with documents and/or information.

Any person who is interviewed may arrange to have a friend or solicitor with him/her (provided that person is not connected to any matter under investigation).

The Investigating Officer will produce a written statement for signature in respect of any interviews that they conduct.

Referral to the Monitoring Officer

The Investigating Officer may refer the matter back to the Monitoring Officer if it appears to them appropriate to do so. For example, if the member is seriously ill or the decision to investigate should be reconsidered in the light of new evidence.

Deferral of investigation

The Monitoring Officer has discretion to defer the investigation if it appears appropriate to do so. For example, if there is a criminal investigation taking place.

Confidentiality

The Investigating Officer shall request that anyone contacted in relation to the investigation shall maintain confidentiality in order to maintain the integrity of the process.

Draft report

When the Investigating Officer is satisfied that they have sufficient information, or have obtained as much information as is reasonably practicable to obtain, they shall prepare a confidential draft report setting out the details of the allegation, the relevant sections of the code, a summary of the allegation, the response of the subject member, the information, documents and evidence taken during the course of the investigation, a statement of his/her draft findings, and the Investigating Officer's conclusion as to whether the member has breached the Code of Conduct.

The draft report should be sent to the Monitoring Officer, the complainant, the subject member and the Independent Person for their comments. The Investigating Officer may wish to conduct further investigations once they have received those comments, before producing the final report.

Final report

The final report should include the same sections as the draft report and a final conclusion as to whether there has been a breach of the Code of Conduct.

It may be helpful to include a chronology, summary of disputed facts and/or to append witness statements or other documents.

Action on receipt of report

If the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct, the Monitoring Officer will review the report and, if satisfied that the report is sufficient, in consultation with the Independent Person, will write to the complainant and the subject member notifying them that no further action is required and enclosing a copy of the report.

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

If the report concludes that there is evidence of a failure to comply with the Code of Conduct the matter will be referred to the Hearing Sub-Committee.

The hearings process is the subject of a separate procedure [\[link\]](#).

Appendix Three

Hearings Procedure

The following process will be followed where the Investigating Officer has considered that there is evidence that the subject member has breached the Code of Conduct.

Pre-hearing process

The Monitoring Officer will, where possible, arrange for the Hearing Sub-Committee to meet to hear the complaint within three months of receiving the Investigating Officer's report. She should aim to find a date which the witnesses, the Investigating Officer, the complainant and the subject member can attend. The Monitoring Officer should give all those involved sufficient notice of the date for the Hearing Sub-Committee meeting.

The Monitoring Officer will require the subject member to give his/her response to the Investigating Officer's report in order to identify what is likely to be agreed and what is likely to be in contention at the Hearing Sub-Committee.

If the subject member wishes to rely on evidence at the committee, they should provide it in writing to the Monitoring Officer as soon as possible. The Investigating Officer may have taken a witness statement from him/her or set out his/her comments in the report but if the subject member wishes to add to what the Investigating Officer has written they should provide a witness statement to the Monitoring Officer as soon as possible.

The Hearing Sub-Committee will not allow new arguments or evidence to be presented at the hearing.

The Monitoring Officer will consider whether it is appropriate to hear two complaints together eg if they relate to the same member or to the same incident or occasion.

The subject member should be provided with the Investigating Officer's report and any evidence which will be heard at the hearing.

The Monitoring Officer should provide the members of the Hearing Sub-Committee with all the evidence in advance of the hearing so that they can read it to identify any potential conflicts of interest.

The Monitoring Officer will provide the Hearing Sub-Committee with a report which summarises the allegation. This should include a list of agreed facts and disputed issues and outline the proposed procedure for the hearing (this will be based upon the **Procedure for the Hearing Sub-Committee** at the end of this appendix).

A Member Services officer will act as a point of contact for the subject member, the complainant, the Independent Person and any witnesses who will give evidence.

The Hearing Sub-Committee

The Hearing Sub-Committee will generally take place in public. If the subject member is a parish councillor, a parish councillor who is a co-opted member of the Standards Committee will attend in an advisory capacity, in addition to the three voting members of the Sub-Committee.

An Independent Person will be invited to attend the hearing and will be asked to comment on whether there has been a breach of the Code of Conduct and on appropriate sanctions.

~~This will be an Independent Person who has not previously been consulted by the subject member.~~

If the subject member does not attend the hearing, the Hearing Sub-Committee may adjourn the hearing or may continue to reach a decision on the basis of the Investigating Officer's report and, if it decides to do so, any evidence that it hears.

Whilst the Hearing Sub Committee is a meeting of the authority, it is not a court of law. It does not hear evidence under oath. The rules of natural justice should nevertheless be carefully followed and the Hearing Sub-Committee will have due regard to the seriousness of the proceedings for those involved, the Council and the public.

The Hearing Sub-Committee will decide disputed issues and whether the subject member has breached the code on the balance of probabilities.

Representation

The subject member may choose to be represented if they wish. They will have to bear the cost of being represented. The Hearing Sub-Committee may refuse to allow any person to remain at the hearing if they are disruptive. The Hearing Sub-Committee will have the discretion to hear opening or closing arguments from the subject member and the Investigating Officer if it feels it would assist them in reaching a decision.

Evidence

The Hearing Sub-Committee will control the procedure and evidence presented at a hearing, including the number of witnesses and the way they are questioned. All matters relating to the evidence and procedure are within its discretion.

Generally the subject member is entitled to present his/her case as they see fit.

Witnesses of facts that are disputed would normally be expected to attend to be questioned. Character witnesses will normally provide written evidence, which can be read at the hearing.

Witnesses may be questioned by the Hearing Sub-Committee, the Independent Person, the Investigating Officer and the subject member.

The onus is on the subject member to ensure the attendance of the witnesses whom they would like to give evidence to assist them. The Hearing Sub-Committee can limit the number of witnesses or the issues which can be covered by them.

Neither the Hearing Sub-Committee nor the subject member will have any power to compel witnesses to give evidence.

At the Hearing Sub Committee

At the hearing, the Investigating Officer will present his/her report, call such witnesses as they consider necessary and make representations to substantiate his/her conclusion that

the member has failed to comply with the Code of Conduct. The Investigating Officer may ask the complainant to attend and give evidence to the Hearing Sub-Committee. The Investigating Officer may be asked about his/her report or any matters relating to his/her involvement.

Role of the Monitoring Officer

References to the Monitoring Officer should be read to include any representative of the Monitoring Officer.

The Monitoring Officer has a key role in ensuring the smooth running of the pre-hearing and hearing process. He or she will remain neutral throughout and will provide independent advice to the Hearing Sub-Committee.

Role of the complainant

The role of the complainant will usually be limited to being a witness for the Investigating Officer and they are not a party to the proceedings. However, the Hearing Sub-Committee might wish to consult him/her at any stage in the hearing if it feels that his/her comments would assist it.

Decision

The Hearing Sub-Committee must consult the Independent Person before reaching its decision.

The Hearing Sub-Committee may wish to retire to consider its decision. The Monitoring Officer may assist it in setting out the reasons for their decision.

The Hearing Sub-Committee will reach a decision as to whether the subject member has breached the code of conduct. If it decides that the subject member has not breached the Code of Conduct, it will take no further action. If it decides that the subject member has breached the Code of Conduct, it should go on to decide what sanction, if any, is appropriate.

Sanctions

The Hearing Sub-Committee will consult the Independent Person before imposing any sanction and give the subject member the opportunity to make representations.

The Hearing Sub-Committee should consider all the mitigating and aggravating circumstances that appear to it to be relevant. For example, it may wish to consider:

- What were the actual and potential consequences of the breach?
- How serious was the breach?
- What is the attitude of the subject member now? Have they apologised?
- Has the subject member previously been dealt with for a breach of the Code of Conduct?

The following are examples of mitigating and aggravating factors, but these lists should not be regarded as exhaustive.

Mitigating Factors

- An honest but mistaken belief that the action was not a breach of the Code of Conduct
- A previous record of good service
- Evidence that they were suffering from ill health at the time of the breach

Aggravating Factors

- Dishonesty
- Continuing to deny the facts or blaming other people
- Evidence of a failure to follow advice or warnings

The priority of the Hearing Sub-Committee should be to ensure that there are no further breaches of the Code of Conduct and that public confidence is maintained.

Sanctions

The sanctions available to the Hearing Sub-Committee are:

- Publish its findings in respect of the member's conduct.
- Write a formal letter of censure to the member found to have breached the Code of Conduct.
- Report its findings to Council for information.
- Recommend to the member's group leader or the Parish Council (or, in the case of un-grouped members, recommend to the Council meeting) that they be removed from any or all committees or sub-committees of the Council.
- Recommend to the Leader of the Council or the Parish Council that the member be removed from the Cabinet or removed from particular portfolio responsibilities.
- Recommend to the relevant Council training, mediation / conciliation (or other appropriate remedy) for the member.
- Accept the written apology of subject member.

Notice of the decision

As soon as is reasonably practicable after the hearing, the Monitoring Officer shall issue a formal decision notice in consultation with the chairman of the Hearing Sub-Committee, and send a copy to the complainant, the subject member and any relevant parish council. The decision notice will be available for public inspection and may be reported to the next meeting of the Council.

Procedure of the Hearing Sub-Committee

- 1 Election of a chairman.
- 2 Chairman to introduce members and all parties present.
- 3 Chairman to outline complaint and explain procedure.
- 4 Investigating officer to outline the case as to why they believe the subject member has breached the Code of Conduct and call any witnesses (including the complainant if necessary).
- 5 Subject member and the Hearing Sub-Committee may ask questions of the Investigating Officer and any witnesses.
- 6 The subject member outlines their case as to why they believe that they have not breached the Code of Conduct and may call witnesses.
- 7 The Investigating Officer (and possibly the complainant) and the Hearing Sub-Committee may ask questions of the subject member or any of his/her witnesses.
- 8 The subject member and the Investigating Officer may be asked to give brief closing remarks.
- 9 The Independent Person will be invited to give comments.
- 10 The Hearing Sub-Committee will retire to consider whether the subject member has breached the Code of Conduct.
- 11 The chairman will announce the Hearing Sub-Committee's decision as to whether the Code of Conduct has been breached by the subject member.
- 12 If no breach, is found the meeting will be closed.
- 13 If a breach is found, the subject member will be invited to give further comment on any mitigating circumstances;
- 14 The Investigating Officer may comment upon appropriate sanction.
- 15 The Independent Person will be invited to give further comments.
- 16 The Hearing Sub-Committee will retire to consider sanction.
- 17 The Hearing Sub-Committee will announce sanctions which it is imposing on the subject member and then close the meeting.
- 18 A written decision notice will be issued and sent to all parties as soon as reasonably practicable after the Hearing Sub-Committee.