

# **PART 7 – THE CODES, PROTOCOLS AND ADVICE**

## **A – MEMBERS’ CODE OF CONDUCT**

## **Royal Borough of Windsor & Maidenhead Members' Code of Conduct**

Under this Code of Conduct, when acting in your capacity as a Member or co-opted Member<sup>1</sup> you must have regard to the following rules<sup>2</sup>:

- 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 of financial value for yourself, or others.
- ii) You must co-operate fully with whatever scrutiny is appropriate to your office, including reasonably co-operating with enquiries connected to any Code of Conduct complaint made against you under this Code of Conduct.
- iii) You must, in your decision making role, declare personal, prejudicial and disclosable pecuniary interests, as well as any predetermination, and take steps to resolve any conflicts as a result of those interests, including registering and declaring interests in accordance with the procedures set out in the Appendices 1 to 2 below.
- iv) You must, when using the Council's resources, ensure that such resources are not used for improper purposes. This rule includes not doing anything which could potentially cause the Council to be in breach of the Code of Recommended Practice on Local Government Publicity.
- v) You must promote and support high standards of conduct by leadership and example in your dealings with members of the public, Members and Officers by ensuring that:<sup>3</sup>
  - a. You must not act in a way which a reasonable person would regard as bullying or intimidating
  - b. You must not unlawfully discriminate against anyone, regardless of gender, race, disability, sexual orientation, age or religion.
  - c. You must not behave in such a way that a reasonable person would regard as disrespectful
  - d. You must not disclose information which you believe, or ought reasonable be aware is confidential, unless you have the consent of the person authorised to give it, or where you are required by law to do so.
  - e. You must undertake training arranged by the Council on equality and diversity within two calendar months of your election and annually thereafter

---

<sup>1</sup> 'Acting as a Member or Co-Opted Member' - see Appendix 4

<sup>2</sup> The Code of Conduct is consistent with the following principles: selflessness, integrity, objectivity, accountability, openness, honesty and leadership, as required by s28 Localism Act 2011

<sup>3</sup> See Appendix 3 'High Standards of Conduct' for guidance on this part of the Code

## Appendix 1

### **Registering Disclosable Pecuniary Interests (s.30 Localism Act 2011) and Personal Interests**

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 Interests ('DPIs'), where the DPI is yours, your spouse's or civil partner's, or is the DPI of somebody with whom you are living with as a husband or wife, as if you were civil partners. The definition of each DPI is in Appendix 2.

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 2.

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 2.

Following disclosure of any interest not on the authority's Register of Interests 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 also, 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.

### **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 a DPI, a Prejudicial Interest<sup>4</sup> or a Personal Interest which is relevant to the matter being considered.

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 openness and integrity.

---

<sup>4</sup> See definition of Disclosable Pecuniary Interests, Prejudicial Interest and Personal Interests at Appendix 2

## 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. Details of how to obtain a Dispensation are below.

If you have a DPI or Prejudicial Interest (and do not have a Dispensation) as described then you must declare the interest at the start of the meeting when the Chairman asks if there are any interests to declare. 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.

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.

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.

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

If you seek a Dispensation under s33 Localism Act 2011, you must make a written request to the Proper Officer of the Council.

The Proper Officer or the Council by a majority vote 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) in the case of decisions made by Cabinet, considers that without the dispensation each Member of the Cabinet would be prohibited from participating in any particular business of Cabinet, or

(e) considers that it is otherwise appropriate to grant a dispensation.<sup>5</sup>

A dispensation under this section must specify the period for which it has effect, and the period specified may not exceed four years.<sup>6</sup>

The Proper Officer in connection to this Appendix is the Managing Director, the Monitoring Officer or his or her Deputy, or the officer clerking the meeting.

---

<sup>5</sup> S33(2) Localism Act 2011

<sup>6</sup> S33(3) Localism Act 2011

vi)

**Appendix 2****Definitions of Disclosable Pecuniary, Prejudicial and Personal Interests and Predetermination****Disclosable Pecuniary Interest (DPIs)**

These are statutory 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 b) either—  i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or

	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.
--	---

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.

It is a potentially a criminal offence under s34 Localism Act 2011 if you fail, without reasonable excuse, to comply with the requirements under s30 or s31 Localism Act 2011 to register or declare a Disclosable Pecuniary Interest.

### **Personal Interests**

These are interests which the Council has decided should be disclosed, under s29(2) Localism Act 2011. 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 of which you are a member, or have a close association or which you are in a position of general control, influence or management and that body:
  - exercises functions of a public nature; or
  - is in receipt of any grant from the Council; or

- is directed to charitable purposes; or
  - is one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),
- 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 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.

### **Prejudicial Interest**

This is Personal Interest which a reasonable fair minded and informed member of the public, with knowledge of all the facts, would reasonably believe is so significant that it influences your judgement of the public interest, in other words, you have the appearance of being biased towards a decision before actually making it. This would include where you have predetermined a matter. It is not enough for you to make reassurances that you are in fact not biased, but what it appears like, in the view of a reasonable and fair-minded informed member of the public.

The mere existence of local knowledge, or connections within the local community, will not in itself amount to a prejudicial interest. There must be some factor that might positively appear to 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.

### **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. This will be demonstrated if you make a public statement in absolute terms about a decision you are to make. If you make such statements but nevertheless participate in a decision, you will put the Council at risk of legal action challenging that decision.

You will not have predetermined a matter just because you have expressed a particular opinion previously or hold a view prior to any meeting. 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. If you have indicated a view in a public forum, you will be asked at a decision-making meeting to declare that, although you have given such a view, you nevertheless have an open mind. This will be done when the Chairman asks if there are any interests to declare.<sup>7</sup>

### **Sensitive Interest**

---

<sup>7</sup> See s25 Localism Act 2011 Prior indications of a view are not to amount to predetermination



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).

**Guidance on High Standards of Conduct (para. v)****Appendix 3****What is 'bullying' and 'intimidation'?**

Bullying has been described by ACAS as 'offensive, intimidating, malicious, or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient'. A victim's obvious vulnerability will be taken into account when assessing whether bullying has occurred.

Bullying conduct can involve behaving in an abusive or threatening way, or making allegations about people in public, in the company of their colleagues, through the press or in blogs. It may happen once or be part of a pattern of behaviour, although minor isolated incidents are unlikely to be considered bullying. It is also unlikely that a Member will be found guilty of bullying when both parties have contributed to a breakdown in relations.

Bullying should be contrasted with the legitimate challenges which a Member can make in challenging policy or scrutinising performance. Contributing to debates in Council meetings about policy and asking officers to explain the rationale for their professional opinions are to be encouraged. All Members should feel free to challenge fellow councillors and professional officers as to why their views are held. However, Members need to be careful about criticism which becomes offensive in nature which will cross the line of what a reasonable person would find acceptable.

**Discrimination**

It is unlawful to discriminate against a person because they have one of the "protected characteristics", which are, age, disability, gender reassignment, marriage and civil partnership, race, religion or belief, sex, and sexual orientation.

The primary legislation is the [Equality Act 2010](#), which outlaws discrimination in access to education, public services, private goods and services or premises in addition to employment. An allegation that a Member has unlawfully discriminated against anyone will be judged by reference to the requirements of the Equality Act 2010.

**Respect - what a reasonable person would regard as disrespectful to others.**

Everyone in normal life is very aware of what 'respect' looks like; however, in a culture of positive argument in politics and legal matters, the lines can get blurred between interacting with others to make a point, and yet remaining respectful of other's views. Ideas and policies may be robustly criticised, but individuals should not be subject to unreasonable or excessive personal attack. This particularly applies to dealing with the public and officers. Chairmen of meetings are expected to apply the rules of debate and procedure rules or standing orders to prevent abusive or disorderly conduct.

In politics, rival groupings are common, either in formal political parties or more informal alliances. It is expected that each will campaign for their ideas, and they may also seek to discredit the policies and actions of their opponents. Criticism of ideas and opinion is part of democratic debate, and does not in itself amount to failing to treat someone with

respect. In an arena of political discussion, including postings on social media, and debate in Council meetings, a finding of a breach for disrespect would be exceptional. It is not for the Council to get involved in political arguments between Members, which are better dealt with by a complaint to the relevant political group or leader. The Monitoring Officer will reject complaints which appear to be political 'tit for tat' alone. Parody postings on social media by a Member about another Member, for example, whilst considered to be of significant poor taste, are unlikely to amount to disrespect unless there was an indication of discrimination or other unlawful issue.

The Council is under a legal obligation to ensure that officers work in a safe environment and the same rules about their interaction with the public apply equally to their work with Members. Anyone should feel free to express disagreement with officers, so long as it is done in an appropriate way. Officers should make decisions which are unbiased, and attempts to coerce them or persuade them to act in a particular way to a point where to do so would prejudice their professional integrity would not be acceptable. It is also unacceptable to criticise officers as individuals in a public forum. When receiving such a complaint, the Monitoring Officer will take into account the specific circumstances of the case, whether the member was entitled to question the officer concerned, whether there was an attempt to intimidate or undermine the officer and the content and context of what was said.

### **Confidential Information**

All information marked 'confidential', or given as confidential via verbal or non-verbal communication, must be treated as such and not disclosed in any form to another person.

Unmarked Information is confidential where it involves personal data, or that it is information that is deemed reasonable that it should be kept confidential, for example where there is an obvious detriment to someone by a disclosure.

Councillors must not cause the Council to breach Data Protection legislation by releasing any personal information which is held by the Council, but comes to the knowledge of the Councillor. Such disclosure could cause the Council to be subject to severe fines.

Members are advised to seek advice from the Monitoring Officer if they are unsure whether information is confidential.

**When 'acting as a Member or Co-opted Member'****Appendix 4**

S27 of the Localism Act 2011 obliges a local authority, in discharging its duty to promote and maintain high standards of conduct by Members, to adopt a Code of Conduct dealing with the conduct that is expected of Members '*when they are acting in that capacity*'. (s27(2)). The Council does not therefore have authority to consider a Member's conduct undertaken in their private capacity.<sup>8</sup> This includes allegations of disrespect, bullying or intimidation which have no link to Council business, no matter how serious the allegation.

You will nevertheless be deemed to be acting as a Councillor, and therefore within the rules in this Code of Conduct, when you are conducting the business of the Council, or communicating or corresponding about the business of the Council, or whenever you act, claim or give the impression you are acting in the role of Councillor. The rules of the Code of Conduct will apply where there is a clear link to Council business, for example with regard to confidentiality and use of Council resources, even if your actions in respect of these examples are undertaken during private business:

---

<sup>8</sup> This position sits with Art. 10 of the European Convention on Human Rights which protects an individual's freedom of speech when done in their private capacity. This includes not only the substance of any political comment but the form in which it is conveyed. This stance has been supported in caselaw, notably *Livingstone v Adjudication Panel for England* (2006) and for example *MC v Standards Committee of London Borough of Richmond* (2011).

## Appendix 5

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

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

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

The Monitoring Officer will acknowledge a Code of Conduct complaint within 5 working days. An initial response will then be sent within 10 working days after that, either seeking further clarification, or setting out how the council will consider the complaint. The onus is on the complainant to ensure that all relevant information is given. 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.

#### 2. Response of the Subject Member

The Subject Member will be informed of the complaint within 5 working days of the complaint being received and clarified. The Subject Member will be asked to supply written comments within 10 working days from the complaint being received or such longer time as determined by the Monitoring Officer. A Subject Member will be informed that he or she is entitled under the Localism Act 2011 to seek support from one of the Council’s Independent Persons

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

Once a response has been received from the Subject Matter, or when a reasonable time has passed and no responses has been received, the Monitoring Officer will carry out an initial assessment of the complaint. The purpose of the initial assessment by the Monitoring Officer is to determine whether the complaint should be accepted for further consideration or rejected. In determining whether a complaint should proceed the Monitoring Officer may apply the following criteria:

- Acting as a Member: Was the Subject Member acting as a Member at the time of the allegation?<sup>9</sup>
- 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? Where complaints are raised by Members alleging a lack of respect or

---

<sup>9</sup> See guidance at Appendix 4

courtesy by the Subject Member then the Monitoring Officer may reject the complaint - see guidance on 'Respect - what a reasonable person would regard as disrespectful to others' Appendix 3.

- Duplication – Is the complaint substantially similar to a previous allegation or is it subject of an existing investigation? If there is a current complaint about the same matter then a repeat allegation will be rejected unless the complainant is directly harmed by the allegation or they can provide new evidence.
- 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 – In all cases, is the public interest served in referring the complaint further. Has the Subject Member offered an apology or other remedial action which is satisfactory to the Monitoring Officer, taking into account the circumstances of the complaint?

The complainant and the Subject Member will normally be informed by the Monitoring Officer of the initial assessment decision within 10 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 the complaint shall be dismissed. There is no right of appeal for the complainant under these rules.

#### **4. 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:

- If there is clear evidence that there has been no breach of the Code of Conduct, the Monitoring Officer will write a No Breach Decision Notice explaining the reason for the decision which will be given to the complainant and the Subject Member. The Parish or Town Clerk, if appropriate, will be informed that there is no breach.
- Where there has been a clear breach of the Code of Conduct the Monitoring Officer will write a report with a recommendation for a decision for a breach of the Code of Conduct, giving reasons for that recommended decision, and then refer the matter to a Members Standards Sub-Committee for a formal decision. The Member Standards Sub-Committee will conduct a local hearing following the procedure in Appendix 6 of this Part, and make a decision in accordance with paragraph 2.2.
- Where there has possibly been a breach of the Code of Conduct, the Monitoring Officer will require a formal investigation and a written investigation report by an Investigating Officer. An indicative timescale for the process should be given to the complainant and the Subject Member. At least a monthly update report will be provided to all parties in an ongoing investigation. The investigation report shall conclude whether or not there has been a breach of the Code of Conduct and give clear reasons for that conclusion.

## **5. Finding on Investigation**

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

Where an 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 and the Chairman of the Member Standards Panel, shall make a decision to take no further action. The Monitoring Officer will write a No Breach Decision Notice explaining the reason for the decision which will be given to the complainant and the Subject Member. The Parish or Town Clerk, if appropriate, will be informed that there is no breach, but no further information will be supplied.

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

Where there is evidence that the Subject Member has failed to comply with the Code of Conduct, the Monitoring Officer, in consultation with an Independent Person and the Chairman of the Member Standards Panel, shall make a decision to refer the Investigating Officer's report to a Member Standards Sub-committee. The Member Standards Sub-Committee will conduct a local hearing following the procedure Appendix 6 of this Part, and make a decision in accordance with paragraph 2.2.

The Member Standards Sub Committee will usually hear a complaint within one calendar month of the date that the Monitoring Officer has referred the matter to the Sub Committee. The Subject Member and complainant will be informed of the decision.

## **6. Appeals, Transparency and Confidentiality**

### **6.1 Appeals**

There is no right of appeal under the Code of Conduct and the decision of the Monitoring Officer or the Member Standards Sub Committee will be final. However, Subject Members who have been found in breach of the Code of Conduct 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 and Social Care Ombudsman to complain if he or she believes that proper process has not been followed. The Ombudsman will not however have authority to change the decision itself. Note that the Ombudsman will not consider a complaint from a Councillor.

### **6.2 Transparency**

The decision of the Monitoring Officer or Member Standards Sub Committee will be sent to the Subject Member and the complainant. A decision that a Subject Member is in breach of the Code of Conduct will be published on the Council's website. The decision will be publicised for 12 months unless the Member Standards Sub-Committee consider an alternative time is appropriate.

Unless the Member Standards Sub-Committee determines otherwise, the decision notice, the Group Leader/ Chairman's statement and the Subject Member's statement only will be published on the website.

### **6.3 Confidentiality**

Subject to the requirements of Data Protection legislation, unless the Monitoring Officer or Member Standards Sub Committee decides otherwise or unless stated to the contrary in this Part, the complaint, all communications and correspondence, investigation reports, reports and decisions will remain confidential. Statements and investigations will be conducted with an expectation that such information will only be released to the parties involved under these arrangements.

The members 'need to know' in relation to access to information shall only extend to the Subject Member, the complainant (where such is a member) and members of the Member Standards Sub Committee.

Requests for information will be provided on the basis of the expectation of confidentiality by the parties and exemptions under the various statutory schemes. Where investigation reports have been prepared, only summary or the conclusions will be released.



## Appendix 6

### 1 Procedure for Member Standards Sub Committee

#### 1.1 Appointment, Composition and Terms of Reference of the Member Standards Sub Committee

The Monitoring Officer is required to convene a Member Standards Sub Committee from the membership of the Member Standards Panel as necessary. The Member Standards Sub Committee will therefore not have a fixed membership.

The Member Standards Sub Committee shall comprise of two members of the Member Standards Panel, and one of the Council's Independent Persons. If the complaint relates to a Town or Parish Councillor then a co-opted Town or Parish Councillor may also be an additional member of the Member Standards Sub Committee, but will not have voting rights.

#### 1.2 Pre Hearing Process

The date of the hearing will be arranged by the Monitoring Officer in consultation with the members of the Member Standards Sub Committee and the Subject Member.

Once the date for the Member Standards Sub Committee has been arranged the Subject Member will be notified and asked if they:

- a) wish to attend the hearing;
- b) wish to be accompanied or represented at the hearing by any other person;
- c) wish to submit any written evidence or documentation to be considered by the Sub Committee. This must be sent no later than 3 working days prior to the hearing and will be passed to the complainant and the Investigating Officer for any comment. Additional evidence or documentation not submitted by this deadline may not be accepted by the Sub Committee;
- d) wish to call relevant witnesses to give evidence at the hearing. The Chairman of the Member Standards Sub Committee appointed at the meeting will have the final decision on how many witnesses may reasonably be needed.

The Member Standards Sub Committee and the Subject Member, and the Independent Person will each receive a report from the Monitoring Officer which will include a copy of the Investigating Officer's final report, on a strictly confidential basis.

The Members Standards Sub Committee will be held in private and this will be confirmed at the hearing. The complainant will not attend unless the Chairman of the Member Standards Sub Committee agrees, or the Subject Member requests that they attend for the purposes of answering questions on the evidence provided.

#### 1.3 Procedure for the Member Standards Sub Committee

The procedure for the Member Standards Sub Committee will be as follows:

- a) The Chairman will confirm the names and status of those attending. If the Subject Member is not present at the start of the hearing, and they had indicated their intention to attend, the Chairman shall ask the Monitoring Officer whether the Subject Member has provided any reasons why he or she would not be present. From the response the Member Standard Sub Committee will decide whether to make a determination in the absence of the Subject Member or adjourn the hearing to another date.
- b) If an Investigating Officer was used then the Investigating Officer, or in his/her absence the Monitoring Officer, shall present the Investigating Officer's report having particular regard to any points of difference identified by the Subject Member and why the Investigating Officer had concluded, on the basis of their findings of fact, that the Subject Member had failed to comply with the Code of Conduct. The Investigating Officer or Monitoring Officer may call witnesses as necessary in order to substantiate his/her findings.
- c) The Subject Member will then be given the opportunity to ask the Investigating Officer, or any of the witnesses, questions relating to the report or matters that have arisen during the witness statements.
- d) Members of the Member Standards Sub Committee, the Independent Person and the Monitoring Officer will then have the opportunity of asking the Investigating Officer, or any of the witnesses, questions relating to the report or matters that have arisen in the witness statements.
- e) The Subject Member will then be invited to respond to the Investigating Officer's report and provide evidence, either by calling witnesses or by making representations to the Member Standards Sub Committee as to why they consider that they did not fail to comply with the Code of Conduct.
- f) The Investigating Officer will then be given the opportunity to ask the Subject Member and any witnesses, questions relating to the representations made to the Member Standards Sub Committee.
- g) Members of the Member Standards Sub Committee, the Independent Person and the Monitoring Officer will then have the opportunity to ask the Subject Member, and any witnesses, questions relating to the representations made to the Member Standards Sub Committee.
- h) The Investigating Officer will then be given the opportunity to sum up.
- i) The Subject Member will then be given the opportunity to sum up
- j) The Independent Person will then be invited to comment and outline their view in respect of the complaint.

- k) The Chairman will check with the other members of the Member Standards Sub Committee whether they are satisfied that they have sufficient evidence to come to a considered conclusion on the matter. If it is decided that additional evidence is required before a determination can be made then the hearing will be adjourned and the Investigating Officer or Monitoring Officer will be asked either to seek and provide such additional evidence and/or undertake further investigation on any point specified by the Member Standards Sub Committee.
- l) If the Member Standards Sub Committee is satisfied that that they do have sufficient evidence to make a decision this will conclude the evidence gathering part of the hearing. The Investigating Officer, the Subject Member, the Independent Person and any witnesses that might be present will be asked to leave at this point, but the clerk and Monitoring Officer to the Sub Committee will remain.
- m) The Member Standards Sub Committee will then determine the complaint on the balance of probabilities. If the Member Standards Sub Committee determine that there has been a failure to follow the Code they shall seek advice from the Monitoring Officer as to what action they believe should be taken against the Subject Member.

## **2 Findings of the Member Standards Sub Committee**

### **2.1 No Finding of a Failure to follow the Code of Conduct**

If the Member Standards Sub Committee determine that the Subject Member has not failed to follow the Code of Conduct then the complaint will be dismissed.

The Monitoring Officer shall prepare a decision notice in consultation with the Chairman of the Member Standards Sub Committee stating the Member Standards Sub Committee's findings in relation to a non-failure to follow the Code of Conduct . The decision notice will be provided to the Subject Member, the Investigating Officer if relevant, the complainant and the Independent Person for their information.

### **2.2 Finding of Failure to follow the Code of Conduct**

If the Member Standards Sub Committee determines that the Subject Member has failed to follow the Code of Conduct then it can decide to take any or more of the following actions:

- a) Formally censure the Subject Member in writing for their failure to follow the Code of Conduct;
- b) Recommend to the Subject Member's Group Leader (or in the case of ungrouped Members, recommend to Council or any subcommittee(s) of Council that the Subject Member be removed from any or all subcommittee(s) of the Council;

- c) Recommend to the Leader of Council that the Subject Member be removed from the Cabinet, or removed from particular portfolio responsibilities;
- d) Instruct the Monitoring Officer (or recommend that the relevant Town/Parish Council, as appropriate) to arrange training for the Subject Member;
- e) Remove (or recommend to the relevant Town/Parish Council that the Subject Member be removed) from all outside appointments to which he/she has been appointed or nominated by the authority (or by the Town/Parish Council);
- f) Withdraw (or recommend to the relevant Town/Parish Council that it withdraws) facilities provided to the Subject Member by the Council, such as a computer, website and/or e-mail and internet access;
- g) Exclude (or recommend that the relevant Town/Parish Council exclude) the Subject Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council or Panel meetings; or
- h) Report its findings to the Crown Prosecution Service in respect of a Subject Member that has been found to have committed an offence under s30 and/or s31 Localism Act 2011.

### **2.3 Publication of the Decision on Finding a Breach of the Code of Conduct**

Within 5 working days of the decision, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chairman of the Member Standards Sub Committee. A copy of the decision notice will be sent to the complainant, the Subject Member (and, if applicable, the relevant Town/Parish Council) and the Independent Person for their information.

A decision that a Subject Member is in breach of the Code of Conduct will be published on the Council's website for 12 months unless the Member Standards Sub-Committee consider an alternative time is appropriate.

The Subject Member has no right of appeal to the Council against a decision of the Monitoring Officer or the Member Standards Sub Committee.