

Report to: **Standards Committee**

Date: **27 February 2012**

Title of report: **Code of Conduct for Councillors and Local Standards Framework**

By: **Assistant Chief Executive, Governance and Community Services**

Purpose of report: **To consider the proposed changes to the standards regime in East Sussex as a result of the Localism Act 2011**

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**RECOMMENDATIONS:**

The Committee is recommended to recommend to the Governance Committee to:

1. **approve the establishment of a Standards Committee with 7 members to be appointed on a proportionate basis, with the amended terms of reference set out in Appendix 5;**
2. **approve in principle the revised draft Code of Conduct as set out at Appendix 1, and to delegate authority to the Assistant Director Legal and Democratic Services to make amendments and approve the final document;**
3. **approve in principle the arrangements for dealing with misconduct complaints consisting of the draft local assessment of complaints about Member Conduct (Appendix 2), assessment criteria (Appendix 3) Monitoring Officer Protocol (Appendix 4) and terms of reference set out at Appendix (5), (6) and (7), and to delegate authority to the Assistant Director Legal and Democratic Services to make amendments and approve the final arrangements;**
4. **approve the proposal to delegate to the Standards Committee authority to discharge the duty of the County Council to promote and maintain high standards of conduct;**
5. **approve the proposal to recommend to the County Council that Standing Orders be amended to include provision that a member must withdraw from the meeting room (including the public gallery) during the consideration of any item of business in which they have a prejudicial or Disclosable Pecuniary Interest unless they are permitted to remain as a result of a dispensation or unless not required to do so by the Code of Conduct;**
6. **approve the proposals to delegate the power in relation to dispensations to the Monitoring Officer;**
7. **approve the proposal to delegate authority to the Assistant Director Legal and Democratic Services to appoint Independent Persons and to determine the rules and procedures for hearings by the full Standards Committee or sub-committee**

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**1. Financial Appraisal**

1.1 There are no significant financial implications arising as a result of changes to the new standards regime for the County Council, and any implications can be met from within existing budgets.

**2. Background**

2.1 The Localism Act 2011 abolishes much of the standards regime but requires councils to have a code of conduct and a register of members' interests. It also places a duty on councils to promote and maintain high standards of public life and have a mechanism in place to enforce the code. A register of members' interests is still required and failure to register or declare a pecuniary interest without a good cause has become a criminal offence to be enforced through the courts. Regulations are awaited which will confirm what pecuniary interests will be required to be entered onto the register, although councils will be able to require the inclusion of other pecuniary or non pecuniary interests. Any committee established to oversee the council's code is not required to have independent members. Instead the Act requires the council to appoint at least one independent person who must be consulted when an allegation is made that a member has breached the code

of conduct. The member accused of the breach will also be able to have access to the independent person to make representations.

### 3. Proposals

3.1 Standards Committee – the proposed standards committee will be a normal committee of the Council and the composition will therefore be governed by proportionality. The Act establishes a new category of independent person who must be consulted at various stages. The legislation appears to prevent current independent members from serving as independent persons for 5 years. The current independent members terms of office will therefore end from the date the new provisions come into force (1 July 2012). In view of the requirement for the Council to have a code of conduct and to enforce it, a Standards Committee appears to be the most appropriate mechanism. It is therefore proposed that a Standards Committee be established comprising 7 Members. The proposed terms of reference of the Standards Committee are attached as Appendix 5.

3.2 Code of Conduct – The Council is required to adopt a new Code of Conduct governing elected and co-opted members' conduct when acting in their official capacity. The new Code must be consistent with the following seven principles - selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Regulations to be made under the Act will require the registration and disclosure of 'Disclosable Pecuniary Interests' (DPIs), which will be similar to current prejudicial interests. The provisions of the Act also require an authority's Code to contain appropriate requirements for the registration (and disclosure) of other pecuniary interests. The Act prohibits members with a DPI from participating in the authority's business (unless they have obtained a dispensation) and the Council could adopt a Standing order requiring members to withdraw from the meeting room. The draft Code attached as Appendix 1 is subject to consultation with the local borough and district councils in order to try and maintain a level of consistency across the geographical area, particularly in relation to twin-hatted members. The draft Code is, where possible, based on the current Code which is familiar to Members.

The main change is to include a section relating to DPIs. The regulations defining what constitutes a DPI have not yet been made, and the draft code may need to be amended once these are made. The revised code also proposes to no longer require twin-hatted members to leave the room where a matter is considered which relates to another public body of which they are a member. It is also proposed that members of the Executive have only a personal, rather than a prejudicial interest at a scrutiny committee where business is considered which relates to a decision that they or members of the Executive have taken.

3.3 Independent Persons – The arrangements adopted by the Council must include provision for the appointment of at least one Independent Person. The functions of the Independent Person are:

- they must be consulted by the authority before it makes a finding as to whether a member has failed to comply with the Code of Conduct or decides on action to be taken in respect of that member
- they may be consulted by the authority in respect of a standards complaint at any other stage: and
- they may be consulted by a member of the authority against whom an allegation has been made.

It is important that the impartiality of the IP is not compromised by undertaking more than one of these roles where it would be inappropriate to do so. It would therefore seem appropriate to appoint more than one IP. It is proposed that the councils in East Sussex look to appoint a pool of IPs who could be consulted as appropriate. It is proposed that authority be delegated to the Assistant Director Legal and Democratic Services to appoint the Independent Persons.

3.4 Register of Interests – The Monitoring Officer will be required to maintain a register of interest which must be available for public inspection. The content of the register be approved by the County Council. The register must include DPIs (to be defined by regulations) but the Act also provides that an authority's Code must require the registration of non DPIs and non pecuniary interests (definition awaited). The Act provides that DPIs cover the interest of the member but also the interests of their spouse/partner. Each elected or co-opted member must register all DPIs within 28 days of becoming a member. It is proposed that this register is in addition to the current register of interests.

3.5 Dispensations - In future a dispensation may be granted in the following circumstances:

- that so many members of the decision making body have DPIs in a matter that it impend the transaction of the business (meeting would be inquorate)
- without the dispensation the representation of the political groups would disturb the political composition of the meeting and so affect the outcome of the vote
- it would be in the interests of persons living in the authority's area
- every member of the authority's Cabinet is otherwise precluded from participating
- that the authority considers that it is otherwise appropriate to grant a dispensation.

It is proposed that the power to grant a dispensation be delegated to the Monitoring Officer.

3.6 Dealing with Complaints – The Act requires that the Council adopt arrangements for dealing with complaints of breach of the Code of Conduct. The draft Local Assessment of Complaints About Member Conduct is attached at Appendix 2. This set out the Framework and is substantially the same as the current document, the main difference is the proposed removal of the Review stage from the initial assessment process, which is considered unnecessary.

3.7 Sanctions – The Act sets out various criminal offences, such as participating in a meeting or taking a decision where the member has a disclosable pecuniary interest without reasonable excuse. However, the Act does not give the Council or its Standards Committee any powers to impose sanctions such as suspension, so where failure to comply with the Code is found the range of actions could include: a formal letter being sent to the councillor concerned, reporting the committee's findings to the Council for information, recommending formal censure through a motion at full Council, a recommendation that the member is removed from committees or other positions appointed to or nominated to by the Council or its Executive or issuing a press release. The standards Committee could also recommend other sanctions but would require the member to agree to perform these, such as the member submits a written apology in a form specified by the standards committee; the member undertakes such training as the standards committee specifies; the member participates in such conciliation as the standards committee specifies

#### **4. Conclusions**

4.1 The Committee is asked to comment on the proposals in relation to the new standards regime prior to consideration by the Governance Committee and full Council

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Local Member: All

Background Documents: None

## **(1) Members' Code of Conduct**

On their election to the County Council members are required to sign an undertaking to comply with the Council's Code of Conduct.

The Code of Conduct and the Guide for Councillors are set out below.

### **Part 1 – General provisions**

#### **Introduction and interpretation**

1. —(1) This Code applies to **you** as a member of East Sussex County Council, when acting in that capacity.

(2) This Code is based upon the seven principles, which are set out in Appendix 1.

(3) It is your responsibility to comply with the provisions of this Code.

(4) It is a criminal offence to fail to notify the authority's monitoring officer of a disclosable pecuniary interest, or to take a decision where you have disclosable pecuniary interest, without reasonable excuse. It is also an offence to knowingly or recklessly to provide false or misleading information to the authority's monitoring officer.

(5) In this Code—

"co-opted member" means a person who is not a member of the authority but who-

(a) is a member of any committee or sub-committee of the authority, or

(b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority,

and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee.

"meeting" means any formal meeting of—

(a) the authority;

(b) the executive of the authority;

(c) any of the authority's or its executive's committees, sub-committees, joint committees, joint sub-committees, or area committees;

"member" includes a co-opted member and an appointed member.

## **Scope**

2. —(1) Subject to sub-paragraphs (2) and (3) , you must comply with this Code whenever you—

(a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or

(b) act, claim to act or give the impression you are acting as a representative of your authority,

and references to your official capacity are construed accordingly.

(2) This Code does not have effect in relation to your conduct other than where it is in your official capacity.

(3) Where you act as a representative of your authority—

(a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or

(b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

## **General obligations**

3. —(1) You must treat others with respect.

(2) You must not—

(a) do anything which may cause your authority to breach any of its the equality duties (in particular as set out in the Equality Act 2010);

(b) bully any person;

(c) intimidate or attempt to intimidate any person who is or is likely to be—

(i) a complainant,

(ii) a witness, or

(iii) involved in the administration of any investigation or proceedings,

in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or

(d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.

**4. You must not—**

(a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—

- (i) you have the consent of a person authorised to give it;
- (ii) you are required by law to do so;
- (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or

(iv) the disclosure is—

(a) reasonable and in the public interest; and

(b) made in good faith and in compliance with the reasonable requirements of the authority; or

(c) prevent another person from gaining access to information to which that person is entitled by law.

**5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.**

**6. You—**

(a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and

(b) must, when using or authorising the use by others of the resources of your authority—

(i) act in accordance with your authority's reasonable requirements;

(ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and

(c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

**7.** —(1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by—

(a) your authority's chief finance officer; or

(b) your authority's monitoring officer,

where that officer is acting pursuant to his or her statutory duties.

(2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

## Part 2 – Interests

### Personal and Pecuniary interests

8. —(1) You have a personal interest in any business of your authority where either—

(a) it relates to or is likely to affect—

(i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;

(ii) any body—

(a) exercising functions of a public nature;

(b) directed to charitable purposes; or

(c) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),

of which you are a member or in a position of general control or management;

(iii) any employment or business carried on by you;

(iv) any person or body who employs or has appointed you;

(v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;

(vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);

(vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);

(viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;



(ix) any land in your authority's area in which you have a beneficial interest;

(x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;

(xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or

(b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of—

(in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision.

(2) In sub-paragraph (1)(b), a relevant person is—

[(a) a member of your family or a [close] friend; or

(b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;

(c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or

(d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

(3) You have a pecuniary interest in any business of your authority where either –

[ ***Awaiting regulations*** ]

(4) a pecuniary interest is a “disclosable pecuniary interest” in relation to a person (“M”) if —

(a) it is an interest of M's, or

(b) it is an interest of—

(i) M's spouse or civil partner,

(ii) a person with whom M is living as husband and wife, or

(iii) a person with whom M is living as if they were civil partners,  
and M is aware that that other person has the interest.

**Disclosure of personal interests (See also Part 3)**

9. —(1) Subject to sub-paragraphs (2) to (7), where you have a personal interest or a pecuniary interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

(2) If the personal interest or pecuniary interest is entered on the authority's register there is no requirement to disclose the interest to that meeting.

(3) Where you have a personal interest in any business of your authority which relates to or is likely to affect any body described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(a), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.

(4) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.

(5) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.

(6) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.

(7) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.

(8) In this paragraph, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

**Prejudicial interest generally**

**10.** —(1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

(2) You do not have a prejudicial interest in any business of the authority where that business—

(a) does not affect your financial position or the financial position of a person or body described in paragraph 8;

(b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or

(c) relates to the functions of your authority in respect of—

(i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;

(ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;

(iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;

(iv) an allowance, payment or indemnity given to members;

(v) any ceremonial honour given to members; and

(vi) setting council tax or a precept under the Local Government Finance Act 1992.

### **Interests arising in relation to overview and scrutiny committees**

**11.** You also have a personal interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where—

(a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and

(b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

**Effect of prejudicial interests on participation**

**12.** —(1) Subject to sub-paragraph (2) and (3), where you have a prejudicial interest in any business of your authority—

(a) you must withdraw from the room or chamber where a meeting considering the business is being held—

(i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;

(ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;

unless you have obtained a dispensation from your authority's monitoring officer or standards committee;

(b) you must not exercise executive functions in relation to that business; and

(c) you must not seek improperly to influence a decision about that business.

(2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

(3) Where you have a prejudicial interest arising solely from membership of any body described 8(1)(a)(i) or 8(1)(a)(ii)(a) then you do not have to withdraw from the room or chamber and may make representations to the committee but may not participate in the vote:

**Effect of disclosable pecuniary interests on participation**

**13.** —(1) Where you have a disclosable pecuniary interest in any business of your authority—

(a) [you may not participate, or participate further, in any discussion of the business at the meeting, or participate in any vote, or further vote, taken on the business at the meeting and must withdraw from the room or chamber where a meeting considering the business is being held], whenever it becomes apparent that the business is being considered at that meeting unless you have obtained a dispensation from your authority's standards committee or Monitoring Officer;

(b) you must not exercise executive functions in relation to that business

### **Part 3 – Registration of Personal and Pecuniary Interests**

#### **Registration of members' interests**

**14.** —(1) Subject to paragraph 15, you must, within 28 days of—

(a) this Code being adopted by or applied to your authority; or

(b) your election or appointment to office (where that is later),

register in your authority's register of members' interests (maintained under section 29 of the Localism Act 2011) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), or disclosable pecuniary interests by providing written notification to your authority's monitoring officer.

(2) Subject to paragraph 15, you must, within 28 days of becoming aware of any new personal interest or disclosable pecuniary interest or change to any personal interest or disclosable pecuniary interest registered under paragraph (1), register details of that new personal interest or disclosable pecuniary interest or change by providing written notification to your authority's monitoring officer.

#### **Sensitive information**

**15.** —(1) Where you consider that the information relating to any of your personal interests or disclosable pecuniary interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 14.

(2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in your authority's register of members' interests.

(3) In this Code, "sensitive information" means information whose availability for inspection by the public could lead to the member or a person connected with the member being subject to violence or intimidation.

### **Dispensations**

**16 - (1)** The standards committee or monitoring officer may, on a written request made to the monitoring officer of the authority by a member, grant a dispensation relieving the member from either or both of the restrictions in section 13 above in cases described in the dispensation.

(2) The standards committee or monitoring officer may grant a dispensation only if, after having had regard to all relevant circumstances, the standards committee or monitoring Officer.—

(a) considers that without the dispensation the number of persons prohibited by section 13 above 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 authority's area,

(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 by section 13 above 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.

(3) A dispensation must specify the period for which it has effect, and the period specified may not exceed four years.

(4) Section 13 above does not apply in relation to anything done for the purpose of deciding whether to grant a dispensation under this section.

## **APPENDIX 1**

### **The Seven Principles of Public Life**

#### *Selflessness*

**1.** Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

#### *Honesty and Integrity*

**2.** Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

#### *Objectivity*

**3.** Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

#### *Accountability*

**4.** Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

#### *Openness*

**5.** Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

#### *Honesty*

**6.** Members should declare any private interests relating to their public duties and to their public duties and take steps to resolve any conflicts arising in a way that protects the public interest.

#### *Leadership*

**7.** Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

**EAST SUSSEX COUNTY COUNCIL**

**STANDARDS COMMITTEE**

**THE LOCAL ASSESSMENT OF COMPLAINTS  
ABOUT  
MEMBER CONDUCT**



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## **INTRODUCTION**

All councillors are bound by a Code of Conduct. The Code also applies to co-opted members of other committees. This governs their general behaviour, setting out things members must and must not do while acting in their official capacity. It also includes rules about registering and declaring interests, gifts and hospitality, and explains what members must do when potential conflicts of interest arise at meetings.

The task of overseeing the ethical conduct of members falls to local authority standards committees. These committees are made up of elected councillors.

The Standards Committees have to examine each complaint they receive and decide what action to take, if any. Action can take a wide range of forms, including asking the member to attend training, arranging mediation between the member and complainant, or ordering an in-depth investigation.

This document sets out the Local Assessment procedure to be followed by the standards committees of the County Council. It is based on legislation, and will be kept under regular review.

## **PART 1**

### **RECEIVING COMPLAINTS AND INITIAL HANDLING**

#### **Receipt of written allegations**

**1.1** Any written communications received by the County Council that appear in any way to contain allegations that a Member has failed, or may have failed, to comply with the Code must, upon receipt, be referred to the County Council's Monitoring Officer.

#### **The Monitoring Officer role on receipt of written allegations**

**1.2** Before referring any such allegations to the Assessment Sub-Committee of the Standards Committee, the Monitoring Officer:

- (i) should write to the Complainant acknowledging receipt of their complaint;
- (ii) should (provided that to do so would not be contrary to the public interest and/or would not prejudice any person's ability to investigate the allegation) write to the Subject Member stating:
  - (a) that a complaint has been made against them;
  - (b) the name of the Complainant (unless the Complainant has requested anonymity, or to do so would be unlawful);
  - (c) the relevant paragraphs of the Code it is alleged they have breached;
  - (d) that the complaint will be considered by the Assessment Sub-Committee and the date of this meeting if known; and
  - (e) a written summary of the allegation (save where the Monitoring Officer in accordance with the Monitoring Officer Protocol, in consultation with the chairman of the Standards Committee, is of the opinion that such notification would be contrary to the public interest or would prejudice any person's ability to investigate the allegation).

AND

- (iii) prepare a short summary of the complaint for the Assessment Sub-Committee.

#### **Procedure for Allegations referred to the Assessment Sub-Committee**

##### **Publication of agenda and papers in advance of Assessment Sub-Committee meeting**

**1.3** The Monitoring Officer must send the Complainant's written allegations (and any supporting papers comprising their complaint), and the Monitoring Officer's summary (produced under 1.2 (iii) above) as confidential appendices to a standard cover report to the Assessment Sub-Committee (see Appendix 1 for standard cover report).

**1.4** The standard cover report will (but the confidential appendices will not) be published as an item on the agenda of the Assessment Sub-Committee's meeting not less than five clear working days before the meeting or, if this is not possible, as far in advance of the meeting as is reasonably possible in the circumstances.

## **PART 2**

### **THE ASSESSMENT SUB-COMMITTEE**

#### **Quorum and composition of the Assessment Sub-Committee**

- 2.1 To be quorate, and to be able to take any decisions on allegations, 3 members of the Assessment Sub-Committee must be present for the duration of the meeting.
- 2.2 The County Council's Assessment Sub-Committee will be constituted by 3 members, in accordance with 2.1 above, although it will not have fixed membership or a fixed chair.

#### **Decisions of the Assessment Sub-Committee**

- 2.3 Decisions of the Assessment Sub-Committee will be taken by majority vote, with the Chair having the casting vote.

#### **Frequency of meetings**

- 2.4 The Assessment Sub-Committee will meet as and when required to enable it to undertake its initial assessment of any allegations within 20 working days of receipt of an allegation by the County Council.

#### **Restrictions on attendance**

- 2.5 Only the following are permitted to attend a meeting of the Assessment Sub-Committee:
- the members of the Assessment Sub-Committee, and
  - relevant officers of the County Council.

#### **Consideration of matters at the meeting**

##### **Considering the allegations and making a decision**

- 2.6 In making its assessment of which of the actions (set out at 2.8 below) to take in respect of an allegation, the Assessment Sub-Committee must deal with each case on a case-by-case basis having regard to any professional advice from relevant officers of the County Council, and any relevant criteria and factors that the County Council's Standards Committee determines from time-to-time (see Assessment Criteria).
- 2.7 In addition the views of an Independent Person appointed by the authority maybe sought in relation to an allegation prior to a decision being taken by the Assessment Sub Committee.
- 2.8 After having assessed any written allegations before it, the Assessment Sub-Committee must do one of the following:
- (a) decide that no action should be taken in respect of the allegation;
  - (b) decide that no action should be taken but request further information from the Complainant;
  - (c) after consulting with the Monitoring Officer, refer the allegation to the Monitoring

Officer with an instruction to arrange for a formal investigation of the allegation; or with an instruction to arrange for the Subject Member to attend a training course; and/or for that member and the complainant to engage in a process of conciliation; and/or other steps (not including an investigation) to be taken as appear appropriate to the Assessment Sub-Committee (see Parts 4-5 below)

(d) or

(e) if the person is no longer a Member of the County Council but is a Member of another relevant authority (as defined in s.49 of the Local Government Act 2000), they may refer the allegation to the Monitoring Officer of the other authority, if it considers that that is a more appropriate way of dealing with the matter.

**2.9** The Assessment Sub-Committee must also record the main points it considered, its conclusion and the reasons for its conclusion.

### **Decision Notices and publishing documents after the Assessment Sub-Committee's meeting**

**2.10** Within 5 working days of making a decision, the Assessment Sub-Committee should provide the Complainant and the Subject Member with written notice of its decision and the reasons for its decision ("A Decision Notice").

**2.11** All Decision Notices should be signed for and on behalf of the Committee by a member of the Committee, and should be countersigned by the Monitoring Officer.

#### The contents of a Decision Notice – where the Subject Member concerned has already been provided with a written summary of the allegation against them

**2.12** Where the Subject Member has already been provided a written summary of the allegation (further to paragraph 1.2 above), the Decision Notice (that must be sent to the Member, the Complainant and the Standards Committee of any other authority concerned) should contain that written summary of the allegation, and:

- must record the main points considered, and the Assessment Sub-Committee's conclusion and the reasons for its conclusion,
- must state, where the matter is to be referred to the Monitoring Officer for investigation, that the matter has been so referred and give the Subject Member the opportunity to comment on the allegation, unless the Committee directs that it is not in the public interest, or would prejudice any investigation into the allegation to do this, and
- must be prepared having regard to, and any professional advice from relevant officers of the County Council, and may
- give the name of the member who was the subject of the allegation, unless releasing this information is, in the opinion of the committee, not in the public interest, or would prejudice any investigation into the allegation.

The contents of a Decision Notice – where the member concerned has **not** already been provided with a written summary of the allegation against them

- 2.13** Where the Subject Member has not already been provided a written summary of the allegation (further to paragraph 1.2 above), the contents of the Decision Notice (which must be sent to the Member, the Complainant and the Standards Committee of any other authority concerned) will depend upon (i) the extent to which the Subject Member has been informed of the allegation or any of its details (further to paragraphs 1.2 above), and (ii) any decision of the Monitoring Officer (in consultation with the Chair of the Assessment Sub-Committee) as to whether it would, at the time of issuing the Decision Notice, still be contrary to the public interest, or would still prejudice any person's ability to investigate the allegation, to provide any such details.

### **Publication of Decision Notices**

Publication of Decision Notices where the Member concerned **has** already been provided a written summary of the allegation

- 2.14** Once the Decision Notice has been communicated to the Complainant and the Member, the County Council must publish the Decision Notice issued under and incorporating the details referred to in paragraph 2.12 above, so that it is available for public inspection at the County Council offices for a period of 6 years beginning with the date of the Assessment Sub-Committee's meeting.

Publication of Decision Notices where the Member concerned **has not** already been provided a written summary of the allegation

- 2.15** Once a Decision Notice is communicated to the complainant and the Subject Member, the County Council must publish the Decision Notice issued under and incorporating the details referred to in paragraph 2.13 above, so that it is available for public inspection at the County Council offices for a period of 6 years beginning with the date of the Assessment Sub-Committee's meeting.
- 2.16** Further details about the allegation may, however, be incorporated into the Decision Notice to be published if, in consultation with the Chair of the Assessment Sub-Committee, the Monitoring Officer has decided that, at the time of publishing, it would not be contrary to the public interest, or would not prejudice any person's ability to investigate the allegation, to provide these further details and the Subject Member and Complainant have already been notified of such details.

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## **PART 3**

### **MONITORING OFFICER TO ARRANGE FOR STEPS OTHER THAN INVESTIGATION TO BE TAKEN**

#### **Monitoring Officer – Duty to comply with instruction**

- 3.1** Where the Assessment Sub-Committee, or the Review Sub-Committee, after consulting with the Monitoring Officer, refer an allegation to the Monitoring Officer with an instruction:
- to arrange for the Subject Member to attend a training course; and/or for
  - that the member and the complainant to engage in a process of conciliation; and/or
  - for other steps (not including an investigation) to be taken as appear appropriate to the Assessment or Review Sub-Committees. The Monitoring Officer must deal with the matter in accordance with the instruction given to them.

#### **Monitoring Officer power to refer back to Assessment Sub-Committee**

- 3.2** Where a matter has been referred to the Monitoring Officer (by the Assessment Sub-Committee) for steps other than investigation, the Monitoring Officer may refer the matter to the Assessment Sub-Committee:
- (i) if, as a result of new evidence or information, the Monitoring Officer is of the opinion that:
- the matter is materially more serious or less serious than may have seemed apparent when the Assessment Sub-Committee made its decision to refer to the Monitoring Officer for steps other than investigation;
  - the Assessment Sub-Committee would not have decided to refer to the Monitoring Officer for steps other than investigation had it been aware of the new evidence or information; or
- (ii) if, the Subject Member, has died, is seriously ill, or has resigned from the County Council and the Monitoring Officer is of the opinion that, in the circumstances, it is no longer appropriate to continue with the steps other than investigation.
- 3.3** If, further to 3.2 above, the Monitoring Officer refers a matter to the Assessment Sub-Committee:-
- (i) the papers may contain, and the sub-committee meeting will consider, exempt information as defined in the Local Government Act 1972 Schedule 12A. Therefore, in accordance with the LGA 1972 Part VA, any such reports (and background papers) may not be required to be published publicly, and the meeting may not be required to be held with the press and public present;
- (ii) the Assessment Sub-Committee should consider the matter in accordance with paragraph 2.7 above, and may make the same decisions as those as set out at 2.8, although the committee may direct that the matter should not be referred back a further time.

### **Monitoring Officer's report**

- 3.4** Within 3 months of the day on which the Monitoring Officer received an instruction as per 3.1 above (or, if this is not possible, as soon as is reasonably practicable thereafter), the Monitoring Officer must submit a report to the full County Council's Standards Committee (or to a Sub-Committee if, further to its terms of reference, the full committee establishes such a committee for these purposes) giving details of the action taken or proposed to comply with the instruction.
- 3.5** The Monitoring Officer's report may contain exempt information as defined in the Local Government Act 1972 Schedule 12A. Therefore, in accordance with the LGA 1972 Part VA, any such reports (and background papers) may not be required to be published publicly, and may not be required to be considered by the Committee with the press and public present.

### **The Committee's decision on the report**

- 3.6** If the committee is not satisfied with the action specified in the Monitoring Officer's report, it must issue a further instruction to the Monitoring Officer. The committee's decision to this effect, may contain exempt information, and so the committee should consider, in accordance with the rules set out at paragraph 3.5 above, whether the decision should be published publicly.
- 3.7** If the committee is satisfied with the action specified in the Monitoring Officer's report, it must give written notice to this effect to:
- the Subject Member;
  - the Complainant; and
  - the Standards Committee of any other authority concerned.
- 3.8** The committee's written notice may contain exempt information, and so the Committee should consider, in accordance with the rules set out at paragraph 3.5 above, whether the notice should be published publicly.



## **PART 4**

### **MONITORING OFFICER TO INVESTIGATE A COMPLAINT AND STANDARDS COMMITTEE'S CONSIDERATION OF THE REPORT**

#### **Monitoring Officer power to delegate investigation**

- 4.1 Where the Assessment Sub-Committee refer an allegation to the Monitoring Officer to investigate, the Monitoring Officer may decide not to personally conduct the investigation and may arrange for this, and other functions in connection with this, to be conducted by a suitable, and appropriately qualified and experienced person, whether employed by the County Council or not ("a delegated investigator").

#### **Conducting the investigation**

- 4.2 In conducting an investigation, the Monitoring Officer or delegated investigator may:
- (i) make such inquiries of any person as the Monitoring Officer or delegated investigator thinks necessary or expedient for the purposes of conducting that investigation;
  - (ii) require any person to give such information or explanation as the Monitoring Officer or delegated investigator thinks necessary or expedient for the purposes of conducting that investigation;
  - (iii) require any other authorities concerned to provide such advice and assistance as may reasonably be needed to assist in the investigation;
  - (iv) require any other authorities concerned to meet the reasonable cost of any advice and assistance provided in accordance with (iii) above; and
  - (v) require any other authorities concerned to afford reasonable access to such documents in their possession as appear to the Monitoring Officer to be necessary for the purpose of conducting the investigation.

#### **Disclosure of information**

- 4.3 Information obtained by the Monitoring Officer (or the delegated investigator) in the course of conducting their investigation must not be disclosed other than in accordance with the Local Government Act 2000 s 63, the Standards Committee (England) Regulations 2008/ 1085.

#### **Monitoring Officer power to refer back to Assessment Sub-Committee**

- 4.4 Where a matter has been referred to the Monitoring Officer (by the Assessment Sub-Committee) for investigation, the Monitoring Officer may refer the matter to the Assessment Sub-Committee:
- (i) if, as a result of new evidence or information, the Monitoring Officer is of the opinion that:
    - the matter is materially more serious or less serious than may have seemed apparent when the Assessment Sub-Committee made its decision to refer to the Monitoring Officer for investigation;

- the Assessment Sub-Committee would not have decided to refer to the Monitoring Officer for investigation had it been aware of the new evidence or information;

or

- (ii) if, the Subject Member, has died, is seriously ill, or has resigned from the County Council and the Monitoring Officer is of the opinion that, in the circumstances, it is no longer appropriate to continue with an investigation

**4.5** If, further to 4.4 above, the Monitoring Officer refers a matter to the Assessment Sub-Committee, the same rules and procedures as set out at 3.2 – 3.3 shall apply.

### **Completion of the investigation**

**4.6** On completing an investigation, as the Monitoring Officer or delegated investigator must:

- (i) make a finding that there either has, or has not, been a failure to comply with the Code (respectively, “a finding of failure’ or “a finding of no failure’);
- (ii) prepare a written report of the investigation which contains a statement as to the finding;
- (iii) send a copy of that report to the Subject Member; and
- (iv) refer the report to the full County Council Standards Committee (or to a subcommittee if, further to its terms of reference, the full committee establishes such a committee for these purposes) and any other Standards Committee concerned.

### **Referral of the Monitoring Officer’s report to the committee and ‘exempt’ status of the report**

**4.7** The Monitoring Officer’s report and the other papers to be sent to and considered by the committee may contain exempt information as defined in the Local Government Act 1972 Schedule 12A. Therefore, in accordance with the LGA 1972 Part VA, any such reports (and background papers) may not be required to be published publicly, and may not be required to be considered by the committee with the press and public present.

### **Publication of agenda and papers in advance of the committee meeting**

**4.8** Subject to paragraph 4.7 above, the relevant papers must be published as an item on the agenda of the committee’s meeting not less than five clear working days before the meeting or, if this is not possible, as far in advance of the meeting as is reasonably possible in the circumstances.

### **The committee’s consideration of the Monitoring Officer’s report**

**4.9** In making its decision as to which of the actions (set out at 4.10) to take, the committee must have regard to the Monitoring Officer’s report;; any professional advice from relevant officers of the County Council, and any relevant criteria and factors that the County Council’s Standards Committee determines from time-to-time.

**4.10** After having considered the Monitoring Officer’s report, the committee must by majority decision make one of the following findings:

- a) that it accepts a finding of no failure (i.e. that the Subject Member has not breached the Code);
- b) that the matter should be considered at a hearing of the full County Council’s

Standards Committee, or a Hearings Sub-Committee;

### **Committee accepting a finding of no failure**

**4.11** As soon as reasonably practicable after making such a finding, the committee must issue a “Finding of No Failure” Decision Notice and send this to:

- The Subject Member;
- The Complainant;
- Any other authority concerned.

and must, unless the Subject Member asks the committee not to, publish the Decision Notice in at least one newspaper circulating in the County and, if considered appropriate by the committee, on the County Council web-site and any other publication.

### **Committee accepting a finding of failure**

#### Finding of Failure

**4.12** Within 5 working days of making such a finding, the committee should produce a written notice of its decision, and the reasons for its decision, (“a ‘Finding of Failure – Hearing’ Decision Notice”) and send this to:

- the Subject Member;
- the Complainant;
- any other authority concerned;

#### Publication of Finding of Failure

**4.13** The Decision Notice may contain exempt information and so the committee should consider, in accordance with the rules set out at paragraph 4.8 above, whether it should be published publicly.

## **PART 5**

### **HEARINGS**

#### **The full Standards Committee or the Hearings Sub-Committee**

- 5.1 Further to a decision under paragraph 4.11(b) hearings may be conducted by the full Standards Committee of the Hearings Sub-Committee.

#### **Deadlines for meetings of the Hearing Sub-Committee**

- 5.2 Where the it has been decided that a complaint should be considered by a hearing of either the full Standards Committee or the Hearings Sub-Committee, the hearing must take place within 3 months (or, if this is not possible, as soon as is reasonably practicable thereafter) of the date on which (i) the Monitoring Officer's investigation report is completed BUT must not take place until at least 14 days after the date on which the Monitoring Officer sent his or her investigation report to the Subject Member, unless the Subject Member agrees to the hearing being held earlier.

#### **The 'exempt' status of papers referred to the committee conducting the hearing**

- 5.3 The papers to be sent to and considered by the committee conducting the hearing may contain exempt information as defined in the Local Government Act 1972 Schedule 12A. Therefore, in accordance with the LGA 1972 Part VA and the County Council's Standing Orders 1.11 and 2.8, any such reports (and background papers) may not be required to be published publicly, and may not be required to be considered by the committee with the press and public present.

#### **Publication of agenda and papers in advance of the committee hearing**

- 5.4 Subject to paragraph 5.3 above, the relevant papers must be published as an item on the agenda of the committee's meeting not less than five clear working days before the meeting or, if this is not possible, as far in advance of the meeting as is reasonably possible in the circumstances.

#### **The Hearings Sub-Committee**

##### **Quorum and composition**

- 5.5 To be quorate, and to be able to take any decisions on allegations, 3 members of the Hearings Sub-Committee must be present for the duration of the meeting.
- 5.6 The County Council's Hearings Sub-Committee will be constituted by 3 members in accordance with 5.5 above, although it will not have fixed membership or a fixed chair.

#### **Decisions of the Full Standards Committee or Hearings Sub-Committee**

- 5.7 Decisions of the full Standards Committee or the Hearings Sub-Committee will be taken by majority vote, with the Chair having the casting vote.

#### **The Hearing**

- 5.8 The hearing must be conducted:

- to enable the Subject Member to have the opportunity to present evidence and make representations at the hearing orally or in writing either personally, by counsel, a solicitor or, with the committee's consent, by any other representative;
- in accordance with any rule and procedures from time to time agreed by the full Standards Committee and/or monitoring officer; and
- in accordance with relevant statutory provisions

### **Findings of the committee conducting the hearing**

**5.9** In making a finding and imposing a sanction (see 5.10 below), the committee must seek, and take into account, the views of at least one Independent Person appointed by the authority and act in accordance with any relevant guidance and procedures from time to time agreed by the full Standards Committee and/or monitoring officer.

**5.10** Following a hearing, the committee is entitled to make one of the following findings:

- (i) that the Subject Member had not failed to comply with the Code;
- (ii) that the Subject Member has failed to comply with the Code but that no action needs to be taken; or
- (iii) that the Subject Member has failed to comply with the Code and that one of the following sanctions should be imposed:
  - a) if the Subject is no longer a member of the County Council, it must censure the Subject Member;
  - b) if the Subject Member is a member of the County Council it must impose one of, or any combination of the following sanctions:
    - formal censure of that member;
    - reporting its decision to the council for its information;
    - the sending of a formal letter;
    - recommend to the relevant political party group that the member be removed from a particular committee or committees;
    - recommend to the Leader of the council that the member be removed from the Cabinet, or removed from particular portfolio responsibilities
    - recommend the member is removed from outside appointments to which the member has been appointed or nominated by the Council or the Executive;
    - formally recommend that the member submits a written apology in a form specified by the standards committee;
    - formally recommend that the member undertakes such training as the standards committee specifies;
    - formally recommend that the member participate in such conciliation as the standards committee specifies.

**5.11** Any sanction imposed by the committee will take effect immediately, unless the committee specifies a later date (but within 6 months of its decision) on which the sanction(s) should take effect.

## **PART 6**

### **Withdrawing complaints**

**6.1** There may be occasions when the complainant asks to withdraw their complaint prior to the assessment sub-committee having made a decision on it. In these circumstances, the assessment sub-committee will need to decide whether to grant the request. The following considerations may apply:

- Does the public interest in taking some action on the complaint outweigh the complainant's desire to withdraw it?
- \_ Is the complaint such that action can be taken on it, for example an investigation, without the complainant's participation?
- \_ Is there an identifiable underlying reason for the request to withdraw the complaint? For example, is there information to suggest that the complainant may have been pressured by the subject member, or an associate of theirs, to withdraw the complaint?

### **Multiple and vexatious complaints**

- 6.2** The Council may receive a number of complaints from different complainants about the same matter. In such cases they should be dealt with in a manner that is a practical use of time and resources.
- 6.3** A number of complaints about the same matter may be considered by the assessment sub-committee at the same meeting. If so, an officer should be asked to present one report and recommendation that draws together all the relevant information and highlights any substantively different or contradictory information. However, the assessment sub-committee must still reach a decision on each individual complaint and follow the notification procedure for each complaint.
- 6.4** Unfortunately, a small number of people abuse the complaints process. The authority's policies on vexatious or persistent complainants, or take action to limit an individual's contact with the authority could be used in such circumstances.
- 6.5** However, the Standards Committee must consider every new complaint that they receive in relation to the Code of Conduct. If the Standards Committee has already dealt with the same complaint by the same person and the monitoring officer does not believe that there is any new evidence, then a complaint does not need to be considered.
- 6.6** A person may make frequent allegations about members, most of which may not have any substance. Despite this, new allegations must still be considered as they may contain a complaint that requires some action to be taken.

## **PART 7**

### **INFORMATION AND STATISTICS**

- 7.1 The full Standards Committee will monitor how effectively members are complying with the Code, the type of complaints received and, how, and how quickly, these are dealt with.
- 7.2 The Monitoring Officer will take steps to ensure that an appropriate system is implemented to ensure that the following information is recorded in an up-to-date and readily available form:

#### **Initial receipt and Assessment Sub-Committee process**

- The number of, date on, place, and method by which, complaints are received by the County Council, which are subsequently referred to the Assessment Sub-Committee;
- A log of the identity of Complainants, specifically highlighting complaints by other members or members of staff of, or contractors with, the County Council;
- A log of the number of such complaints that relate to any one specific incident;
- A log of the identity of members to which such complaints relate, including a very brief (if possible, one sentence) summary of the complaint and the section of the Code alleged to have been breached;
- The date on which such complaints are considered by the Assessment Sub-Committee, with a log of its membership and decision on each complaint;
- The date on which a Decision Notice is sent to the Subject Member and Complainant;
- The date on which a Decision Notice is published by the County Council;
- The number of times, and very brief reasons why, a Subject Member has not been provided with any of the following details:
  - The existence of a complaint against them;
  - The identity of the Complainant
  - A written summary of the complaint

#### **Requests for Review and Review Sub-Committee process**

- The number of, date on, and method by which, the Monitoring Officer receives requests for review of decisions of the Assessment Sub-Committee to take no action;
- A log of the identity of persons requesting a review, specifically highlighting such requests by other members or members of staff of, or contractors with, the County Council;
- A log of the number of such requests that relate to any one specific incident;
- A log of the identity of (i) the members who sat on the Assessment Sub-Committee whose decision is subject to the review request, and (ii) the Subject Member(s) to which such requests relate, including a very brief (if possible, one sentence) summary of the reasons for the request for a review, and the section of the Code alleged to which it relates;
- The date on which such complaints are considered by the Review Sub-Committee, with a log of its membership and decision on each complaint;
- The date on which a Decision Notice is sent to the Subject Member and Complainant;
- The date on which a Decision Notice is published by the County Council
- The number of times, and very brief reasons why, a Subject Member has still not, by the

outcome of the Review Stage, been provided with any of the following details:

- The identity of the Complainant
- A written summary of the complaint

#### Steps taken by Monitoring Officer – other than investigation

A log of:

- The date on which such steps were directed and by which committee;
- The identity of member(s) subject to the steps;
- What the steps are;
- If or when the steps were taken;
- Whether the member(s) and or Complainants complied with the steps;
- The identity (and cost) of any external mediators or facilitators involved;
- Whether the steps resolved the matter/satisfied the Complainant;
- The date on which a report detailing the steps was sent to committee;
- The date on which the committee considered the report;
- Whether the committee was satisfied with the steps taken;
- The number of times (with dates) the committee was not satisfied with the steps taken, issued a further instruction and, if so, details of that instruction and any follow up action;
- The date on which any such decision are published.

#### Investigations of the Monitoring Officer or ESO's

A log of:

- The date on which specific identified complaints are referred to the Monitoring Officer / ESO for investigation;
- The identity of any investigators;
- The date on which any investigations commence and are completed;
- The recommendations of any investigation report;
- The cost of the investigation;
- The date on which a copy of any investigation report is sent to the Subject Member;
- The date on which any investigation report is referred to committee for consideration;
- The date on which committee considers the report;
- Whether or not the committee agrees and disagrees with the findings of any investigation report;
- The committee's decision on the report;
- The date on which the decision is published.

#### Hearings

A log of:

- The date on which specific identified complaints are referred for hearing;
- The date of the hearing;
- Whether the hearing is conducted by the full standards committee or the Hearings Sub-Committee;
- Whether the Subject Member was legally represented;
- The decision of the hearing committee;
- The date on which the decision is published.



## Appeals

A log of:

- The number of appeals by members to the APE;
- The number of appeals upheld and dismissed

**East Sussex County Council**  
**Standards Committee**  
**Assessment Criteria**

These criteria are intended to reflect local circumstances and priorities and are simple, clear and open. They are to ensure fairness for the complainant and the subject member.

**1. Circumstances where the Initial Assessment Sub-Committee may decide to take no further action**

Where the complaint:

- (1) does not have enough information to satisfy the sub-committee that the complaint should be referred for investigation or other action;
- (2) is about someone who is no longer a member of the Council;
- (3) has not been received within 3 months of the alleged misconduct unless there are exceptional circumstances;
- (4) or one substantially similar, has already been the subject of an investigation or other action relating to the Code of Conduct or has been the subject of an investigation by other regulatory authorities;
- (5) is believed to be either:
  - (a) relatively minor
  - (b) tit-for-tat
  - (c) politically motivated
  - (d) malicious
  - (e) not sufficiently serious to warrant further action;
- (6) where the subject member has apologised and/or admitted making an error and the matter would not warrant a more serious sanction;
- (7) where it is apparent that the subject Member is relatively inexperienced as a Member; OR
- (8) where it appears that even if the allegations were fully investigated and a breach of the Code of Conduct upheld, training or conciliation would be the appropriate remedy.
- (9) Where the complaint is anonymous (save where it is in the Committee's or Monitoring Officer's opinion in the public interest to maintain confidentiality).

Whilst complainants must be confident that complaints are taken seriously and dealt with appropriately, deciding to investigate a complaint or to take

further action will cost both public money and officers' and members' time. This is an important consideration where the matter is relatively minor. The Assessment Sub Committee will take into account the public benefit in investigating complaints which are less serious, politically motivated, malicious or vexatious. It will not refer a complaint for investigation where it considers that the public interest in investigating the complaint is outweighed by the cost and resources that would be likely to be involved.

## **2. Circumstances where the Assessment Sub Committee may decide to refer the complaint to the Monitoring Officer for local investigation**

Where the complaint is sufficiently serious to justify the cost of an investigation and it is in the public interest to investigate.

## **3. Circumstances where the Assessment Sub Committee may decide to refer the allegation to the Monitoring Officer for other positive action**

- (1) Where the complaint:
  - (i) could be dealt with more effectively by:
    - (a) requesting an apology
    - (b) mediation
    - (c) training
    - (d) reviewing procedures and protocols
  - (ii) is part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the authority which could be dealt with by:
    - (a) mediation
    - (b) training
    - (c) reviewing procedures and protocols
- (2) Where it is not in the interests of good governance to undertake or complete an investigation into a complaint.

Notes (a) The Initial Assessment Sub-Committee must consult the Monitoring Officer before reaching a decision to take other action. It is to be noted that the purpose of this approach is not to determine whether there has been a breach of the Code.

(b) If members decide to refer the complaint to the Monitoring Officer for another form of positive action the following must be considered:

- *What is being proposed.*
- *Why it is being proposed.*
- *Why the Member should co-operate*

- *What the Sub-Committee hopes to achieve*

(c) A complaint referred for positive action will not state whether the member breached the Code but that the decision made was an alternative to investigation and that no conclusion was reached on whether the subject member failed to comply with the Code. There will be no opportunity to undertake an investigation into the complaint and it will not be referred back to the Standards Committee even if this action is perceived to have failed.

Date updated February 16, 2012

# **East Sussex County Council**

## **Standards Committee**

### **Monitoring Officer Protocol**

Instructions to the Monitoring Officer on the discharge of functions in relation to the initial assessment and review of allegation that a member of the County Council has failed to comply with the Code of Conduct

#### **1 Receipt of Allegations**

1.1 The Monitoring Officer shall set up arrangements within the County Council to secure that any allegation made in writing that a member of the County Council has or may have failed to comply with the County Council's Code of Conduct is referred to him/her immediately upon receipt by the County Council.

1.2 The Monitoring Officer shall maintain a register of such allegations to ensure that the County Council can comply with its obligations under the relevant legislation.

1.3 Complaints shall only be entertained where they are signed by the complainant, but the Monitoring Officer is authorised to maintain the confidentiality of the identity of the complainant where and for so long as in his/her opinion that would be in the public interest.

#### **2 Notification of Receipt of Allegations**

2.1 All relevant allegations must be assessed by the Assessment Sub-Committee, so the Monitoring Officer has no authority to deal with an allegation which appears to be an allegation of failure by a relevant member to observe the Code of Conduct other than by reporting it to the Assessment Sub-Committee. The Monitoring Officer shall therefore determine whether the allegation appears to be a substantive allegation of misconduct. Where it appears not to be, he/she shall ensure that the matter is dealt with under a more appropriate procedure, for example where it is really a request for service from the County Council, a statement of policy disagreement, a legal claim against the County Council or a complaint against an officer of the County Council.

2.2 Following receipt of the allegation, and where the allegation does appear to be a complaint of misconduct against a relevant member, the Monitoring Officer will promptly, and in any case in advance of the relevant meeting:

- 2.2.1 acknowledge to the complainant receipt of the allegation and confirm that the allegation will be assessed by the Assessment Sub-Committee at its next convenient meeting;
- 2.2.2 notify the member against whom the allegation is made of receipt of the complaint, together with a written summary of the allegation, and state that the allegation will be assessed at the next convenient meeting of the Assessment Sub-Committee. However, where the Monitoring Officer is of the opinion that such notification would be contrary to the public interest or would prejudice any person's ability to investigate the allegation, he/she shall consult the Chairman of the Standards Committee, and may then decide that no such advance notification shall be given;
- 2.2.3 collect such information as is readily available and would assist the Assessment Sub-Committee in its function of assessing the allegation;

- 2.2.4 seek local resolution of the matter where practicable, in accordance with Paragraph 3 below;
- 2.2.5 place a report, including a copy of the allegation, such readily available information and his/her recommendation as to whether the allegation discloses an apparent failure to observe the Code of Conduct, on the agenda for the next convenient meeting of the Assessment Sub-Committee.

### **3 Local Resolution**

3.1 Local resolution is not an alternative to reporting the allegation to the Assessment Sub-Committee, but can avoid the necessity of a formal local investigation.

3.2 Where the Monitoring Officer is of the opinion that there is the potential for local resolution, he/she shall approach the member against whom the allegation has been made and ask whether he/she is prepared to acknowledge that his/her conduct was inappropriate, and whether he/she would be prepared to offer an apology or undertake other appropriate remedial action. With the consent of the member concerned, the Monitoring Officer may then approach the complainant and ask whether the complainant is satisfied by such apology or other remedial action. The Monitoring Officer should then report to the Assessment Sub-Committee as required, and at the same time report the response of the member concerned and of the complainant. The idea is that, where the member has acknowledged that his/her conduct was inappropriate, and particularly where the complainant is satisfied with the proffered apology or remedial action, the Assessment Sub-Committee might take that into account when considering whether the matter merits investigation.

### **4 Local Investigation**

4.1 It is recognised that the Monitoring Officer will not personally conduct a formal local investigation.

4.2 It will be for the Monitoring Officer, where appropriate after consultation with the Chairman of the Assessment Sub-Committee, to determine who to instruct to conduct a formal local investigation, and this may include another senior officer of the County Council, a senior officer of another County Council, or an appropriately experienced consultant.

Document updated 16 February 2012

## **Article 9 - The Standards Committee**

### **9.01 Standards Committee**

The Council meeting will establish a Standards Committee.

### **9.02 Composition**

The Standards Committee will be composed of at least seven councillors (who may not include the Leader) The quorum of the Committee shall be 4 councillors.

### **9.03 Role and Function**

The Standards Committee will have the following roles and functions:

- (a) promoting and maintaining high standards of conduct by councillors, co-opted members and church and parent governor representatives;
- (b) assisting the councillors, co-opted members and church and parent governor representatives to observe the Members' Code of Conduct;
- (c) advising the Council on the adoption or revision of the Members' Code of Conduct;
- (d) to agree procedures for the dealing with potential breaches of the Members Code of Conduct;
- (e) monitoring the operation of the Members' Code of Conduct;
- (f) advising, training or arranging to train councillors, co-opted members and church and parent governor representatives on matters relating to the Members' Code of Conduct;
- (g) liaise with the Independent person(s) following receipt of a complaint in relation to a potential breach of the Code of Conduct;
- (h) dealing with any reports on allegations of breaches of the Council's Code of Conduct that are referred to the Monitoring Officer for investigation and determination;
- (i) To establish sub-committees of at least 3 members drawn from the Standards Committee to carry out the roles and functions listed below (quorum to be 2 members),

- i) to make an initial assessment of any complaint received alleging a breach of the local Code of Conduct by any councillor and to either refer the matter to the Monitoring Officer for investigation or other action or decide that no action should be taken in respect of the complaint;
  - ii) to determine any complaints that councillors or co-opted members have acted in breach of the Member's Code of Conduct, including the imposition of any sanctions available;
- j) to discharge or make arrangements for discharging any of the functions conferred upon the Committee;
- k) to submit to the Council an annual report on the work of the Committee.



# East Sussex County Council

## Standards Committee

### Terms of Reference of the Hearing Sub-Committee

Being mindful of the relevant legislation:-

1. To determine whether to accept the Monitoring Officer's finding of no breach, to go to a local hearing or to refer the matter to a case tribunal.
2. In the event that a hearing of the Standards Committee is required, the Hearings Sub-Committee may be convened to hear and determine any allegation that a member of the County Council has failed, or may have failed, to comply with the County Council's Code of Conduct, and determine the appropriate sanction.
3. **Composition** - The Standards Sub-Committee (Hearing) shall comprise of 3 members of the Standards Committee.
4. **Independent Person** – The views of the Independent Person appointed by the authority must be sought, and taken into account before the Hearing Sub-Committee makes its decision on an allegation the authority has decided should be investigated
5. **Quorum** - The quorum for a meeting of the Hearing Sub-Committee shall be 3 members (with an independent member as Chairman of the Sub-Committee), and at least one elected member of the County Council.
6. **Frequency of Meetings** - The Standards Sub-Committee (Hearing) shall meet as and when required to hear and determine any allegation(s) against an elected or co-opted member of the Council.

# East Sussex County Council

## Standards Committee

### Terms of Reference of the Assessment Sub-Committee

Being mindful of the relevant legislation:-

1. The Assessment Sub-Committee will, subject to paragraph 2 below, conduct an initial assessment of all written complaints received by the County Council's Monitoring Officer on the appropriate Complaints Form for such purposes or such written complaints submitted by a letter/e-mail/fax setting out all the relevant information required on such Complaints Form.
2. The Assessment Sub-Committee will only have jurisdiction to consider written allegations that an elected or co-opted Member or former Member of the County Council has failed, or may have failed, to comply with the County Council's Code of Conduct for Members.
3. The Assessment Sub-Committee is empowered to do one of the following:-
  - i) decide that no action should be taken in respect of the allegation;
  - ii) ask for additional information from the complainant on the allegation before concluding the initial assessment;
  - iii) if the allegation is likely to be reasonably substantiated and it is in the public interest to warrant the County Council's funds being spent on a local investigation, refer the allegation to the County Council's Monitoring Officer, with an instruction that s/he arranges for an investigation of the allegation; or directs that s/he arranges training, conciliation or such other appropriate action as is permitted by the relevant legislation; or
  - iv) [where the allegation is in respect of a person who is no longer a member of the County Council, but is a member of another relevant authority (as defined in Section 49 of the Local Government Act 2000), refer the allegation to the Monitoring Officer of that other authority,]  
  
and shall authorise the Monitoring Officer to take all reasonable steps to implement its decision(s), with reasons, and to notify the person making the allegation and the member concerned of that decision.
4. **Composition** - The Assessment Sub-Committee shall comprise 3 members. There is no requirement for fixed membership or a fixed Chair of the Assessment Sub-Committee.

5. **Quorum** - The quorum for a meeting of the Assessment Sub-Committee shall be 3 members.
  
6. **Frequency of Meetings** - The Assessment Sub-Committee will meet as and when required to enable it to undertake its initial assessment of any allegations within 20 working days of receipt of an allegation by the County Council.

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