



# CONSTITUTION SUB COMMITTEE

TUESDAY, 21ST JUNE, 2016

At 5.30 pm

in the

ASCOT AND BRAY - TOWN HALL, MAIDENHEAD

## SUPPLEMENTARY AGENDA

### PART I

<u>ITEM</u>	<u>SUBJECT</u>	<u>PAGE NO</u>
4.	<u>MEMBERS' CODE OF CONDUCT REVIEW</u> To consider the above report	3 - 20

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Report for: ACTION



<b>Contains Confidential or Exempt Information</b>	NO - Part I
<b>Title</b>	<b>Members' Code of Conduct Review</b>
<b>Responsible Officer(s)</b>	Russell O'Keefe, Strategic Director of Corporate and Community Services
<b>Contact officer, job title and phone number</b>	David Scott, Head of Governance, Partnerships, Performance and Policy and Monitoring Officer. 01628 796748
<b>Member reporting</b>	Cllr Targowska, Principal Member for HR and Legal, Chair of Constitution Subcommittee
<b>For Consideration By</b>	Constitution Subcommittee
<b>Date to be Considered</b>	21 June 2016
<b>Implementation Date if Not Called In</b>	N/A
<b>Affected Wards</b>	All

## REPORT SUMMARY

1. Following Council in December 2015, this report presents a review of the Members' Code of Conduct (Part 7A of the RBWM Constitution), with a recommendation for no change to the code, and some minor changes to one of the related procedures. The current version of the code is shown in Appendix A.
2. The review has looked at our code of conduct in comparison to a selection of other authorities' codes, and has identified some proposed amendments in relation to dealing with allegations of breaches of the Members' Code of Conduct. A revised Appendix 4 to the Code of Conduct is proposed which moves the responsibility for conduction investigations to the Monitoring Officer, with a revised version attached in Appendix B.
3. The report seeks the Constitution Sub Committees support to recommend this proposed change to full Council for approval in July.
4. Members are also asked to consider if they wish to recommend establishing additional panel(s) to assist in the arrangements for dealing with breaches of the Members' Code of Conduct.

## If recommendations are adopted, how will residents benefit?

Benefits to residents and reasons why they will benefit

Dates by which residents can expect to notice a difference

1. A fit for purpose code of conduct with a transparent and fair process for complaints will help ensure trust in elected members and the democratic process.	27 July 2016
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## 1. DETAILS OF RECOMMENDATIONS

### RECOMMENDATION: That the Constitution Subcommittee:

- i. Confirms that the current Code of Conduct is fit for purpose with the exception of Appendix 4.
- ii. Supports the revision of Appendix 4 of the Code of Conduct; transferring responsibility for dealing with breaches of the code to the Monitoring Officer in line with the majority of other similar codes of conduct,
- iii. Recommends to July Council that the revised Appendix 4 (Arrangements for dealing with breaches of the Code of Conduct) is adopted.
- iv. Consider whether establishing additional panel(s), or any other proposals, should be recommended to July Council.

## 2. REASON FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED

- 2.1 The Council adopted its Code of Conduct (CofC) in 2012 as a result of changes introduced by the Localism Act 2011. Further changes to the Code including the Registration of Personal Interests was adopted by Council on 22 September 2015. These came into effect on 1 November 2015.
- 2.2 Council requested in September 2015 that the Constitution Subcommittee undertook a thorough review and consultation of the current Code, with a view (if necessary) to make recommendation to Council by December 2015.
- 2.3 To enable further discussion and consultation with Members and Officers, Council on 15 December 2015 agreed to extend this period of review with a view to reporting back to Council by July 2016.

### Recommendation i - Review of Members' Code of Conduct

- 2.4 The Royal Borough of Windsor and Maidenhead's Members' Code of Conduct was benchmarked against three unitary authorities (Bracknell Forest, Wokingham and Cheshire East), one County Council (Hampshire) and one London Borough (Wandsworth).
- 2.5 The comparison of the RBWM CofC compared to the other borough indicates that very largely the CofC remains fit for purpose, with the exception of Appendix 4 - Arrangements for dealing with breaches of the Code of Conduct.

Option	Comments
No change to the current Members' Code of Conduct	The current code of conduct is consistent with the other Local Authorities compared and achieves the following principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership. <b>This is the recommended option</b>
Change the current	A review was undertaken and no changes were

Option	Comments
Member's Code of Conduct	required. Not recommended.

**Recommendation ii - Arrangements for dealing with breaches of the Code of Conduct**

2.6 Arrangements for dealing with breaches of the CofC have also been benchmarked against the above Councils. Following this review, a number of changes have been recommended, combining our existing processes and adding what are considered to be the best practices from other Councils, especially Hampshire. These changes will allow for residents to have a clear and transparent mechanism for appropriate complaints to be assessed and decided. The new changes will also protect Members from frivolous or vexatious complaints.

Option	Comments
Change the current Arrangements for dealing with Members' breaches of the Code of Conduct – Appendix 4 of the Code of Conduct	<p>The following changes are being proposed:</p> <ul style="list-style-type: none"> <li>• Complaints are dealt with by the Monitoring Officer rather than the Managing Director, in consultation with the Independent Person. This would be consistent with all the other Councils reviewed.</li> <li>• Adopt a greater level of rigour around anonymous complaints, such that complaints will only be accepted if there is documentary or photographic evidence.</li> <li>• Consistent clarity around timescales and outcomes.</li> <li>• An additional set of checks to determine whether the complaint should be accepted for further consideration or rejected, for example, sufficiency of information and seriousness of the complaint be established before progressing to formal stages.</li> <li>• All complaints should be made through a standardised form. This could be an e-form or a downloadable template or both.</li> <li>• See Appendix B for the revised Appendix.4.</li> </ul> <p><b>This is the recommended Option</b></p>
No change to the current Arrangements for dealing with Members' breaches of the Code of Conduct	<p>The current arrangements while adequate do not allow residents to have a clear and transparent mechanism for appropriate complaints to be assessed and decided upon, and do not allow adequate protection for Members from frivolous or vexatious complaints. See Appendix A section Appendix 4.</p> <p>Not recommended.</p>

**Recommendation iii - establishing additional panel(s) or any other proposals**

2.7 As an alternative to leaving the responsibility with the Monitoring Officer as proposed, the Constitution Subcommittee is asked to consider whether a panel(s) should be set up to either decide whether:

- (a) a complaint should be considered, or
- (b) to decide what sanction should be delivered, or
- (c) both.

In other authorities there are a mixture of arrangements, with some having panels and others leaving the responsibility with the Monitoring Officer. Where panels are in place, they are generally made up of Members.

- 2.8 The Subcommittee is also asked to consider if there are any other suggestions that should be recommended to Council.

<b>Option</b>	<b>Comments</b>
No additional panel(s)	This is the current system in RBWM. The Managing Director (will become the Monitoring Officer if changes as set out in this report are adopted), in consultation with an Independent Person, decides whether a complaint should be considered and the appropriate sanction if a complaint is upheld.
One additional panel to consult on whether a complaint should proceed.	Delegations could be to the Monitoring Officer, in consultation with an Independent Person and an "Assessment Panel".
One additional panel to consult on what the sanction should be considered.	Delegations could be to the Monitoring Officer, in consultation with an Independent Person and an "Investigation Panel."
Two additional panels to consult on whether a complaint should be considered and to decide what sanction should be delivered.	Delegations would be 2 and 3 above at the appropriate points in the process (one overarching panel could be constituted and membership for the two additional ones drawn from that)

### 3. KEY IMPLICATIONS

<b>Defined Outcomes</b>	<b>Unmet</b>	<b>Met</b>	<b>Exceeded</b>	<b>Significantly Exceeded</b>	<b>Date they should be delivered by</b>
The Review of the Code of Conduct is report to Council	After 26 July 2016	26 July 2016	N/A	N/A	26 July 2016

### 4. FINANCIAL DETAILS

- 4.1 There are no financial implications arising from the recommendation in this report.

### 5. LEGAL IMPLICATIONS

- 5.1 The Constitution must be in compliance with the terms of the Local Government Act 2000, Local Government and Public Involvement in Health Act 2007 and Local Democracy, Economic Regeneration and Construction Act 2009, Localism Act 2011 and other relevant statutory acts or guidance.

**6. VALUE FOR MONEY**

6.1 An updated Constitution will ensure the Council is less likely to be challenged on its procedures and processes.

**7. SUSTAINABILITY IMPACT APPRAISAL**

7.1 There is no impact on sustainability objectives.

**8. RISK MANAGEMENT**

<b>Risks</b>	<b>Uncontrolled Risk</b>	<b>Controls</b>	<b>Controlled Risk</b>
There is a risk of challenge if the Constitution is not legally updated.	Constitution is not updated.	Constitution is regularly reviewed and updated.	Revised Constitution available on website.

**9. LINKS TO STRATEGIC OBJECTIVES**

9.1 The main links are to:

**Residents First**

- Work for safer and stronger communities

**Value for Money**

- Improve the use of technology

**Delivering Together**

- Enhanced Customer Services
- Deliver Effective Services

**Equipping Ourselves for the Future**

- Developing Our systems and Structures

**10. EQUALITIES, HUMAN RIGHTS AND COMMUNITY COHESION**

10.1 Not at this stage.

**11. STAFFING/WORKFORCE AND ACCOMMODATION IMPLICATIONS**

11.1 None.

**12. PROPERTY AND ASSETS**

12.1 None.

**13. ANY OTHER IMPLICATIONS**

13.1 None.

**14. CONSULTATION**

14.1 N/A

## 15. TIMETABLE FOR IMPLEMENTATION

Date	Details
26 July 2016	Discussed at Full Council

## 16. APPENDICES

Appendix A – Current Constitution Code of Conduct for Members – Part 7A  
Appendix B – Revised Appendix 4 proposed to replace the current Appendix 4

## 17. BACKGROUND INFORMATION

RBWM Constitution - Version 16.5 June 2016  
Report to Full Council 15 December 2015

## 18. CONSULTATION (MANDATORY)

Name of consultee	Post held and Department	Date sent	Date received	See comments in paragraph:
<b>Internal</b>				
Cllr Targowska	Principal Member HR & Legal	13/ 6/ 16	13/ 6/ 16	Reflected through the report
Russell O'Keefe	Strategic Director Corporate and Community Services	11/ 6/ 16	13/ 6/ 16	
Alison Alexander	Managing Director/ Strategic Director Adults, Children and Health	11/ 6/ 16	13/ 6/ 16	
Simon Fletcher	Strategic Director Operations and Customer Services	11/6/ 16		

## REPORT HISTORY

Decision type:	Urgency item?
Key decision	No

Full name of report author	Job title	Full contact no:
David Scott	Head of GPPP and Monitoring Officer	01628 79 6748



**Royal Borough of Windsor & Maidenhead Code of Conduct**

**Conduct expected of Members and co-opted Members of the authority when acting in that capacity**

You, as a member of the Royal Borough of Windsor and Maidenhead shall have regard to the following principles: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

When acting in your capacity as a Member or co-opted Member:

- i) You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate.
- ii) You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.
- iii) When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on merit.
- iv) You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office.
- v) You must be as open as possible about your decisions and actions and the decisions and actions of your authority and should be prepared to give reasons for those decisions and actions.
- vi) You must declare any private interests, both pecuniary and non-pecuniary, that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interests in a manner conforming with the procedures set out in the Appendices below.
- vii) You must, when using or authorising the use by others of the resources of your authority, ensure that such resources are not used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

viii) You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example.

This Code of Conduct is supplemented by the provisions of Appendix 1 to 5

## **Appendix 1**

### **Registering and Declaring pecuniary and personal interests (s.30 Localism Act 2011)**

You must, within 28 days of taking office as a Member or co-opted Member, notify your authority's monitoring officer of any disclosable pecuniary interest ('DPIs') as defined by regulations made by the Secretary of State, where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners. The definition of DPIs is in Appendix 5.

In addition, you must, within 28 days of taking office as a Member or co-opted Member, notify your authority's Monitoring Officer of any Personal Interest as defined in Appendix 5.

If any DPI or Personal Interest has not been entered onto the authority's Register of Interests, then the Member must disclose the interest to any meeting of the authority at which they are present, where they have an interest in any matter being considered and where the matter is not a Sensitive Interest as defined in Appendix 5.

Following disclosure of any interest not on the authority's Register of Interest or the subject of a pending notification, you must notify the Monitoring Officer of the interest within 28 days beginning with the date of disclosure in order that it may be placed on the Register of Interests.

You must, within 28 days of receipt, notify the Monitoring Officer, in writing, of any gift, benefit or hospitality, with a value in excess of £25, which will then be entered on the public register of gifts and hospitality.

A copy of the register will be available for public inspection and will be published on the authority's website.

## **Appendix 2**

### **Disclosure of interests and participation in meetings. (s.31 Localism Act 2011)**

#### Disclosure at Meetings

You are required to disclose interests at meetings when you are aware that you have either:

- (a) A DPI or a Personal Interest which is relevant to the matter being considered; or

(b) A Personal Interest or a DPI which is not on your Register of Interests;

You are not required to (but can do so if you wish) disclose any other type of interest that you may have. If in doubt, it is always better to disclose an interest than not do so as the Council places a high value upon its public reputation for integrity.

### Participation for Decision Makers at Meetings

If you attend a meeting as a decision maker and have:

- (a) DPI which is relevant to the matter under discussion; or
- (b) a Prejudicial Interest;

then you must not participate in any debate of the matter and/or participate in any vote at the meeting, unless you have obtained a Dispensation.

Please see Appendix 5 for guidance on these terms. Appendix 3 states how you can obtain a Dispensation.

If you have a DPI or Prejudicial Interest (and do not have a Dispensation) as described then you must:

- (a) Declare the interest at the start of the meeting when the Chairman asks if there are any interests to declare; and
- (b) Before the item is to be discussed, you may make representations before there is debate on the matter but, when finished, you must move to the public area or leave the room and take no further part in the discussion or vote.

You cannot avoid disclosure of a DPI or Prejudicial Interest merely by withdrawing during that part of the meeting when the matter you have a DPI or Prejudicial Interest, is to be discussed. In respect to a DPI, failure to comply is a Criminal Offence.

If you remain in the room, you must not sit with the other members of the meeting and must move to the public area. You must not speak after making your representations. It is also important that you do not express your views in a non-verbal way, for example by using body language or expressing emotion.

## **Appendix 3**

### **How to obtain a Dispensation**

If you seek a Dispensation, you must make a written request to the Relevant Officer of the Council.

The Council may grant a dispensation under this section only if, after having had regard to all relevant circumstances, the authority—

- (a) considers that without the dispensation the number of persons from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business,

- (b) considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business,
- (c) considers that granting the dispensation is in the interests of persons living in the Royal Borough of Windsor and Maidenhead.
- (d) if it is an authority to which Part 1A of the Local Government Act 2000 applies and is operating executive arrangements, considers that without the dispensation each Member of the authority's executive would be prohibited from participating in any particular business to be transacted by the authority's executive, or
- (e) considers that it is otherwise appropriate to grant a dispensation.

A dispensation under this section must specify the period for which it has effect, and the period specified may not exceed four years.

The Relevant Officer is the Managing Director or in substitute the officer clerking the meeting.

## **Appendix 4**

### **Arrangements for dealing with breaches of the Code of Conduct**

Complaints in respect of this Code are made to the Managing Director.

When a complainant makes a complaint they will receive:

- an acknowledgment within 3 working days
- a response within 10 working days setting out how the Council will consider the complaint and the likely timescale for resolution

When a complaint is made against you, you will be provided with a copy of the complaint and will be requested to provide your initial views and comments on the allegations. The Managing Director will consider this before making any decision whether to investigate the complaint.

The Council's arrangements for dealing with the breach will be determined by the Managing Director and will be proportionate to the complaint and will be timely and effective.

When a complaint is received, the Managing Director will decide on whether a complaint against you requires formal investigation or any other action, in consultation with the Independent Person, as appropriate.

If the Managing Director feels that it is inappropriate to take a decision on a complaint, the Managing Director will refer the particular complaint to a nominee. You are requested to communicate with any nominee on the facts under investigation.

The Managing Director must consult the Independent Person before making a decision on an allegation that the Managing Director has decided required investigation.

The Managing Director will inform you and the complainant of the decision in relation to the complaint.

### Support to Members during an Investigation

The Council will support to you during the complaint investigation process:

- a. Independent Person: You can seek views of the second Independent Person (not the Independent person who is consulted by the Managing Director) on the complaint.
- b. Legal Support: The Council will provide financial support to allow you to seek any reasonable legal advice to defend (i) proceedings for criminal acts alleged as part of your role as Councillor, or (ii) any allegation of a breach of the Code of Conduct.

Any criminal acts must occur in the course of your duties as a Councillor. You must notify the Council's insurance manager before seeking legal advice. The advice and legal costs must be appropriate to the complaint. You will be required to immediately repay back all monies to the Council if you are convicted of a criminal offence or have failed to comply with the Code of Conduct.

### Appeals

You have no right to appeal under the Code and the decision of the Managing Director will be final. However, you will have the option after the decision has been made to make any further statement that you wish on the complaint and the findings.

This further statement shall be published on the Council's website for the period stated in Transparency below.

If the complainant is unhappy with this decision, there is no further right of appeal to the Council. They may write to the Local Government Ombudsman as deem appropriate.

The Local Ombudsman acts as an independent 'referee' in disputes between individuals and their local councils. The Ombudsman is appointed by Government to investigate complaints against local authorities.

### Transparency

The decision of the Managing Director will be sent to you and the complainant and also published on the Council's website for the following period:

- a. No Breach of Code – 3 months
- b. Breach of Code – 24 months (or when you are no longer a Member of the Council, if earlier).

Unless the Managing Director determines, only the decision notice and your statement will be published on the website.

**Criminal Offence  
(s.34 Localism Act 2011)**

It is a criminal offence if you fail, without reasonable excuse, to comply with the requirements under s30 or s31 Localism Act 2011 to register or declare DPIs, or take part in council business at meetings or when acting alone.

If you breach the above, the Magistrates Court may, upon conviction, impose a fine of up to level 5 (currently £5,000.00), and an order disqualifying the person from being a Member of a relevant authority for up to five years.

The Council would consider that taking legal advice from the Monitoring Officer or their nominee (even if such advice was not upheld) would amount to 'reasonable excuse' for the purposes of s34(1) of the Act.

**Disclosable Pecuniary Interest (DPIs)**

Interests defined by regulations made under s30(3) of the Localism Act 2011 and described in the table below.

(‘M’ means you and ‘relevant person’ means you and your partner). “Partner” means a spouse or civil partner of M, or a person with whom M is living as husband and wife or a person with whom M is living as if they were civil partners

<b>Subject</b>	<b>Prescribed description</b>
Employment, office, trade, profession or vacation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority— a) under which goods or services are to be provided or works are to be executed; and b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	Any tenancy where (to M’s knowledge)— a) the landlord is the relevant authority; and b) the tenant is a body in which the relevant person has a beneficial interest.
Securities	Any beneficial interest in securities of a body where— a) that body (to M’s knowledge) has a place of business or land in the area of the relevant authority; and

	<p>b) either—</p> <p>i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p>
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These descriptions on Disclosable Pecuniary Interests above are subject to the following definitions;

The Act	means the Localism Act 2011
Body in which the relevant person has a beneficial interest	means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;
Director	includes a member of the committee of management of an industrial and provident society;
Land	excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;
M	means a member of a relevant authority;
Member	includes a co-opted member;
Relevant authority	means the authority of which M is a member;
Relevant period	means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) or section 31(7), as the case may be, of the Act;
Relevant person	means M or any other person referred to in section 30(3)(b) of the Act;
Securities	means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

### **Independent Person**

The Independent Person is the person engaged by the Council who:

- must be consulted by the Managing Director before making a decision on an allegation that the Managing Director has decided should be formally investigated.
- may be consulted by the Managing Director in respect of a complaint at any other stage.
- may provide views to a Member or co-opted Member if that Member's behaviour is the subject of an allegation.

- may assist in granting dispensations to members and co-opted members from requirements relating to interests set out in the Code of Conduct.
- will exercise all of the above functions in respect of Parish Councils and members of those Parish Councils within the Council.

### **Personal Interests**

A Personal Interest is :

- i) any body of which you are in a position of general control or management and to which you are elected appointed or nominated by the Council;
- ii) any body
  - exercising functions of a public nature; or
  - in receipt of any grant from the Council; or
  - directed to charitable purposes; or
  - one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),

of which the you are a member or have a close association or of which you are in a position of general control, influence or management.
- iii) Membership of any private club, society or association operating within the Borough Council's area, where you hold a position of general control or management
- iv) any other connection or association which a member of the public may reasonably think may influence you when you make a decision on Council matters and acting as a Councillor. e.g.. the decision relates to a close family member or friend and could have a substantial benefit to them.

You are not required to record any Personal Interest in point (iv) above on your Register of Interests (but may do so if you wish).

### **Predetermination**

Predetermination means that you have a closed mind and do not make a decision impartially and solely on the basis of the relevant facts. You have not predetermined a matter just because you have expressed a particular opinion previously or hold a view prior to any meeting. It is proper for Councillors to play an active part in local discussions and the expression of a view on a particular matter or campaigning on a particular platform should not prevent you from participating in council business relating to such an issue. If you have an open mind, are willing to listen and are open to consider all the facts and arguments presented to you before making your decision, then you will not have predetermined a matter.

Predetermination should not be confused with Predisposition (see below)

### **Predisposition**

Any decision maker may have an initial view or opinion on a matter arising from personal experiences and preference. Simply holding an initial view or tendency in favour of a particular cause or matter does not preclude you from decision making. This



is natural bearing in mind that Councillors are often elected based upon their stated views and opinions. Having a strong view on a matter will amount to only legitimate predisposition.

### **Prejudicial Interest**

This is Personal Interest which a reasonable fair minded and informed member of the public would reasonably believe is so significant that it influences your judgement of the public interest. That is, your decision is influenced by your Personal Interest such that you are not able to impartially consider only relevant issues (you are biased). This would include where you have Predetermined a matter.

You must ask yourself whether a member of the public – if he or she knew all the relevant facts – would think that your Personal Interest was so significant that it would be likely to prejudice your judgement. In other words, the interest must be perceived as likely to harm or impair your ability to judge the public interest.

The mere existence of local knowledge, or connections within the local community, will not normally be sufficient to meet the test. There must be some factor that might positively harm your ability to judge the public interest objectively. The nature of the matter is also important, including whether a large number of people are equally affected by it or whether you or a smaller group are particularly affected.

### **Sensitive Interest**

A Sensitive Interest occurs where you and the Monitoring Officer consider that disclosure of the details of a DPI or a Personal Interest could lead to you, or a person connected with you, being subject to violence or intimidation. If the interest is entered on the register, copies of the register that are made available for inspection and any published version of the register will exclude details of the interest, but may state that you have a DPI or a Personal Interest and that the details are withheld under Section 32(2).

## Appendix B – to the Constitution Sub Committee report 21 June 2016

### Proposed revised Appendix 4

#### Arrangements for dealing with breaches of the Code of Conduct

Complaints in respect of this Code are made to the Monitoring Officer.

##### 1. Receipt and Acknowledgment of the Complaint

When a complainant makes a complaint they will receive:

- An acknowledgment within 3 working days.
- A initial response within 10 working days setting out how the Council will consider the complaint and the likely timescale for resolution.
- The complainant will be told that full details of their complaint will be given to the Councillor concerned ('the Subject Member').
- Anonymous complaints will not be considered unless accompanied by documentary or photographic evidence, evidencing an exceptionally serious or significant matter.

If the Subject Member is a Parish or Town Councillor, the clerk will be informed of the complaint on a confidential basis, where it is a Parish or Town Council matter.

##### 2. Response of the Subject Member

The Subject Member will be informed of the complaint within 3 working days of the complaint being received. The Subject Member will be asked to supply written comments within 15 working days from the complaint being received.

##### 3. Initial Assessment of the complaint by the Monitoring Officer

The purpose of the initial assessment by the Monitoring Officer, in consultation with an independent person where appropriate, is to determine whether the complaint should be accepted for further consideration or rejected. In determining whether a complaint should proceed the Monitoring Officer will apply the following criteria:

- Sufficiency of information – Is there sufficient information or evidence provided with the allegation? If it appears that substantiating evidence may be available, but has not been provided, the Monitoring Officer may ask for additional evidence, but the onus is on the complainant to ensure that all relevant information is provided.
- Seriousness of the complaint – is the complaint trivial, vexatious, malicious, politically motivated, or 'tit for tat'? Would the resources/cost involved in investigating and determining the complaint be disproportionate to the allegation if proven?
- Duplication – Is the complaint substantially similar to a previous allegation or subject of an investigation by another relevant authority?
- Length of time – Did the events or behaviour to which the complaint relates take place more than six months prior to receipt of the complaint. Does the time lapse mean that those involved are unlikely to remember matters clearly, or does the lapse of time mean that there would be little benefit in taking action
- Public Interest – Is the public interest served in referring the complaint further. Has the Subject Member offered an apology or other remedial action?

The Complainant and the Subject Member will normally be informed by the Monitoring Officer of the initial assessment decision within 20 working days of it being made. Should it be determined by the Monitoring Officer, in consultation with an Independent Person where appropriate, that the complaint should not proceed, then that is the end of the matter. There is no right of appeal.

#### **4. Initial Decision of the Monitoring Officer**

Should it be determined, having regard to the criteria referred to in section 3 above, that the complaint be accepted for further consideration the Monitoring Officer shall, subject to consultation with an Independent Person, have delegated authority to decide to take one of the following actions:

- Take no action if there is clear evidence that there has been no breach of the Code of Conduct. Nothing further will be required from the Subject Member and the matter will be closed.
- Where there has been a clear breach of the code of conduct, to resolve the matter informally by, for example, accepting a written apology to the complainant from the Subject Member, or by asking the Subject Member to attend training, or by requiring the Subject Member to amend their Register of Interests. Where there has been a determination by the Monitoring Officer to resolve the matter informally, the Subject Member's name will not be disclosed or published on the Council's website.
- Where there is an indication that there has been a breach of the Code of conduct, to require a formal investigation and a written investigation report by an Independent Investigating Officer and indicative timescale for the process should be given. The investigation report shall conclude whether there has been a breach of the Code of Conduct and give clear reasons for that conclusion. Copies of the investigation report will be provided in confidence to the Independent Person, and the Subject Member.

#### **5. Finding on Investigation**

##### **5.1 No Breach of Code of Conduct**

Where a formal investigation finds no evidence that the Subject Member has failed to comply with the Code of Conduct, the Monitoring Officer, in consultation with an Independent Person, shall make a decision to take no further action. The Subject Member and the complainant will both be informed. The Parish or Town Clerk, if appropriate, will be informed that there is no breach, but no further information will be supplied. There will be no appeal.

##### **5.2 Breach of Code of Conduct**

Where a formal investigation finds evidence that the Subject Member has failed to comply with the Code of Conduct, the Monitoring Officer, in consultation with an Independent Person shall make a decision whether there has been a breach of the Code of Conduct.

The Subject Member will be informed of the decision. The Subject Member will be asked for his or her comments on the Investigation report, to the Monitoring Officer, within 20 working days from receipt, and these comments will inform the Monitoring Officer regarding the sanction to be imposed.

If the Monitoring Officer has decided that there has been a breach of the Code of conduct, he or she shall take one of the following actions:

- Resolve the matter informally by, for example, accepting a written apology from the Subject Member to the complainant, or by asking the Subject Member to

attend training, or by accepting an entry on the Subject Member's Register of Interests.

- Refer the matter to the Subject Member's Group Leader, or Chairman if a parish or Town Councillor, with a recommendation for sanction e.g. removal from a panel etc.

If the allegation appears to involve criminal activity, the Monitoring Officer will refer the matter to the police at any stage in this process they believe appropriate.

#### Support to Subject Members during an Investigation

The Council will support Subject Members during the complaint investigation process as follows:

- a. Independent Person: Subject Members can seek support from one of the Independent Persons (not the Independent person who is consulted by the Monitoring Officer) with regard the complaint.
- b. Legal Support: The Council will provide financial support to allow Subject Members to seek any reasonable legal advice to defend (i) proceedings for criminal acts alleged as part of your role as Councillor, or (ii) any allegation of a breach of the Code of Conduct. Subject Members will be required to sign an agreement with regard to legal support.

Any criminal acts must occur in the course of the Subject Member's duties as a Councillor. They must notify the Council's insurance manager before seeking legal advice. The advice and legal costs must be appropriate to the complaint. Subject Members will be required to immediately repay back all monies to the Council if they are convicted of a criminal offence or have failed to comply with the Code of Conduct.

#### Appeals

There is no right to appeal under the Code of Conduct and the decision of the Monitoring Officer will be final. However, Subject Members may make a statement about the complaint and the findings. This statement shall be published on the Council's website for the period stated in Transparency section below.

If the complainant is unhappy with this decision, they may write to the Local Government Ombudsman to complain. The Local Government Ombudsman acts as an independent 'referee' in disputes between individuals and their local councils. The Ombudsman is appointed by Government to investigate complaints against local authorities.

#### Transparency

The decision of the Monitoring Officer will be sent to the Subject Member and the complainant and also published on the Council's website for the following period:

- a. No Breach of Code – 3 months
- b. Breach of Code – 24 months (or when you are no longer a Member of the Council, if earlier).

Unless the Monitoring Officer determines, only the decision notice and the Subject Member's statement will be published on the website.