

# Standards Committee

## Agenda

Tuesday 7 May 2024 at 6.00 pm

145 King Street, Hammersmith, W6 9XY

### MEMBERSHIP

Administration	Opposition
Councillor Rebecca Harvey Councillor Helen Rowbottom Councillor Rowan Ree Councillor Rory Vaughan	Councillor Alex Karmel
Co-optees	
His Honour John Rylance Dr Tom Babbedge Dilina Ostborn	

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**This meeting is open to members of the public but seats are limited. If you'd like to attend the meeting please contact david.abbott@lbhf.gov.uk**

Date Issued: 29 April 2024

# Standards Committee Agenda

7 May 2024

<u>Item</u>	<u>Pages</u>
<b>1. ELECTION OF THE CHAIR</b>	
<b>2. APOLOGIES FOR ABSENCE</b>	
<b>3. DECLARATION OF INTERESTS</b>	
<p>If a Councillor has a disclosable pecuniary interest in a particular item, whether or not it is entered in the Authority's register of interests, or any other significant interest which they consider should be declared in the public interest, they should declare the existence and, unless it is a sensitive interest as defined in the Member Code of Conduct, the nature of the interest at the commencement of the consideration of that item or as soon as it becomes apparent.</p> <p>At meetings where members of the public are allowed to be in attendance and speak, any Councillor with a disclosable pecuniary interest or other significant interest may also make representations, give evidence or answer questions about the matter. The Councillor must then withdraw immediately from the meeting before the matter is discussed and any vote taken.</p> <p>Where Members of the public are not allowed to be in attendance and speak, then the Councillor with a disclosable pecuniary interest should withdraw from the meeting whilst the matter is under consideration.</p> <p>Councillors who have declared other significant interests should also withdraw from the meeting if they consider their continued participation in the matter would not be reasonable in the circumstances and may give rise to a perception of a conflict of interest.</p> <p>Councillors are not obliged to withdraw from the meeting where a dispensation to that effect has been obtained from the Standards Committee.</p>	
<b>4. MINUTES</b>	4 - 6
<p>To approve the minutes of the previous meeting as an accurate record.</p>	
<b>5. ADOPTION OF A NEW MEMBER'S CODE OF CONDUCT</b>	7 - 110
<p>This report recommends the Standards Committee endorses the LGA draft Model Code of Conduct for adoption by Full Council.</p>	



# Agenda Item 4

London Borough of Hammersmith & Fulham  
**Standards Committee**  
**Minutes**



**Thursday 10 February 2022**

**PRESENT**

**Committee members:** Councillors Rebecca Harvey, Alex Karmel, Rowan Ree, Helen Rowbottom and Matt Thorley

**Independent members:** His Honour John Rylance, Dilina Ostborn

**Officers:** Adesuwa Omoregie, Kayode Adewumi

**1. CO-OPTED MEMBERS**

The Committee noted the appointment of His Honour John Rylance, Dr Tom Babbedge and Dilina Ostborn as Co-Opted Members of the Committee.

Members of the Committee introduced themselves and gave a brief description of their roles in the Council.

**2. ELECTION OF THE CHAIR**

His Honour John Rylance was elected as the Chair of the Standards Committee.

**3. APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillor Rory Vaughan.

**4. DECLARATION OF INTERESTS**

There were no declarations of interest.

**5. STANDARDS COMMITTEE TERMS OF REFERENCE**

The Terms of reference were noted.

## 6. LOCAL GOVERNMENT ASSOCIATION MODEL CODE OF CONDUCT

In 2019, the Committee on Standards in Public Life (CSPL) produced a report on “Local Government Ethical Standards”. The report made a series of recommendations to ensure that the governance of local authorities was robust and took account of learning across the sector. The production of an updated model Code of Conduct by the Local Government Association (LGA) was one of the recommendations in the report. The report stated that a model Code of Conduct would create consistency across England and reflect the common expectations of the public regardless of geography or tier of local government.

In response to the report, the LGA produced a model Code. Members of the committee were consulted on three drafts of the Code (twice in 2020 and in January 2021). The LGA draft code has considered comments from Councillors, officers, councils, Independent members, and Members of the public from across the Country.

Whilst there is a statutory requirement for every authority to adopt a code of conduct, the LGA’s model Code is a template and authorities can choose to adopt it either in whole, with amendments considering local circumstances, or continue with the current Code.

The Chair, Hon John Rylance, strongly recommended against recommending to Full Council to adopting the Code in its current form as in his view the Code was defective for three main reasons: -

- The concept was a mess - The 24 pages long Code is accompanied by a 60-page guidance. The Guidance is not consistent with the Code. The potential for divergence between the code and the guidance is too far. The Code makes no reference to the guidance which could lead to confusion. There must be one document which covers the content of the Code and guidance making it easy for a member of public or Member to refer to.
- Drafting error – The Code has been badly drafted leading to misinterpretations.
- No Sanctions – There are no effective means of determining a breach nor any power to sanction erring Members

Dilina Ostborn noted the new Code is a great improvement on the current one. She observed that there is little room for including sanctions as it stands.

In response to a couple of questions from Members, the meeting was informed that the LGA was commissioned to draft the guidance to support the Code. There had been no comments from the Government on the Committee on Standards in Public Life report published in 2019 until recently when the Minister for Levelling Up Communities, Kemi Badenoch, said she was actively considering the recommendations set out in the Committee’s report and will respond “shortly”. The CSPL’s recommendations included that local authorities should be given the power to suspend councillors without allowances for up to six months for breaches of the code of conduct. The big question for the Government to address is whether it wants to legislate for sanctions. The Council could wait until the Government responds to the Committee’s report before it adopts the new Code.

Regarding the perceived conflict between the Code and guidance, the guidance was drafted to complement the Code. The adopted Code would be the document which members of the public would use to understand breaches of the code. There is no expectation that the adopted code would need to be read in conjunction with the guidance. This does not presently happen with the current code

There could appear to be a conflict on the application of the Code due to some loose drafting. Bullet point one and two could have been drafted better. The intention was to provide clarity to a member of the public in relations to action where a member misuses their position as a councillor and actions taken which would give the impression that they are acting as a councillor.

It was suggested that: -

- Committee may review its position after the Government's response to the Committee had been received.
- A section addressing sanction should be included.
- a clear process is required if a complaint is received.

The Committee agreed: -

1. that the comments made tonight be incorporated into a further draft for consideration by the Committee before the election.
2. it could not recommend to Full Council the adoption of the proposed new Member Code of Conduct or that minor changes to the draft code could be delegated to the Monitoring Officer in conjunction with the Chair of the Committee.

Meeting started: 7.00 pm  
Meeting ended: 7.50 pm

**Chair** .....

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**Report to:** Standards Committee and Full Council

**Date:** 7 May 2024 and 22 May 2024

**Subject:** Adoption of a New Member's Code of Conduct

**Report author:** Kayode Adewumi, Assistant Director – Democratic, Registration and Coroner's Services

**Responsible Director:** Grant Deg, Assistant Director of Legal Services and Monitoring Officer

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### SUMMARY

The purpose of this report is to request the Standards Committee to approve the LGA draft Model Code of Conduct for recommendation to Full Council for adoption.

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### RECOMMENDATIONS

That the Standards Committee:

1. Approve the Member Code of Conduct attached as appendix 1 to be recommended to Full Council for adoption.
2. Review and approve the list of sanctions at Appendix 2 available to the Committee if a Councillor breaches the Code.
3. Adopt the LGA's Guidance on the Member Model Code of Conduct Complaints Handling (the "Guidance on complaints handling") at Appendix 3.
4. Approve Arrangements for dealing with complaints alleging a breach of the Members' Code of Conduct at Appendix 4.
5. Delegate authority to the Monitoring Officer, following consultation with the Chair of the Standards Committee, to make any final minor changes to the recommended Member Code of Conduct prior to submission to Full Council.

That Full Council:

Approve the Member Code of Conduct and the attached appendices and amend the Constitution accordingly.

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**Wards Affected:** All

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<b>Our Values</b>	<b>Summary of how this report aligns to the H&amp;F Values</b>
Doing things with local residents, not to them	The adoption of the new Member Code of Conduct will promote confidence in local democracy.

## **Financial Impact**

There are no direct financial implications arising from this report.

*Alex Pygram, Head of Finance, Corporate Services, 9<sup>th</sup> April 2024.*

## **Legal Implications**

Section 27 of the Localism Act 2011 (the Act) requires each local authority to adopt a code of conduct which deals with the conduct that is expected of members and co-opted members, when they are acting in that capacity.

Section 28 of the Act requires the Member Code of Conduct (Code) to be consistent with the Nolan principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

The Code appended at Appendix 1, prepared by the Local Government Association (LGA), is consistent with the Nolan Principles and is suggested national good practice.

The Standards Committee is responsible for standards functions as set out in the constitution and for advising Full Council on the adoption or revision of the Code. Changes to the Code are however decisions reserved to Full Council.

If adopted by Full Council, the Code will replace the Council's current Code and will be published on the Council's website.

*Angela Hogan, Chief Solicitor (Contracts and Procurement) 9<sup>th</sup> April 2024*

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## **Background Papers Used in Preparing This Report - None**

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## **Background**

1. In February 2022, the Committee considered the Local Government Association (LGA) Model Code of Conduct for adoption but could not recommend it to Full Council. The Committee was of the view that the concept was a mess with a 24 page Code accompanied by a 60 page guidance, there were some drafting errors which could lead to misinterpretations and there are no sanctions for erring Members. It however noted that the LGA Model Code was a great improvement on the current one.
2. This report addresses the issues raised at the last meeting and recommends the LGA Model Code of Conduct for adoption with some additional provisions.

## **Purpose of the Code of Conduct**

3. The purpose of the code of conduct is to assist Members in modelling the behaviour that is expected of them and to set out the type of conduct that could lead to action being taken against them. It sets out general principles of



conduct expected of all Councillors and specific obligations in relation to standards of conduct. The Code is intended to protect Councillors' democratic role, encourage good conduct, and safeguard the public's trust and confidence in the role of a councillor.

## **LGA Model Code of Conduct – Appendix 1**

4. In June 2023, the LGA conducted a survey to capture data on the Model Councillor Code of Conduct to gauge the impact of the code on Councils. The total response rate was 110 complete responses out of 317 (35 per cent). 8 out of 33 London Boroughs responded to the survey (24 per cent).

The Key findings of the survey published on 1<sup>st</sup> August is as follows: -

- All respondents to the survey were aware of the Model Councillor Code of Conduct.
  - 82% of respondents said they had adopted the LGA Model Councillor Code of Conduct to at least some extent, with 25% adopting it in full and 40% adopting the Code with some additions or minor amendments.
  - Among Councils which used the Model Code to inform their review, 73% reported it being 'Very useful' and 25% stated it was 'Fairly useful'.
  - A light touch review of the constitutions of Councils that did not respond to the survey indicated that 54% of non-respondent Councils had adopted the Model Code in full or in part.
  - In total across England, 63% of councils have adopted the Model Councillor Code of Conduct either completely or partially and 37% have not.
5. Since December 2020, when the LGA launched the Model Code, 95% of responding Councils have reviewed their Code of Conduct. 85% have conducted a formal review and 10% have informally reviewed their Code. Only 5% of the Councils which took part in this survey have not reviewed their Councillors' Code of Conduct since December 2020.
  6. The Chief Executive and the Monitoring Officer strongly recommend the adoption of the LGA Code with the inclusion of the following components.
  7. Below are the additional provisions added to section 11 of the Code. -
    - **Provision of formal references for Council Employees**
      - 11.1 As a Councillor you must not provide or offer to provide a formal reference for any candidate for employment or promotion with the Council as to do so may be perceived as bringing an unacceptable pressure to bear on the appointing officer and any officer appointed as a result of such reference.
    - **Sex Offenders Register or to Sexual Risk Orders**
      - 11.2 As a Councillor you must inform the Monitoring Officer if you commit any offence under Sexual Offences Act 2003 and are subject to the notification requirements set out in the Sexual Offences Act 2003 (commonly known as being put on the sex offenders register), or subject to Sexual Risk Orders or other orders relating to sexual conduct.

- 11.3 A Councillor who becomes disqualified pursuant to the Local Government Act 1972 section 81A, as inserted by the Local Government (Disqualification) Act 2022 section 1, shall immediately notify the Monitoring Officer of that fact and of the circumstances relating to it.

(This was agreed by Full Council on 19 October 2022).

- **Police Investigation, Arrest or Charge.**

- 11.4 As a Councillor you are required to inform the Monitoring Officer should you be under police investigation, have been arrested or charged of an offence.

### **Proposed Sanctions – Appendix 2**

8. The Localism Act 2011 abolished the statutory standards regime set up by the Local Government Act 2000. Therefore, the range of sanctions prescribed by the 2000 Act are no longer available.
9. If the decision takers finds that a subject Member has failed to follow the Code of Conduct and that they should be sanctioned, the sanctions now available under the Localism Act 2011 are set out in Appendix 2.
10. Failure to comply with a sanction may of itself be a breach of the Code.

### **LGA’s Guidance on the Member Model Code of Conduct Complaints Handling (the “Guidance on complaints handling”) – Appendix 3**

11. This guidance was prepared in response to requests received by the LGA as part of their consultation in 2020 on the LGA Model Councillor Code of Conduct. It is designed to assist monitoring officers, and anyone nominated by a monitoring officer to carry out investigations on their behalf and to assist councillors in understanding the process.

### **Arrangements for dealing with complaints alleging a breach of the Members’ Code of Conduct – Appendix 4**

12. Under Section 28 of the Localism Act 2011, the Council must have in place “arrangements”, under which allegations that a Member or co-opted Member of the Council, or of a Committee or Sub Committee of the Council (as defined by sub section 27 (4) ), has failed to comply with the Members’ Code of Conduct can be investigated and decisions made on such allegations.
13. These “arrangements” set out how a person may make a complaint that an elected or co-opted Member of the Council has failed to comply with the Members’ Code of Conduct (“the Code”) and sets out how the Council will deal with allegations of a failure to comply with the Code.
14. Such arrangements must provide for the Council to appoint at least one Independent Person, whose views must be sought by the Council before it takes a decision on an allegation which it has decided shall be investigated,

and whose views can be sought by the Council at any other stage, or by a Member or co-opted Member against whom an allegation has been made.

15. These arrangements have been updated taking into account the proposed action the Standards Committee or Council, Leader or appropriate official of the Political Groups can take where a Member has failed to comply with the Code of Conduct.

### **Update from the last meeting**

16. The Committee made three suggestions at the last meeting: -

- Committee may review its position after the Government's response to the Committee had been received.

The Government has published its response to the Committee on Standard in public life 2019 report.

- A section addressing sanction should be included.

The LGA has produced a Guidance on the Member Model Code of Conduct Complaints Handling (the "Guidance on complaints handling") which contains examples of sanctions Councils have the power to impose and which matters are reserved to Full Council or need to be referred to a relevant political group. A section addressing sanctions has now been included.

- A clear process is required if a complaint is received.

The LGA's Guidance on the Member Model Code of Conduct Complaints Handling (the "Guidance on complaints handling") has been designed to assist Monitoring Officers and anyone nominated to carry out investigations on their behalf. It clearly sets out guidance for the process of handling a complaint which can be adopted.

### **Proposals and Analysis of Options**

17. Whilst there is a statutory requirement for every authority to adopt a Code of Conduct, the LGA's model Code is a template and authorities can choose to adopt it either in whole or with amendments to take into account local circumstances. This report outlines 2 options for consideration.

### **Options**

#### **Option 1 – Recommend to Full Council to adopt the LGA Model Code appended at Appendix 1 with amendments.**

18. The LGA Code has undergone various rounds of consultation and supporting documents have been produced by the LGA designed to assist the Monitoring Officer to handle complaints. It is appropriate for the Standards Committee to consider and make changes to the Model Code in accordance with national guidance if it adopts this option.

## **Option 2 – Do Nothing and continue with the Council’s existing code of conduct**

19. The Standards Committee should periodically review the Code and consider whether changes should be made. The existing code of conduct has been reviewed by the Monitoring Officer. Therefore, is not recommended to do nothing.

### **Reasons for Decision**

20. There is a statutory requirement for each Council to adopt a code of conduct. Although the Council currently has a Code, the LGA has prepared an updated model code. One of the roles of the Standards Committee is to consider changes to the Code of Conduct. A recommendation from the Standards Committee is therefore needed before a decision can be made by Full Council on the adoption of the Code.

### **LIST OF APPENDICES**

Appendix 1 – Model Code of Conduct

Appendix 2 – Proposed Sanctions

Appendix 3 – LGA’s Guidance on the Member Model Code of Conduct Complaints Handling (the “Guidance on complaints handling”)

Appendix 4 – Arrangements for dealing with complaints alleging a breach of the Members’ Code of Conduct

## **Member Code of Conduct**

### **Definitions**

For the purposes of this Code of Conduct, a “Councillor” means a member or co-opted member of the Council.

### **Purpose of the Code of Conduct**

The purpose of this Code of Conduct is to assist you, as a Councillor, in modelling the behaviour that is expected of you, to provide a personal check and balance, and to set out the type of conduct that could lead to action being taken against you. It is also to protect you, the public, fellow Councillors, council officers and the reputation of local government. It sets out general principles of conduct expected of all Councillors and your specific obligations in relation to standards of conduct.

### **General principles of Councillor conduct**

Everyone in public office at all levels; all who serve the public or deliver public services including Councillors and council officers should uphold the Seven Principles of Public Life also known as the Nolan Principles (Appendix A).

Building on these principles, the following general principles have been developed specifically for the role of Councillor.

In accordance with the public trust placed in you, on all occasions **MUST**

- act with integrity and honesty
- act lawfully
- treat all persons fairly and with respect; and
- lead by example and act in a way that secures public confidence in the role of Councillor.

In undertaking your role you **SHOULD**:

- impartially exercise your responsibilities in the interests of the local community
- not improperly seek to confer an advantage, or disadvantage, on any person
- avoid conflicts of interest
- exercise reasonable care and diligence; and
- ensure that public resources are used prudently in accordance with the Council’s requirements and in the public interest.

### **Application of the Code of Conduct**

This Code of Conduct applies to you as soon as you sign your declaration of acceptance of the office of Councillor or attend your first meeting as a co-opted member and continues to apply to you until you cease to be a Councillor.

This Code of Conduct applies to you when you are acting in your capacity as a Councillor which may include when:

- you misuse your position as a Councillor
- your actions would give the impression to a reasonable member of the public with knowledge of all the facts that you are acting as a Councillor.

The Code applies to all forms of communication and interaction, including:

- at face-to-face meetings
- at online or telephone meetings
- in written communication
- in verbal communication
- in non-verbal communication
- in electronic and social media communication, posts, statements and comments.

You are also expected to uphold high standards of conduct, show leadership and promote the values in this Code at all times when acting as a Councillor and in any public or published communications while you hold office as a Councillor.

The Council's Monitoring Officer has statutory responsibility for the implementation of the Code of Conduct, and you are encouraged to seek advice from the Monitoring Officer on any matters that may relate to the Code of Conduct.

### **Failure to comply with Sanctions.**

Failure to comply with a sanction may of itself be a breach of the Code.

## STANDARDS OF COUNCILLOR CONDUCT

This section sets out your obligations, which are the minimum standards of conduct required of you as a Councillor. Should your conduct fall short of these standards, a complaint may be made against you, which may result in action being taken.

Guidance is included to help explain the reasons for the obligations and how they should be followed.

### General Conduct

#### 1. Respect

As a Councillor you must:

- 1.1 treat other councillors and members of the public with respect.
- 1.2 treat council employees, employees and representatives of partner organisations and those volunteering for the council with respect and respect the role they play.

Respect means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a Councillor, you can express, challenge, criticize and disagree with views, ideas, opinions and policies in a robust but civil manner. You should not, however, subject individuals, groups of people or organisations to personal attack or do anything to undermine your duty as a Councillor to promote equality (see section 2).

In your contact with the public, you should treat them politely and courteously. Rude and offensive behaviour lowers the public's expectations and confidence in councillors.

In return, you have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening you are entitled to stop any conversation or interaction in person or online and report them to the council, the relevant social media provider or the police. This also applies to fellow councillors, where action could then be taken under the Code of Conduct and council employees, where concerns should be raised in line with council's Member/officer protocol.

## **2. Refraining from bullying, harassment and discrimination and duty to promote equality**

In performing your duties as a Councillor and, in any published material, whether spoken or written while you are a Councillor, you must:

- 2.1 not bully any person,
- 2.2 not harass any person,
- 2.3 promote equalities and not behave in such a way so to undermine achieving equality and
- 2.4 not discriminate unlawfully against any person.

The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face on social media, in emails or phone calls, happen in the workplace or at work social events and may not always be obvious or noticed by others.

The Protection from Harassment Act 1997 defines harassment as conduct that causes alarm or distress or puts people in fear of violence and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person.

Unlawful discrimination is where someone is treated unfairly because of a protected characteristic. Protected characteristics are specific aspects of a person's identity defined by the Equality Act 2010. They are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The Equality Act 2010 places specific duties on local authorities. Councillors have a central role to play in ensuring that equality issues are integral to the council's performance and strategic aims, and that there is a strong vision and public commitment to equality across public services.

In November 2023, Full Council unanimously adopted the London Local Government Anti-Racist Statement which is appended to this Code. Councillors are expected to behave in ways that promote the values and ethos of that statement (Attached as appendix C).

Social media is a public forum and the same considerations, including the provisions of this section of the Code, apply as would to speaking in public or writing something for publication, either officially or in a personal capacity.



### 3. Impartiality of officers of the council

As a Councillor you must:

- 3.1 not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the Council.

Officers work for the Council as a whole and must be politically neutral (unless they are political assistants). They should not be coerced or persuaded to act in a way that would undermine their neutrality. You can question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written. However, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

### 4. Confidentiality and access to information

**As a Councillor you must:**

- 4.1 not disclose information:

- a. given to you in confidence by anyone
- b. acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, unless
  - i. you have received 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 legal advice provided that the third party agrees not to disclose the information to any other person; or
  - iv. the disclosure is:
    1. reasonable and in the public interest; and
    2. made in good faith and in compliance with the reasonable requirements of the council; and
    3. I have consulted the Monitoring Officer prior to its release.

- 4.2 not improperly use knowledge gained solely as a result of my role as a Councillor for the advancement of myself, my friends, my family members, my employer or my business interests.

- 4.3 not prevent anyone from getting information that they are entitled to by law.

Local authorities must work openly and transparently, and their proceedings and printed materials are open to the public, except in certain legally defined circumstances. You should work on this basis, but there will be times when it is required by law that discussions, documents and other information relating to or held by the council must be treated in a confidential manner. Examples include personal data relating to individuals or information relating to ongoing negotiations.

## 5. Disrepute

As a Councillor you must

### 5.1 not bring your role or the council into disrepute.

As a Councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other councillors and/or the council and may lower the public's confidence in your or the council's ability to discharge your/its functions. For example, behaviour that is considered dishonest and/or deceitful can bring the council into disrepute. You are able to hold the council and fellow councillors to account and are able to constructively challenge and express concern about decisions and processes undertaken by the council whilst continuing to adhere to other aspects of this Code of Conduct.

## 6. Use of position

As a Councillor you must:

### 6.1 not use, or attempt to use, your position improperly to the advantage or disadvantage of yourself or anyone else.

Your position as a member of the council provides you with certain opportunities, responsibilities, and privileges and you make choices all the time that will impact others. However, you should not take advantage of these opportunities to further your own or others' private interests or to disadvantage anyone unfairly.

## 7. Use of council resources and facilities

As a Councillor you must:

### 7.1 not misuse council resources.

### 7.2 when using the resources of the Council or authorizing their use by others:

- a. act in accordance with the Council's requirements; and
- b. ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the council or of the office to which you have been elected or appointed.

You may be provided with resources and facilities by the council to assist you in carrying out your duties as a Councillor.

Examples include:

- office support
- stationery
- equipment such as phones, and computers
- transport
- access and use of council buildings and rooms.

These are given to you to help you carry out your role as a Councillor more effectively and are not to be used for business or personal gain. They should be used in accordance with the purpose for which they have been provided and the council's own policies regarding their use.

## 8. Complying with the Code of Conduct

As a Councillor you must:

- 8.1 undertake Code of Conduct training provided by the Council.
- 8.2 cooperate with any Code of Conduct investigation and/or determination.
- 8.3 not intimidate or attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings.
- 8.4 comply with any sanction imposed on you following a finding that you have breached the Code of Conduct.

It is extremely important for you as a Councillor to demonstrate high standards, for you to have your actions open to scrutiny and for you not to undermine public trust in the council or its governance. If you do not understand or are concerned about the council's processes in handling a complaint you should raise this with your Monitoring Officer.

## Protecting your reputation and the reputation of the council

### 9. Interests

As a Councillor you must:

- 9.1 register and disclose your interests.

Section 29 of the Localism Act 2011 requires the Monitoring Officer to establish and maintain a register of interests of members of the authority.

You need to register your interests so that the public, council employees and fellow councillors know which of your interests might give rise to a conflict of interest. The register is a public document that can be consulted when (or before) an issue arises. The register also protects you by allowing you to demonstrate openness and a willingness to be held accountable. You are personally responsible for deciding whether or not you should disclose an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be disclosed by you or other councillors when making or taking part in decisions, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.

You should note that failure to register or disclose a disclosable pecuniary interest as set out in **Table 1**, is a criminal offence under the Localism Act 2011.

**Appendix B sets** out the detailed provisions on registering and disclosing interests. If in doubt, you should always seek advice from the Monitoring Officer.

## **10. Gifts and hospitality**

As a Councillor you must:

- 10.1 not accept gifts or hospitality, irrespective of estimated value, which could give rise to real or substantive personal gain or a reasonable suspicion of influence on your part to show favour from persons seeking to acquire, develop or do business with the council or from persons who may apply to the council for any permission, license or other significant advantage.
- 10.2 register with the Monitoring Officer any gift or hospitality with an estimated value of at least £50 within 28 days of its receipt.
- 10.3 register with the Monitoring Officer any significant gift or hospitality that you have been offered but have refused to accept.

In order to protect your position and the reputation of the council, you should exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you because you are a Councillor. The presumption should always be not to accept significant gifts or hospitality. However, there may be times when such a refusal may be difficult if it is seen as rudeness in which case, you could accept it but must ensure it is publicly registered. However, you do not need to register gifts and hospitality which are not related to your role as a Councillor, such as Christmas gifts from your friends and family. It is also important to note that it is appropriate to accept normal expenses and hospitality associated with your duties as a Councillor. If you are unsure, do contact your Monitoring Officer for guidance.

## **11. Provision of formal references for Council Employees**

- 11.1 As a Councillor you must not provide or offer to provide a formal reference for any candidate for employment or promotion with the Council as to do so may be perceived as bringing an unacceptable pressure to bear on the appointing officer and any officer appointed as a result of such reference.

## **12. Sex Offenders Register or to Sexual Risk Orders**

- 12.1 As a Councillor you must inform the Monitoring Officer if you commit any offence under Sexual Offences Act 2003 and are subject to the notification requirements set out in the Sexual Offences Act 2003 (commonly known as being put on the sex offenders register), or subject to Sexual Risk Orders “or other orders relating to sexual conduct”.
- 12.2 A Councillor who becomes disqualified pursuant to the Local Government Act 1972 section 81A, as inserted by the Local Government (Disqualification) Act 2022 section 1, shall immediately notify the Monitoring Officer of that fact and of the circumstances relating to it.

(This was agreed by Full Council on 19 October 2022)

- **Police Investigation, Arrest or Charge.**

11.4 As a Councillor you are required to inform the Monitoring Officer should you be under police investigation, have been arrested or charged of an offence.

## **Appendix A – The Seven Principles of Public Life**

The principles are:

### **Selflessness**

Holders of public office should act solely in terms of the public interest.

### **Integrity**

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must disclose and resolve any interests and relationships.

### **Objectivity**

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

### **Accountability**

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

### **Openness**

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

### **Honesty**

Holders of public office should be truthful.

### **Leadership**

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

## Appendix B Registering interests

Within 28 days of becoming a Councillor or your re-election or re-appointment to office you must register with the Monitoring Officer the interests which fall within the categories set out in **Table 1 (Disclosable Pecuniary Interests)** which are as described in "The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012". You should also register details of your other personal interests which fall within the categories set out in **Table 2 (Other Registerable Interests)**.

Failure to register a disclosable interest is a criminal offence.

**"Disclosable Pecuniary Interest"** means an interest of yourself, or of your partner if you are aware of your partner's interest, within the descriptions set out in Table 1 below.

**"Partner"** means a spouse or civil partner, or a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners.

1. You must ensure that your register of interests is kept up-to-date and within 28 days of becoming aware of any new interest, or of any change to a registered interest, notify the Monitoring Officer.
2. A 'sensitive interest' is as an interest which, if disclosed, could lead to the Councillor, or a person connected with the Councillor, being subject to violence or intimidation.
3. Where you have a 'sensitive interest' you must notify the Monitoring Officer with the reasons why you believe it is a sensitive interest. If the Monitoring Officer agrees they will withhold the interest from the public register.

### Non participation in case of disclosable pecuniary interest

4. Where a matter arises at a meeting which directly relates to one of your Disclosable Pecuniary Interests as set out in **Table 1**, you must disclose the interest, not participate in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest, just that you have an interest. Dispensation may be granted in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest.
5. Where you have a disclosable pecuniary interest on a matter to be considered or is being considered by you as a Cabinet member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it.

### Disclosure of Other Registerable Interests

6. Where a matter arises at a meeting which **directly relates** to the financial interest or wellbeing of one of your Other Registerable Interests (as set out in **Table 2**), you must disclose the interest. You may speak on

the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

## Disclosure of Non-Registerable Interests

7. Where a matter arises at a meeting which **directly relates** to your financial interest or well-being (and is not a Disclosable Pecuniary Interest set out in Table 1) or a financial interest or well-being of a relative or close associate, you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise you must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

8. Where a matter arises at a meeting which **affects** –

- a. your own financial interest or well-being;
- b. a financial interest or well-being of a relative or close associate;

or

- c. a financial interest or wellbeing of a body included under Other Registerable Interests as set out in **Table 2**

you must disclose the interest. In order to determine whether you can remain in the meeting after disclosing your interest the test set out in paragraph 9 should be applied.

9. Where a matter **affects** the financial interest or well-being:

- a. to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and;
- b. a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest.

You may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise you must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation.

If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

10. Where you have an Other Registerable Interest or Non-Registerable Interest on a matter to be considered or is being considered by you as a Cabinet member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it

## Dispensations

11. In cases where a Councillor has a disclosable Pecuniary Interest, they may still be able to participate and vote at the meeting if they have obtained a dispensation from the Monitoring Officer in accordance with the provisions set out below.



12. There are five circumstances in respect of which a dispensation may be granted, namely:

- (a) That so many members of the decision-making body have disclosable pecuniary interests in a matter that it would impede the transaction of the business;
- (b) That, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter;
- (c) That the authority considers that the dispensation is in the interests of persons living in the authority's area;
- (d) That without a dispensation, no member of the committee would be able to participate in this matter;
- (e) That the authority considers that it is otherwise appropriate to grant a dispensation

14 You must make verbal declaration of the existence and nature of any dispensation granted to you at or before the consideration of the item of business or as soon as the interest to which the dispensation relates, becomes apparent. In the event of a blanket dispensation granted to all Councillors on a particular matter, this should be declared by the chairman at the commencement of the meeting.

#### **General Dispensations Granted by the Monitoring Officer**

15. The following general dispensations have been granted by the Monitoring Officer to all Councillors to enable them to be present, speak and vote where they would otherwise have a Disclosable Pecuniary Interest on the grounds that it is appropriate to grant a dispensation to allow all Councillors to participate fully in the following matters:

- a) Housing: where the Councillor (or spouse or partner) holds a tenancy or lease with the Council as long as the matter does not only relate to the Councillor's particular tenancy or lease,
- b) School meals or school transport and travelling expenses where the Councillor is a parent or guardian of a child in full time education, or is a parent governor of a school, provided that the matter does not only relate to the particular school which the child attends.
- c) Housing Benefit: where the Councillor (or spouse or partner) directly receives housing benefit in relation to their own circumstances.
- d) Decisions in relation to any Council Tax Benefit if the Councillor or their spouse or partner are in receipt of any such benefit.
- e) Membership of the Local Government Pension Scheme of either the Councillor or their spouse or partner.

For the avoidance of doubt and to ensure adherence to the Member Code of Conduct, Councillors should seek guidance from the Council's Monitoring Officer.

**Table 1: Disclosable Pecuniary Interests**

This table sets out the explanation of Disclosable Pecuniary Interests as set out in the [Relevant Authorities \(Disclosable Pecuniary Interests\) Regulations 2012](#).

<b>Subject</b>	<b>Description</b>
<b>Employment, office, trade, profession or vocation</b>	Any employment, office, trade, profession or vocation carried on for profit or gain.
<b>Sponsorship</b>	Any payment or provision of any other financial benefit (other than from the council) made to the Councillor during the previous 12-month period for expenses incurred by him/her in carrying out his/her duties as a Councillor, or towards his/her election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labor Relations (Consolidation) Act 1992.
<b>Contracts</b>	Any contract made between the Council and  (a) the Councillor; or (b) the spouse or civil partner of the Councillor; or (c) the person with whom the Councillor is living as if they were spouses/civil partners; or (d) a firm in which any of the parties in (a-c) is a partner, or (e) an incorporated body in which any of the parties in (a-c) is a director* or (f) a body in which any of the parties in (a-c) has a beneficial interest in the securities) and the council - (i) under which goods or services are to be provided or works are to be executed; and (ii) which has not been fully discharged.

<b>Land and Property</b>	<p>Any beneficial interest in land which is within the area of the council.</p> <p>'Land' excludes an easement, servitude, interest or right in or over land which does not give the Councillor or his/her spouse or civil partner or the person with whom the Councillor is living as if they were spouses/ civil partners a right to occupy or to receive income.</p>
<b>Licenses</b>	<p>Any license (alone or jointly with others) to occupy land in the area of the council for a month or longer</p>
<b>Corporate tenancies</b>	<p>Any tenancy where (to the Councillor's knowledge) -</p> <p>(a) the landlord is the council; and</p> <p>(b) the tenant is a body that</p> <ul style="list-style-type: none"> <li>(i) the Councillor; or</li> <li>(ii) the spouse or civil partner of the Councillor; or</li> <li>(iii) the person with whom the Councillor is living as if they were spouses or civil partners is a partner of, a director* of, or has a beneficial interest in, the securities* in</li> </ul>
<b>Securities</b>	<p>Any beneficial interest in securities* of a body where -</p> <p>(a) that body (to the Councillor's knowledge) has a place of business or land in the area of the council; and</p> <p>(b) either—</p> <ul style="list-style-type: none"> <li>I) the total nominal value of the securities* exceeds £25,000 or one hundredth of the total issued share capital of that body;</li> <li>or</li> <li>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; <ul style="list-style-type: none"> <li>(a) the Councillor; or</li> <li>(b) the spouse or civil partner of the Councillor; or</li> <li>(c) the person with whom the Councillor is living as if they were spouses or civil partners</li> </ul> </li> </ul> <p>has a beneficial interest which exceeds one hundredth of the total issued share capital of that class.</p>

\* 'director' includes a member of the committee of management of an industrial and provident society.

\* '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.

## Table 2: Other Registrable Interests

You must register as an Other Registerable Interest:

- a) any unpaid directorships
- b) any body of which you are a member or are in a position of general control or management and to which you are nominated or appointed by your authority
- c) any body
  - (i) exercising functions of a public nature
  - (ii) directed to charitable purposes or
  - (iii) 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

## The London Local Government Anti-Racist Statement

**Local authorities in London are committed to achieving racial equality because we recognise that persistent racial inequalities are unacceptable and adversely affect all Londoners.**

We know that some groups are more likely to face inequality, experience poor outcomes and to live in poverty. We also know that this is sometimes used as an excuse not to acknowledge racial inequality. But groups don't happen to be more disadvantaged by chance. Structural disadvantage is rooted in racism and discrimination that is both historical and current.

We do have legislation to protect against overt racism, negative attitudes and treatment, but many of the systems that discriminate do so because of more subtle and covert unchecked "prejudice, assumptions, ignorance, thoughtlessness and racist stereotyping."

This wording draws on the Macpherson Report 1999 definition of institutional racism which is still relevant today. This is a dehumanising process that is unacceptable and communities are tired of being treated this way.

We cannot let another generation down by not responding what remains a clear and compelling articulation of what must change.

## **Appendix 2 - Sanctions**

Where a panel finds that the subject member has been in breach of the code, that panel (or substitutes if any member is unavailable) may take any of the steps set out below. Where the monitoring officer has referred the question of sanction to a panel, the panel may take any of the steps set out below. Where a report or recommendation is made to any person or body, that person or body may take any of the steps set out below.

When deciding upon a sanction or what other action to take, the decision makers should ensure that it is reasonable, proportionate and relevant to the subject member's conduct and, if relevant, past conduct. The decision maker may take one, or a combination or any other sanction it decides is reasonable and proportionate.

### **A Sub Committee of the Standards Committee**

A Sub Committee may take any one or more of the following steps:

- (1) determine that the matter requires no further action.
- (2) refer the matter to or back to the monitoring officer to seek or to continue to seek an informal resolution to the matter, to be referred back to the panel if that fails.
- (3) report its findings in respect of the subject member's conduct to council
- (4) issue a formal censure
- (5) recommend to the subject member's group leader (or in the case of un-grouped councillors, recommend to council) that they be removed from any or all committees or sub-committees of the authority
- (6) recommend to the leader of the authority that the subject member be removed from positions of responsibility
- (7) instruct the monitoring officer to arrange training for the subject member
- (8) recommend to council that the subject member be removed from all outside appointments to which they have been appointed or nominated by the authority
- (9) recommend to council that it withdraws facilities provided to the subject member by the authority for a specified period, such as a computer, website and/or email and internet access
- (10) recommend to council that it excludes the subject member from the authority's offices or other premises for a specified period, with the exception of meeting rooms as necessary for attending council, committee and sub - committee meetings and/or restricts contact with officers to named officers only
- (11) if relevant recommend to council that the subject member be removed from their role as leader of the authority
- (12) if relevant recommend to the secretary or appropriate official of a political group that the Councillor be removed as group leader or other position of responsibility.

### **Council, Leader or appropriate official of the Political Groups**

Where a report or recommendation has been made to the council or other body or person the council or that body or that person may take any one or more of the following steps:

- (1) note the report.
- (2) follow and act upon the recommendation.
- (3) reject the report or recommendation with reasons.
- (4) refer the matter back to the panel with or without a recommendation to take any other step which had been open to the panel.
- (5) impose any other step which had been open to the Council, Leader or appropriate official of the Political Group.



# Guidance on Member Model Code of Conduct Complaints Handling

This guidance, together with the guidance prepared for councillors to help them understand and follow the revised Local Government Association (LGA) Model Councillor Code of Conduct (2020), has been prepared in response to requests received by the LGA as part of our consultation in 2020 on the LGA Model Councillor Code of Conduct. It is designed to assist monitoring officers, and anyone nominated by a monitoring officer to carry out investigations on their behalf and to assist councillors in understanding the process. Local authorities may have different practices and arrangements in place. However, the principles of fairness, proportionality, transparency and impartiality will still apply.

21 Sep 2021

## 1. Introduction

It is vital that the public has confidence in the high standards of local government, and that there is transparency about the conduct of councillors and the mechanisms for dealing with alleged breaches of the Codes of Conduct. Equally, it is vital that councillors themselves have confidence in these mechanisms, and that investigations into such complaints abide by the principles of natural justice.

Any reference in this guidance to 'you' is a reference to a monitoring officer, a deputy monitoring officer, or any person nominated by them to carry out their functions. Furthermore, any reference to the 'subject



member' is a reference to the councillor who is the subject of the allegation and references to an Independent Person means an Independent Person appointed under s. 28(7) of the Localism Act 2011.

Under the Model Code of Conduct, councillors are required to cooperate with any Code of Conduct investigation and respect the impartiality of officers. This is in recognition of the key role monitoring officers have in ensuring what might be contentious and difficult issues are handled fairly. This guidance is to support them in carrying out their duties.

The system of regulation of standards of councillor conduct in England is governed by the Localism Act 2011. Local authorities must have a Code of Conduct for councillors, which must be consistent with the "Seven Principles of Public Life", selflessness, honesty, integrity, objectivity, accountability, openness and leadership.

Under Section 28 of the Localism Act 2011, local authorities (other than parish and town councils) must have in place 'arrangements' under which allegations that an elected or co-opted councillor of the authority or of a town or parish council within the principal authority's area has failed to comply with the authority's Code of Conduct can be considered and decisions made on such allegations. It is for the principal authority to decide the details of those arrangements, but they must appoint at least one Independent Person whose views are to be taken into account before making a decision on a complaint that they have decided to investigate.

This guidance is for guidance purposes only and where it differs from the authority's own arrangements under the Localism Act then the authority's arrangements should be followed.

s28 (6) A relevant authority other than a parish council must have in place—

- (a) arrangements under which allegations can be investigated, and
- (b) arrangements under which decisions on allegations can be made.

(7) Arrangements put in place under subsection (6)(b) by a relevant authority must include provision for the appointment by the authority of at least one independent person—

(a) whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate, and

(b) whose views may be sought—

(i) by the authority in relation to an allegation in circumstances not within paragraph (a),

(ii) by a member, or co-opted member, of the authority if that person's behaviour is the subject of an allegation, and

(iii) by a member, or co-opted member, of a parish council if that person's behaviour is the subject of an allegation and the authority is the parish council's principal authority.

The case of R (Harvey) v Ledbury Town Council 2018 (R Taylor v Honiton TC) made clear that allegations of a failure to follow an authority's Code of Conduct can only be considered in accordance with the principal authority's standards arrangements. Though the conduct complained of may give rise to a staff grievance, for example, the subject member cannot receive a sanction outside of the standards arrangements.

## **Background**

More than 100,000 people give their time as councillors. The majority do so with the very best motives, and they conduct themselves in a way that is beyond reproach. However, public perception tends to focus on a minority who in some way abuse their positions or behave badly. Even where behaviour does fall short most issues are resolved easily through a simple apology or through swift action from an officer, a political group or meeting chair. Reference to the Code of Conduct and a formal complaint are very much the last resort where issues remain unresolved.

Anyone who considers that a councillor may have breached the Code of Conduct may make a complaint to that councillor's local authority, usually via the principal authority's monitoring officer. Each complaint must be assessed to see if it falls within the authority's legal jurisdiction, for example whether the subject member was acting as a councillor or representative of the authority at the time. A decision must then be made on whether or not some action should be taken, either as an investigation or some other form of action.

When a matter is referred for investigation or other action, it does not mean that a decision has been made about the validity of the allegation. It simply means that the authority believes the alleged conduct, if proven, may amount to a failure to comply with the Code of Conduct and that some action should be taken in response to the complaint.

The process for dealing with Code of Conduct complaints must be fair and be seen to be fair.

## **2. Initial assessment of complaints**

### **Responsibilities**

The law does not specify how complaints are to be handled. However, in most authorities, initial assessment of complaints that a councillor may have breached the Code of Conduct is usually carried out by the authority's monitoring officer. In other authorities all complaints go to an assessment committee of councillors for consideration. This is a matter for local choice, but the authority should be satisfied that whatever assessment arrangements it adopts, the assessment can be carried out fairly, objectively and without undue delay.

Even where the matter is normally delegated to the monitoring officer, they may reserve the right to refer the matter to a committee of councillors, for example where the monitoring officer has a conflict of interest or the matter is particularly high-profile.

Whichever approach (or any other) is taken, it is important to have published criteria against which complaints can be assessed to aid transparency and consistency (see below).

Independent Persons (IPs) are people who are neither councillors nor officers of the authority but are appointed under Section 28 of the Localism Act 2011 to work with the authority to support them with Code of Conduct complaints and standards issues. Under the Localism Act their views must be sought and taken into account on any matter under investigation, the subject member may seek their views at any stage and the authority may also seek their views at any other stage of the process.

The Committee on Standards in Public Life has recommended that authorities should also seek the views of the IP when initially assessing a case as a further way of ensuring consistency and enhancing public confidence in the framework.

## **Pre-assessment**

### **Publicising the complaints system**

Local authorities, including parish and town councils, should publish information on their websites about the Code of Conduct, about what can and cannot be considered as a complaint, how to complain (including a standard complaints form if appropriate) and where Code of Conduct complaints should be sent to. They should also provide clear details of the procedures they will follow in relation to any written allegation received about a councillor.

Where a principal authority is responsible for handling complaints about its parish and town councillors, it should also make this clear.

### **The submission of complaints and accessibility**

Local authorities should consider that some complainants will not know where to direct their complaint. Some complaints may also need to be considered through more than one of an authority's complaint processes.

Officers dealing with any incoming complaints to the authority will therefore need to be alert to a complaint that a councillor may have breached the Code. If a written complaint specifies or appears to

specify that it is in relation to the Code, then it should be passed to the relevant person for consideration.

Local authorities may produce a complaint form which sets out all the information they expect to receive from a complainant. This can be helpful to both the authority and the complainant. However, authorities cannot compel complainants to use a complaint form.

If an authority does not have a complaint form, it should nevertheless give clear guidelines as to the information that complainants need to provide.

The required information may include:

- the complainant's name, address and other contact details;
- who the complainant is, for example, a member of the public, fellow councillor or officer;
- who the complaint is about and the authority or authorities that the councillor belongs to;
- details of the alleged misconduct including, where possible, dates, witness details and other supporting information;
- equality monitoring data if applicable, for example the nationality of the complainant.

The authority should also make it clear that only in exceptional circumstances would a complainant be granted confidentiality and that as a matter of fairness the complainant's identity would normally be disclosed to the subject member (see section below on confidentiality).

A complaint may arise from an expression of dissatisfaction or concern, which come about in a number of ways initially, including verbally. In such cases, the monitoring officer should ask the complainant whether they want to formally put the matter in writing. If the complainant does not, then the monitoring officer should consider the options for informal resolution to satisfy the complainant. If it is a significant complaint, which the complainant is unwilling to commit to writing (for example because they feel they are being bullied), the monitoring officer may wish to reassure the complainant about confidentiality and draft the complaint for agreement with the complainant.

Under the Localism Act, however, formal complaints must be submitted in writing. This include electronic submissions, though the requirement for complaints to be submitted in writing must be read in conjunction with the Equality Act 2010 and the duty to make adjustments. For example, a complainant may have a disability that prevents them from making their complaint in writing. In such cases, authorities may need to transcribe a verbal complaint and then produce a written copy for approval by the complainant or the complainant's representative.

Authorities should also consider what support should be made available to complainants.

Authorities should not normally allow anonymous complaints as that would be against the principles of transparency and fairness and make matters much more difficult to investigate. However, there may be exceptional compelling reasons why an anonymous complaint could be accepted without detriment to the process and where the allegation can be evidenced without reference to the complainant. For example, if an anonymous complainant submitted a video showing the councillor acting inappropriately or sent in documentation disclosing an undeclared directorship in a matter relating to local authority business, it may be considered that the public interest in investigating the allegation outweighed the issue of anonymity.

Please note that anonymity and confidentiality are different concepts. Anonymity means the complainant is not known whereas confidentiality means that the complainant is known to the authority but their identity has been withheld for a specific reason.

Complaints which identify criminal conduct or a breach of other regulations by any person may be referred to the police or any other relevant regulatory agency for consideration, in accordance with any agreed protocol. In such cases the authority, in agreement with the other body, should consider pausing the assessment of the complaint pending action by the other body.

## **Acknowledging receipt of a complaint**

When a complaint is received by the local authority the relevant officer should acknowledge its receipt and set out the process to be taken to assess the complaint with an agreed timescale.

The authority may also notify the subject member that a complaint has been received and invite their comments on it within an agreed timescale. In deciding whether or not to notify the subject member they would need to weigh up different factors. For example, would telling the subject member risk that the complainant may be intimidated or evidence destroyed, or if the complaint seems to fall outside of the jurisdiction of the Code is there any need to hear from the councillor? However, the presumption would normally be to invite the subject member to comment as this can help the authority to decide whether a matter can be dealt with informally without the need for a formal investigation, for example.

If the authority does tell the subject member about the complaint, the relevant officer will need to be satisfied that they have the legal power to disclose the information they choose to reveal. Additionally, the impact of the Data Protection Act 2018 and UK General Data Protection Regulation (GDPR) should be considered to ensure that any personal data is processed fairly and lawfully at every stage of the process. Reasonable expectations of privacy need to be balanced against the public interest.

## **Pre-assessment enquiries and reports**

When the authority notifies the subject member that a complaint has been made about them, and seeks any relevant comments, the subject member should be given a short timeframe in which to submit their comments such as 10 working days from the date of the notification. In parish cases the principal authority may also notify the clerk and may ask for relevant factual information which would help in the assessment of the complaint.

In notifying the subject member it should be made clear that no judgment one way or the other has been made about whether the allegation is in fact true.

The authority may contact complainants for clarification of their complaint if they are unable to understand the document submitted.

The authority may also carry out preliminary enquiries, for example whether the member was in fact present at the meeting to which the complaint relates. However, such enquiries should be limited to readily-available public records so as not to extend to a more formal investigation.

In authorities where the assessment is carried out by a committee rather than an officer, they may decide that they want the monitoring officer, or other officer, to prepare a short summary of a complaint for the committee to consider. This could, for example, set out the following details:

- Whether the complaint is within jurisdiction;
- The paragraphs of the Code of Conduct the complaint might relate to, or the paragraphs the complainant has identified;
- A summary of key aspects of the complaint if it is lengthy or complex;
- Any further information that the officer has obtained to assist the committee with its decision, for example initial comments from the subject member, minutes of meetings or a copy of a councillor's entry in the register of interests. However, it should be noted that these pre-assessment enquiries should not be carried out in such a way as to amount to an investigation. For example, they should not extend to interviewing potential witnesses, the complainant, or the subject member (although they may have been asked for initial comments) as that would be a matter for any formal investigation should the case proceed;
- The views of the Independent Person.



## Assessment

### Initial tests

The assessment of a complaint would normally be a two-step process, described by the Committee on Standards in Public Life as the ‘can/should’ stages – the first stage being ‘can we deal with this complaint?’ and the second being ‘should we deal with this complaint?’.

The first step would be a jurisdictional test and would assess whether the complaint is:

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

If the complaint fails one or more of these tests it cannot be investigated as a breach of the Code, and the complainant must be informed that no further action will be taken in respect of the complaint. If there is any doubt, however, the allegation should proceed to the second stage. For example, if it is unclear whether the councillor was acting ‘in capacity’ or not then the second stage of assessment criteria should be used.

Where a matter is being referred to a committee of councillors for assessment, we would expect the monitoring officer only to pass cases which have met the jurisdictional threshold.

### Second-stage criteria

Once these jurisdictional tests have been met the authority should have further criteria against which it assesses complaints and decides what action, if any, to take. These criteria should reflect local circumstances

and priorities and be simple, clear and open. They should ensure fairness for both the complainant and the subject member.

Assessing all complaints by established criteria will also protect the authority from accusations of bias. Assessment criteria can be reviewed and amended as necessary, but this should not be done during consideration of a matter.

In drawing up assessment criteria, authorities should bear in mind the importance of ensuring that complainants are confident that complaints about councillor conduct are taken seriously and dealt with appropriately. They should also consider that deciding to investigate a complaint or to take other action will cost both public money and the officers' and councillors' time. This is an important consideration where the matter is relatively minor.

The following non-exclusive factors may help an authority to develop local criteria:

1. Does the complaint contain sufficient evidence to demonstrate a potential breach of the Code?
2. Are there alternative, more appropriate, remedies that should be explored first?
3. Where the complaint is by one councillor against another, a greater allowance for robust political debate (but not personal abuse) may be given, bearing in mind the right to freedom of expression;
4. Is the complaint in the view of the authority malicious, politically motivated, or 'tit for tat'?
5. Whether an investigation would not be in the public interest or the matter, even if proven, would not be serious enough to warrant any sanction (see guidance on hearings);
6. Whether a substantially similar complaint has previously been considered and no new material evidence has been submitted within the current administration;
7. Whether a substantially similar complaint has been submitted and accepted;
8. Does the complaint relate to conduct in the distant past? This would include consideration of any reason why there had been a

delay in making the complaint;

9. Was the behaviour that is the subject of the complaint already dealt with? For example, through an apology at the relevant meeting;

10. Does the complaint actually relate to dissatisfaction with a local authority decision rather than the specific conduct of an individual?

And

11. Is it about someone who is no longer a councillor or who is seriously ill?

Some of these criteria are inevitably subjective. For example, who decides if a complaint is trivial? The complainant may feel they have a genuine grievance even if to a third party it seems relatively minor.

Equally even if a complaint seems to be 'politically motivated' it may nevertheless be highlighting a potentially significant breach of the Code which could not be ignored.

Such criteria can therefore only ever be indicative, and authorities always need to take into account the public interest in taking further action on a complaint. Assessment criteria should be adopted which take this into account so that authorities can be seen to be treating all complaints in a fair and balanced way.

In assessing any case, an authority may want to consider the following questions in the context of local knowledge and experience:

Has the complainant submitted enough information to satisfy the authority that the complaint should be referred for investigation or other action?

If the answer is no, it should be made clear to the complainant that there is insufficient evidence to make a decision so unless, or until, further information is received, the authority will take no further action on the complaint. When doing so, the complainant should be given a clear timeline to submit any further evidence or otherwise the file will be closed.

### **Is the complaint about someone who is no longer a councillor?**

The councillor may have been a councillor at the time of the alleged misconduct but may have since ceased to be a councillor. The authority will need to consider whether it still has jurisdiction. If so, then the authority may not want to take any further action unless they believe the matter is so serious, and the councillor may return to the authority that it would still be in the public interest to pursue the matter. If they do pursue the matter the range of potential sanctions is inevitably more limited and may extend only to publication of the report and a formal censure.

If the councillor is still a member of another principal authority, the authority may wish to refer the complaint to that authority if it would also fall within their code of conduct.

If a councillor is still a member of a town or parish council within the principal authority's area, then the principal authority can still deal with the matter if it relates to matters at the town or parish council.

### **Is the complaint about something that happened so long ago that there would be little benefit in taking action now?**

Where a matter happened some time ago then the authority may decide that any further action would be unwarranted. For example, an investigation may be difficult as people's recollections may have faded. The authority may therefore wish to set a time limit for receiving complaints of say six months under normal circumstances. However, it should also be borne in mind that there may be a good reason why a complaint is 'late' – for example, victims of bullying or harassment may have needed time and courage before coming forward or been made aware of other incidents which has prompted them to make a complaint about things in the past.

### **Does the complaint appear to be trivial, malicious, politically motivated or tit-for-tat?**

Where a complaint is rejected on these grounds the authority should be very clear about the reasons why and discourage politically motivated or tit-for-tat complaints in particular. It will, however, need to satisfy itself that, regardless of any alleged motive of the complainant, the complaint

itself is not sufficiently serious to warrant any further action regardless of the motive. A complaint may appear on the face of it to be politically motivated, for example, because of the timing of its submission, but if it raises sufficiently serious matters it would nevertheless need to be considered fully.

The assessment criteria that the authority adopts should be made publicly available on its website.

## **Decision**

### **Initial assessment decisions**

Where the decision has been delegated to an officer, the authority should aim to complete their initial assessment of an allegation within 15 working days of receiving a complaint. Where they have asked the subject member for comment, they should allow them up to 10 working days to comment and then make the assessment normally within five working days of any comments being received.

Where the subject member has not commented, and the ten working days has elapsed (and they have not provided a reasonable excuse for the delay) the assessment should nevertheless be made within five working days after that.

Where an Independent Person is invited to give their views prior to assessment these should be done at least a day before the final deadline. Where the Independent Person meets in person with the officer to discuss the case, they should nevertheless record their views in writing for the record after the meeting.

Where the assessment is sent to a committee, the committee should be set up along similar timescales. Any inordinate delay in assessing cases can have a damaging effect on trust in the system and is unfair for both the complainant and subject member.

The authority may reach one of the three following decisions on an allegation:

- no further action should be taken on the allegation;

- the matter should be dealt with through a process of informal resolution in the first instance (see section on informal resolution) or;
- the matter should be referred for a formal investigation (see section on investigations).

### **Decision to take no action**

The authority may decide that no further action is required in respect of a complaint based on its agreed criteria.

Where the authority reaches this decision it should be clear that, where an allegation may have disclosed a potential breach of the Code it has nevertheless made no finding of fact as it does not believe it is in the public interest to pursue the matter any further. Where it has been concluded that no potential breach of the Code of Conduct is disclosed by the complaint (for example because it is outside of jurisdiction), no further formal action can be taken by the authority in respect of it.

There should be no right of appeal against a decision not to take any further action if the system is to be efficient and proportionate.

Where the decision was taken by an officer, the monitoring officer may wish to report to the relevant committee periodically on cases in which there has been no further action taken. These cases should be reported confidentially with the aim of giving the committee a picture of issues within the authority and enabling it to assure itself that decisions made have been broadly reasonable in the whole. They are not there to re-open issues.

### **Referral for informal resolution**

When the authority decides that they should seek to resolve the matter informally in the first instance they should refer to the separate guidance on informal resolution.

## **Referral for investigation**

When the authority decides a matter should be referred for investigation it should refer to the separate guidance on investigations.

## **Notification of assessment decisions**

If the authority decides to take no action over a complaint, then as soon as possible after making the decision they should notify the complainant and subject member of the decision and set out clearly the reasons for that decision, including the views of the independent person.

If the authority decides that the complaint should be referred for formal investigation or informal resolution, they should notify the complainant and subject member, stating what the allegation was and what further action is being taken.

In such cases the authority will need to decide whether or not to give the subject member a copy of the full complaint and whether the complainant, where they had been granted confidentiality, should remain confidential for the time being. In doing so they would need to decide whether doing so would be against the public interest or would prejudice any future investigation. This could happen where it is considered likely that the subject member may intimidate the complainant, or any witnesses involved. It could also happen where early disclosure of the complaint may lead to evidence being compromised or destroyed. If only one part of a complaint has been referred for action or the complaint is against more than one councillor then the authority may wish only to disclose the relevant parts of the complaint. Any decision to withhold information should be kept under review as circumstances change.

If the subject member is a parish or town councillor and the authority has decided to take some action with regard to the complaint, their parish or town council should also be notified via the clerk. In doing so the authority will need to consider whether any of the information is confidential.

A decision notice should be issued within one working day of the decision being made.

## **Independent Person**

If the views of the Independent Person were sought, this should be made clear in the decision letter and state whether the Independent Person agreed with the decision or not. Where the Independent Person did not agree with the decision, the notification should explain how the authority took account of those views in reaching a different decision – for example in concluding that the matter was not in fact within the scope of the Code but was a private matter.

## **Other issues to consider**

### **Assessments Committee**

Where a committee is convened to assess an allegation, it is an ordinary committee of the authority if it is making the decision. This means it must reflect political proportionality unless that has been waived and it is subject to the notice and publicity requirements under Schedule 12A of the Local Government Act 1972.

However, while there should be a presumption that a hearing following an investigation would normally be held in public (see guidance on hearings) there will be a strong presumption towards an assessment being treated as exempt information. The meeting may have to consider unfounded and potentially damaging complaints about councillors, which it would not be appropriate to make public because of the risk of unfounded reputational damage or the potential risk of prejudicing any future investigation.

Nevertheless, as for any meeting dealing with exempt or confidential information a summary of the outcome would need to be published setting out the main points considered such as:

- the conclusions on the complaint;
- the reasons for the conclusion.



## **Assessments delegated to officers**

Where an assessment decision has been delegated to an officer there is no legislative requirement for a decision notice to be published. Nevertheless, the authority should consider whether an assessment notice should be published in the public interest or not in the same way as they would if it were a committee decision.

### **What if the subject member is member of more than one authority?**

There may be times when the same complaint is made against a member of more than one authority. For example, an allegation may allege that a councillor has failed to register an interest at both district and county level.

In such a case the two authorities should have an agreement about who would carry out the initial assessment (if necessary, under an agreed delegation) and any subsequent action. This avoids the risk of two different actions or conclusions being reached.

The matter would not arise where the councillor was on a town or parish council and also on the 'principal' district, unitary or metropolitan council as the principal authority is responsible for handling both complaints. It could however arise if the parish or town councillor were also on the county council in a two-tier area.

## **3. Informal resolution**

When dealing with allegations, an authority can decide that some form of action other than investigation or 'informal resolution' is needed at a local level. The authority may also decide that informal resolution may be more appropriate than referring a matter to a hearing following completion of an investigation. Where the authority has delegated such a decision to the monitoring officer, we would expect the monitoring officer to seek the views of an Independent Person before taking such a course of action. Where the delegation is held by a committee, we would expect the committee to consult its monitoring officer and an Independent Person before reaching that decision. You may also consider seeking an informal resolution part way through an

investigation rather than completing an investigation if it becomes clear the matter could be resolved amicably. Where informal resolution relates to a formal investigation you must seek the views of an Independent Person before halting or pausing the formal investigation.

### **Why seek an informal resolution?**

An informal resolution is a more proportionate way of dealing with relatively minor allegations, one-off incidents or underlying disagreements between individuals. It should be borne in mind however that dealing with a matter by alternative resolution at the initial assessment stage is making no finding of fact as there has been no formal investigation, so you would need to balance the interest in resolving a matter quickly and satisfactorily against the interest in the complainant having their complaint upheld or the member's desire to clear their name.

Matters which you might consider appropriate for informal resolution may include:

- the same particular breach of the Code by many members, indicating poor understanding of the Code and the authority's procedures;
- a general breakdown of relationships, including those between members and officers, as evidenced by a pattern of allegations of minor disrespect, harassment or bullying to such an extent that it becomes difficult to conduct the business of the authority;
- misunderstanding of procedures or protocols;
- misleading, unclear or misunderstood advice from officers;
- lack of experience or training;
- interpersonal conflict;
- allegations and retaliatory allegations from the same members;
- allegations about how formal meetings are conducted;
- allegations that may be symptomatic of governance problems within the authority, which are more significant than the allegations in themselves.

## **When would informal resolution not be appropriate?**

Complaints should not be referred for informal resolution when you believe an investigation is in the public interest, for example because of the seriousness of the allegations or because it demonstrates a pattern of behaviour. In addition, an allegation which challenges the councillor's honesty or integrity may be better dealt with as a formal investigation because of the potential reputational issues.

Similarly, an informal resolution is not intended to be a quick and easy means of dealing with matters which you consider to be too trivial or time-consuming to investigate. Genuinely trivial cases are better dealt with by a decision to take no action (see guidance on initial assessments). While an alternative resolution can be a cost-effective way of getting a matter resolved for individual cases, it is not a quick fix particularly where there are more systemic issues. It should not be seen as a routine or cheap way of disposing of an allegation, as it can sometimes be a drawn out, costly and time-consuming process.

You should also take care to avoid it appearing to the complainant that deciding to seek an alternative resolution is sweeping matters under the carpet. The decision should demonstrate to the complainant that their complaint is being addressed and being taken seriously, although perhaps as part of a wider issue.

Importantly, if a complaint merits being investigated, then it should be referred for investigation.

## **Who can be the subject of informal resolution?**

Informal resolution could either be directed at the councillor who is the subject of the complaint, both the subject member and the complainant, or at the authority more generally.

For example, it may be a request that a councillor apologise for remarks made in the heat of the moment. Or you may decide that the authority's resources are better used trying to ensure that the subject member and complainant attempt some form of mediation or reconciliation, or it may be about wider issues for your authority that are raised by the case. For

example, a relatively minor alleged infringement of the Code, by a councillor who is accused of misusing their authority's IT equipment, might identify shortcomings in the authority's policy about councillors using that equipment. In such a case you might decide that the best way to deal with the allegation is to ask the authority to review the policy and make recommendations for improvement.

If you decide to seek an informal resolution when assessing a complaint, you should be clear that an investigation into that complaint will not take place provided you are satisfied that the party at whom the resolution is directed has acted in good faith in seeking to comply with it.

### **Who should you inform if seeking informal resolution?**

If you believe a complaint can be dealt with through informal resolution you should consult with the Independent Person and you should inform the subject member and the complainant of your intention and give them the opportunity to comment before you make your final decision. However, you should simply be trying to assess how successful the resolution might be rather than giving them a veto. For example, a complainant may not be happy at receiving an apology as they may expect the matter to be fully investigated but you may nevertheless decide that an apology is reasonable and best use of resources in the circumstances.

When informal resolution has been completed you should notify:

- the subject member;
- the complainant;
- the relevant Independent Person;
- the relevant town or parish council if the subject member is a town or parish councillor.

In addition, you should report back to the standards committee or similar where you have one at the next available opportunity on the outcome of your actions. This would allow the committee to take a

holistic view of whether informal resolution is being used appropriately and effectively in the round but should not be seen as an opportunity to re-open the case.

### **What sort of actions might form an alternative resolution?**

Alternative resolution can take a wide range of forms. When considering an alternative resolution, you need to think if the complaint highlights specific issues. For example, if it is against a relatively new councillor, a councillor who has taken on a new role or to do with relatively new procedures is there an issue about lack of understanding or training?

Training may be in anything you consider appropriate, such as:

- the Code of Conduct
- authority procedures and protocols
- chairing skills
- working with external bodies
- wider governance issues
- planning and licensing
- working with officers
- use of authority resources.

Where the issue is more of an inter-personal dispute it may simply be asking the subject member to apologise or to withdraw a remark. You may need to be clear that this does not necessarily mean that the councillor has been found to have breached the Code of Conduct where there has been no formal investigation. It is therefore important where you decide on this course at initial assessment that the action proposed does not imply this. You cannot require the subject member to apologise although you may take that into consideration when thinking of the next steps. Of course, in those cases where the councillor has admitted the breach and offered an acceptable apology, you may decide that no further action is necessary.

Where the allegation highlights wider procedure or cultural issues within the authority, you may wish to consider training for all councillors as a whole or mentoring of particular councillors, or work as an authority on conflict resolution.

You may also decide that the allegation highlights authority procedural failings rather than the specific fault of an individual so you may want to develop or review particular authority protocols and procedures.

Where the allegation is one of a series which in your view highlight that relationships within an authority as a whole have broken down to such an extent that it has become very difficult to conduct the business of the authority then some wider form of reconciliation may be needed rather than simply investigating a whole series of complaints which may of themselves be relatively minor but highlight a pattern of disruption or dysfunction. In such cases it may be helpful to engage an independent mediator who is experienced in group community resolution. Mediation is a formal professional process designed to reach agreed outcomes. Less formal mechanisms may also be used to work with the authority to draw up an action plan to move matters forward and again these are often best done by somebody independent.

In such cases it is particularly important that all parties should understand that a decision to seek an informal resolution without investigating the individual complaints means that no conclusion has been reached about what happened. Furthermore, no decision has been made about whether the subject member(s) failed to comply with the Code. Everyone involved should understand that the purpose of such action is not to find out whether the councillor breached the Code of Conduct but rather to address the underlying causes. This is regardless of how simple it may be to establish the facts.

Where a committee is considering an alternative resolution, it should always consult the monitoring officer. The monitoring officer may be able to advise the committee how viable the proposed resolution is, by providing information on the resources available to them. They may be able to tell the committee how much any proposed resolution might cost and whether, for example, the authority has access to the facilities or resources needed to accomplish it, such as qualified mediators.

Where the matters involve the town or parish council the principal authority cannot compel the town or parish council to meet the costs, but it may discuss with them the implications that other town and parish

councils have experienced when they have failed to take action at an early stage. These have included officer and councillor resignations, community disharmony, national level publicity and reputational damage, staff grievances and settlement costs, excessive Freedom of Information Act (FoIA) and Data Subject Access requests, additional external audit inspections and fees and legal challenges and costs.

In considering such issues it is incumbent on the town or parish council to recognise there will be a need to invest in resolutions to the issues and it may be that where they are unwilling to seek to resolve the issues they face, the principal authority may take that into account when assessing future complaints.

## **Role of the monitoring officer**

### **Role of the monitoring officer**

When a matter has been referred for alternative resolution, you should inform the relevant parties (see above). You should take care over how the decision is conveyed. It is important that the wording does not imply that the councillor is culpable where there has been no formal investigation. It is also important that councillors do not feel they have been found guilty without an investigation of the allegation. Above all avoid the risk that both parties could end up potentially feeling dissatisfied.

You should set a time limit by which the action must be taken and make it clear what will happen if it is not undertaken, or not undertaken to your satisfaction. If, within that time limit, you are satisfied with the outcome you should notify the relevant parties. The matter is then closed.

If you are not satisfied within the timescales, you must then notify the relevant parties of whether the matter is nevertheless now closed or whether you intend to take further action. In doing so you should consult with the relevant Independent Person.

You should report any outcomes to your standards committee.

## **What are the next steps if the informal resolution does not**

## **work?**

In certain cases, you may decide that no further action is required. For example, if the subject member has made what you consider to be a reasonable apology or has attended the training, then there is little merit in pursuing the issue even if the complainant may remain dissatisfied. An investigation should not be viewed as something that can take place after an alternative resolution has been attempted and is simply not to the satisfaction of the complainant. There is a risk otherwise that alternative resolution will not be taken seriously, and the complainant will not cooperate if it is seen merely as a precursor to an investigation.

On the other hand, where a subject member has categorically refused to comply with the proposed resolution, has failed to cooperate or has taken action you consider inadequate then you should consider whether a formal investigation is needed, or where the resolution has been proposed during or at the end of a formal investigation, whether the matter should be referred for a hearing. Bear in mind that deliberate and continued failure to cooperate with a monitoring officer who is trying to deal with a standards issue may amount to a breach of the Model Code. In deciding on next steps, you should always bear in mind the public interest and your agreed criteria for considering whether a matter needs further investigation.

## **4. Investigations**

### **Introduction and background**

This guidance deals with good practice where it has been decided that an allegation that the Code of Conduct may have been breached merits a formal investigation.

The Localism Act does not specify how an investigation should be carried out or by whom but simply asks principal authorities to have arrangements in place to handle allegations that the Code may have been broken. In practice we would expect authorities to delegate the day-to-day handling of a formal investigation to their monitoring officer. Monitoring officers are at the heart of the standards framework. They



promote, educate and support councillors in following the highest standards of conduct and ensuring that those standards are fully owned locally.

## Principles of investigation

While an investigation under the Localism Act 2011 is not covered by the right to a fair hearing under Article 6 of the European Convention on Human Rights as the outcome of any hearing will not impact upon the rights of the councillor to carry on the role as a councillor, any investigation must nevertheless abide by the principles of natural justice (*R (Greenslade) v Devon County Council* 2019). That means that the councillor must know what they are accused of and be given the opportunity to comment on the allegations.

Any investigation should therefore bear in mind some key principles:

- Proportionality. That is, the investigation should strive to be proportionate to the seriousness or complexity of the matter under investigation. Where a matter is straightforward or relatively simple, for example where the facts are not in dispute, there may be no need for any formal investigation, but a report can simply be written up (see attached table). Equally not all of the steps in this guidance need be followed in every instance of a formal investigation – a judgment must be made in each case based on its complexity and contentiousness.
- Fairness. The investigation should make sure that the subject member knows what they are accused of and has an opportunity to make comments on the investigation, including on a draft report. Again, this may depend on the nature of the complaint – for example, an alleged failure to declare an interest may be largely a factual matter which needs little or no investigation rather than one that needs to involve evidence from other parties. A councillor quickly admitting to an error may not need further detail to be probed.
- Transparency. As far as is practical and having regard to an individual's right to confidentiality, investigations should be carried

out as transparently as possible – all parties should be kept up to date with progress in the case.

- Impartiality. An investigator should not approach an investigation with pre-conceived ideas and should avoid being involved where they have a conflict of interest.

## Managing conflicts of interest

A first consideration when deciding how an investigation is to be handled will be to see whether any conflicts of interest arise for you. As monitoring officer, you may have taken the decision that an allegation needs a formal investigation. It would not be a conflict of interest if you yourself then undertook that investigation. You have simply decided in the first instance that there is on the face of it a case to answer but have made no judgment. An investigation is to then establish what exactly did happen and if it does in fact amount to a breach of the code. So, there is no conflict in deciding that a matter needs investigating and then carrying out that investigation yourself.

However, there may be other areas where a potential conflict of interest could arise. For example:

- If you were asked to investigate an allegation against a councillor and you had advised them on the same issue previously, regardless of whether or not they had followed your advice;
- If you have been involved in assisting the complainant in formulating their allegation (*Her Majesty's Advocate v Alexander Elliot Anderson Salmond*)
- If you were the complainant or a potential key witness to the incident. In such situations, you should delegate the investigation to somebody else (see section on delegation of investigations);
- Where you have tried unsuccessfully to resolve a complaint informally, for example where one of the parties has refused to cooperate or refused to accept an apology (see guidance on informal resolution). In such a case there may be a perception that you have already made some judgment in the matters at hand.
- If you find that you have a direct or indirect interest in an investigation, for example if a family member or friend is involved.

Instead, you should notify the subject member and the complainant so that the conflict is on the record, explaining that you will not take any part in the investigation, the reason why and who will carry out the investigation in your place.

Also bear in mind that if you do the investigation personally a conflict may arise later in the process if the matter goes to a hearing, and you are asked to act as adviser to the hearing. You may therefore wish to consider at the start of an investigation whether you would want to ask someone else to carry out the investigation if you think you would be better supporting any hearing panel (see guidance on holding a hearing). We believe that you should not conduct an investigation and advise a hearing about the same case. You therefore need to consider whether it is more important to investigate the matter and delegate the role of advising a potential hearing, or to delegate the investigative role.

## **Delegation of investigations**

Monitoring officers can delegate investigations to their deputy or to any other named individual. However, if they do, monitoring officers should maintain the function of overseeing the investigation unless they are conflicted out – see section on conflicts of interest – in which case they should make arrangements for another suitable person to oversee the investigation.

Under Section 5(1)(b) of the Local Government and Housing Act 1989, local authorities must provide you with sufficient resources to perform your duties. In many authorities, monitoring officers will be able to appoint another officer to carry out their investigation. Smaller authorities may find it useful to make reciprocal arrangements with neighbouring authorities where they do not already exist formally. This is to make sure that an experienced officer is available to carry out an investigation or supervise it, should the need arise.

Authorities may also decide to outsource the investigation to another organisation or individual. This can be particularly helpful if it is a complex investigation which may absorb an individual's time or where it is politically high-profile or contentious or where there are possible

conflicts of interest and it is therefore helpful to have somebody independent from the authority carrying out the investigation. You may wish to agree a decision to outsource an investigation with an Independent Person.

Where you delegate the investigation, you should record the scope of the delegation in writing and keep this on the investigation file. This is to ensure that there is no confusion concerning the role and authority of the person delegated to conduct the investigation. You should be particularly clear about who is responsible for writing the draft and final reports. You should also have agreed timelines for delivery of the report. Where it is likely that this initial timeline cannot be met, for example because of unavailability of people for interviews or because further issues emerge, you should have a mechanism to agree and record any extension and again you may wish to consult with the Independent Person.

If you intend to advise a hearing panel should the matter go for a hearing, you should avoid being involved in the preparation of the investigation report. However, you may want to be able to reserve the right to decide when the report is of an acceptable quality to be put to the hearing and, if the recommendation from the investigator is that there is no breach of the Code you should be clear about who signs off that report and decides on no further action. We recommend that the views of the Independent Person are also sought where no further action is being taken.

You should inform the relevant parties when you delegate an investigation or make sure that the investigator has done this, so that they know who is dealing with the case and in case they need to provide the investigator with more information.

## **Disclosure of information**

You must treat any information you receive during the course of an investigation as confidential to the investigative process until the investigation is completed unless there is a statutory requirement to disclose it, for example when there are parallel criminal investigations

being undertaken. Similarly, all parties involved in the conducting of the investigation should be advised of the confidential nature of the proceedings.

## **Starting an investigation**

When you decide to start a formal investigation or receive instructions to carry out an investigation, be clear what it is you are investigating. If the initial complaint had made several different allegations be clear whether you are investigating them all or only part of the allegations. You should also be clear which parts of the Code you are investigating against although you may decide to include other or different provisions during the investigation as it develops.

Having established the scope of the investigation you should inform:

- the subject member;
- the complainant;
- the relevant Independent Person and
- the relevant town or parish council if the subject member is a town or parish councillor.

We would suggest that the notice sent to the town or parish council is sent to the parish clerk, unless sending it to the chair of the council is more appropriate because of the parish clerk's involvement in the complaint (or deputy chair if the chair is the subject member). You may wish to set out what action you consider the town or parish council should take (if any) with regards the complaint and requirements related to confidentiality given that town or parish council standing orders may require the clerk to report the complaint to the council.

You should explain to all parties what it is you are investigating and what will happen next. You should also inform the subject member that they have the right to seek the views of the Independent Person and be represented at any interviews with the investigator.

## **Conducting the investigation**

You must always be aware of your obligations under the Data Protection Act 2018, UK General Data Protection Regulations the Human Rights Act 1998 and other relevant legislation, when carrying out an investigation.

When conducting an investigation, you should be able to make inquiries of any person you think necessary. However, there is no obligation for them to respond. If you have difficulties obtaining a response, or a person refuses to cooperate with the investigation you should not let this delay the investigation but make sure that is clear in any report you write.

By law, a monitoring officer can require their authority to provide them with any advice or assistance they need to help them with their duties. However, you cannot require a parish or town council to meet the costs of any investigation into a parish or town councillor or any costs incurred by the parish or town council in providing advice and assistance with the investigation.

## **Evidence of new breaches**

During the course of an investigation, you may uncover evidence of conduct by councillors that breaches the Code of Conduct but extends beyond the scope of the investigation referred to you. Your powers as an investigator relate only to the allegation that you have been given. While that means you may consider other parts of the Code than those initially considered if they are relevant to the matter in hand, you may also uncover evidence of a possible breach that does not directly relate to the allegation you are investigating. If this happens, you should tell the person you obtained the information from that you cannot investigate the possible breach as part of your existing investigation. You should tell them that they may wish to make a separate complaint to the authority and if the authority considers it needs further action it could be subsequently added to your investigation or dealt with as a separate matter.

Alternatively, if the matters are serious issues in your view, you may wish to refer the matters to the authority yourself as a new complaint for them to make an initial assessment on through their scheme of delegation. If you hold that delegation (for example as monitoring officer) you may wish to ask someone else to take a view on whether the investigation should be extended.

### **Referring cases back to the authority**

During the course of an investigation, it may be necessary to reappraise if an investigation remains the right course of action, for example, if:

- You believe that evidence is uncovered suggesting a case is less serious than may have seemed apparent to the authority originally and that a different decision might therefore have been made about whether to investigate it or not;
- You conclude after examining the matter in detail that in fact the matters under investigation were not done by the subject member in their role as a councillor or as a representative of the authority but rather in a private capacity;
- You have uncovered something which is potentially more serious and the authority may want to consider referring it to the police, for example;
- The subject member has died, is seriously ill or has resigned from the authority and you are of the opinion that it is no longer appropriate to continue with the investigation;
- The subject member has indicated that they wish to make a formal apology which you consider should draw a line under the matter.

In this context 'seriously ill' means that the councillor has a medical condition which would prevent them from engaging with the process of an investigation or a hearing for the foreseeable future. This might be a terminal illness or a degenerative condition. You would be expected to establish this from a reliable independent and authoritative source other than the subject member. This would include where a councillor claims they are suffering from stress brought on by the investigation.

Ultimately it will be for the monitoring officer (or as otherwise defined in the authority's procedures for handling complaints) to conclude whether the investigation should continue. In reaching that decision, the authority should consult with the Independent Person before deciding to defer or end the investigation.

If the matter has been deferred or ended you should notify the subject member and the complainant of the decision and provide timescales within which the matter will be dealt with if it has been deferred. This would not always be appropriate, however, particularly if the matter has been referred to the police.

## **Deferring an investigation**

An investigation should be deferred when any of the following conditions are met:

- There are ongoing criminal proceedings or a police investigation into the councillor's conduct;
- You cannot proceed with your investigation without investigating similar alleged conduct or needing to come to conclusions of fact about events which are also the subject of some other investigation or court proceeding;
- Your investigation might prejudice another investigation or court proceeding.

An investigation may also need to be deferred:

- when there is an ongoing investigation by another regulatory body;
- because of the serious illness of a key party;
- due to the genuine unavailability of a key party.

When it is clear that there is an ongoing police, or other investigation, or related court proceedings, you should make enquiries about the nature of the police, or other investigation, or the nature of any court proceedings. It may be helpful to have an agreed Protocol with the local police about handling overlapping cases as the police may want you to carry on your investigation in the first instance.



If at any time during the investigation you become aware of any circumstances that might require the investigation to be deferred, you should normally notify the subject member of this but again you would need to be careful where there are other proceedings ongoing. If you are not the monitoring officer, you should notify the monitoring officer and seek their consent to the deferral. You or the monitoring officer may also wish to consult with the Independent Person.

The decision to defer an investigation should be taken by the monitoring officer. If you have asked someone else to carry out the investigation, they will need to gather sufficient information from the complainant, subject member, and from the police or other organisation involved, to enable you, as the monitoring officer, to come to a decision. You may wish to seek legal advice at this stage. The reason for the decision to defer should be specifically set out in the investigation file with supporting documentation attached.

In some cases, it will be possible to investigate some of the alleged conduct, where there is no overlap with another investigation or court proceedings. The investigator should highlight those areas where investigation may be possible in the investigation plan.

In some cases, it will be possible to investigate the alleged conduct in parallel with another investigation, for example where the Local Government and Social Care Ombudsman is investigating an authority's decisions and you are investigating the conduct of an individual councillor involved in making the decision. You may need to work closely with the other organisation and agree the steps that each party will take.

You should ask the police, other relevant organisation or individual in writing to keep you informed of the outcome of any police or other investigation, court proceedings or other relevant matter. You should note any important dates, for example of committal hearings, in the investigation plan review. In addition, you may wish to make further contact with the police, other body or individual to ask for an update on the matter.

A deferred investigation should be kept under regular review, in the interests of natural justice. You may wish to seek legal advice at regular intervals, for example every three months, from the date of the deferral decision about the reasonableness of continued deferral.

Once a decision is taken to begin the investigation again you should notify in writing:

- the subject member;
- the complainant;
- the relevant Independent Person; and
- the relevant town or parish council if the subject member is a town or parish councillor.

You should also review the investigation plan in light of the outcome of any police investigation or court proceedings.

## **Confidentiality**

You should treat the information that you gather during your investigation as confidential. This will help ensure that your investigation is seen as fair. Maintaining confidentiality reduces the risk of evidence being viewed as biased and preserves the integrity of the investigation.

We recommend that you also ask the people you interview, and anyone else aware of the investigation, to maintain confidentiality. You should remind councillors of their obligations under the Code of Conduct regarding the disclosure of information that they receive in confidence.

Members of the public are not covered by the Code of Conduct. A person making an allegation about a councillor is under no responsibility to the subject member to keep that complaint confidential, but if they do decide to publish the complaint and it is untrue then the complainant may well expose themselves to an action for defamation.

When the complaint has been received by the authority, the authority is then a data controller in respect of the personal data contained within the complaint and also a body subject to the FoIA.

Were the authority to receive a subject access request (SAR) from the subject member, then the response is likely to be that the complaint will be disclosed to the subject member anyway for comment. Schedule 2 s.7 of the Data Protection Act 2018(DPA) includes an exemption from DPA rights where the function is designed to protect members of the public against dishonesty, malpractice or seriously improper conduct and the function is of a public nature. Local authority investigations are likely to fall under this scope and therefore relevant articles of the UK GDPR including subject access (article 15) do not apply.

There is of course an exemption against disclosure of third-party personal data, but the complainant can be assumed to have agreed to the processing of their own personal data. Some thought needs to be given as to whether other third-party data needs to be redacted, but sufficient information does need to be provided to the subject member to allow them to comment on the complaint.

If a request for information about the complaint was received under the FoIA from a third party, then there would be clear grounds for refusing that request during an ongoing investigation.

If you receive a request from a journalist for example, who is asking if a councillor is under investigation for a specific issue, it would be reasonable to confirm or deny the fact but explain that no further comment can be made until the investigative process is complete.

Any draft report that you issue on the outcome of the investigation should be marked as confidential. This is to preserve the integrity of any further investigation that you may need to undertake.

## **Timescales for an investigation**

There are many factors that can affect the time it takes to complete an investigation. Nevertheless, it is important that there are realistic targets from the outset for the completion of an investigation. This allows the monitoring officer to monitor the progress of investigations and explore reasons for any delays where they have delegated the investigation. We

recommend that most investigations are carried out, and a report on the investigation completed, within a maximum of six months of the original complaint being referred for an investigation.

This will not always be possible, particularly where there is overlapping jurisdiction or you are waiting for a key piece of evidence from an external body but if it is to take longer than that, specific permission should be discussed between the monitoring officer and the Independent Person, and a note made as to the reasons why.

Refusal by the subject member or other relevant party to cooperate, for example by not making themselves available for an interview without good reason, should not be a reason for delay but should be reflected in the report. If the subject member refuses to cooperate that of itself is a potential breach of the Model Code and may be something that any decision maker in a case may want to take account of.

## **Draft reports**

The investigator should produce a draft report. If they are not the monitoring officer, they should share the draft initially with the monitoring officer and the independent person so that they can satisfy themselves that the investigation is of an acceptable standard and met the scope of the complaint. Once the monitoring officer is satisfied, the draft report should then be sent to the relevant parties with a deadline for commenting.

Where criticism is made of a third party (for example a witness) who will not otherwise have an opportunity to comment on a draft report then a Maxwellisation process (Maxwellisation is the process by which people who may be subject to criticism in public reports can comment on those proposed criticisms before the report is published) should be followed before a draft report is completed.

You are under no obligations to accept any comments made but where you do not accept comments you should make a note explaining why. Exceptionally you may need to issue a second draft if there have been significant changes.

## Completion of an investigation

On completion of an investigation, the monitoring officer may decide:

- to take no further action;
- to seek to resolve the matter informally; or
- to refer the matter to a hearing if it is part of the authority's procedures to refer the matter to a separate hearing by a panel or standards committee (see guidance on hearings).

In doing so the monitoring officer must consult with the relevant Independent Person.

In general, the investigation should be regarded as completed when the monitoring officer receives the final report and accepts that no further investigation is necessary.

## Purpose of the report

The report should be treated as an explanation of all the essential elements of the case and a justification for why you have concluded there has been a breach or not. The report should cover:

- agreed facts;
- any disputed facts together with your view, if appropriate, as to which version is more likely;
- whether those facts amount to a breach of the code or not; and
- your reasons for reaching that conclusion.

## Final reports

The final report should be issued by the monitoring officer and must be sent to:

- the subject member;
- the complainant;
- the relevant Independent Person;
- the relevant parish or town council of which the subject member is a councillor.

The report must make one of the following findings on the balance of probabilities:

- that there have been one or more failures to comply with the Code of Conduct;
- that there has not been a failure to comply with the Code.

If the monitoring officer considers that there has been no breach of the Code, that should usually be the end of the matter though they may want to send the report or a summary to the standards committee where you have one for information purposes only or to consider wider lessons.

If the monitoring officer considers that there has been a breach of the Code, the monitoring officer will decide what action, if any, to take and notify the relevant parties. For example, they may decide to seek an informal resolution at this stage or decide that the matter is merely a technical breach which will not lead to any sanction. In doing so the monitoring officer should consult with the independent person.

If the monitoring officer decides the matter should be referred for a hearing, the report should be accompanied by information explaining that a hearing will be held and the procedure to be followed. (see guidance on holding a hearing)

## **Publishing a report**

Where a matter has been referred to a hearing you do not need to publish the report as that will be dealt with at the Hearings Stage.

Where you have concluded that there has been no breach, that no further action is needed, or the matter has been resolved in some other way you do not need to publish the investigation report but you should report the matter to your standards committee. If the matter has generated local interest you may consider putting out a brief statement explaining the outcome and your reasoning. The report may also be disclosable under a Freedom of Information request but that would need

to be considered depending on the content of each report, the need to redact personal information and careful consideration given to the public interest test as to whether it should be disclosed or not.

## Report checklist

Your report should contain the information listed below.

- a 'confidential' marking
- a 'draft' or 'final' marking
- the date
- the legislation under which the investigation is being carried out
- a summary of the complaint
- the relevant sections of the Code
- evidence
- your findings of fact
- your reasoning
- your finding as to whether there has been a failure to comply with the Code.

The level of detail required will vary for each report, depending on the complexity of information to be considered and presented. The report should, however, contain documents that you have relied on in reaching your conclusions. These may include:

- a chronology of events
- summaries of conversations, correspondence and notes of interviews with witnesses.

In addition, the covering letter you send with the draft report should explain that the report does not necessarily represent your final finding. You should also explain that you will produce a final report once you have considered any comments received on the draft report.

When you send the final report, you should also explain that the report represents your final findings and, if it is to be subject to a hearing, it will be for the panel to decide if they agree with your view or not. It is

important that the report has the date of its completion on the front page. This provides clear evidence of when the time within which a hearing should be held begins.

The date of the hearing should be within three months from the date the monitoring officer, or delegated officer, completes the final report (see guidance on hearings).

There should be no appeal allowed either for the subject member or the complainant. Where a breach has been found and the matter is going to a hearing the parties will have their chance to have their say on the investigation at that stage. Where no breach has been found, no action taken or the matter otherwise resolved, that will be the end of the matter.

## **5. Investigation practicalities**

### **Outsourced investigations**

There are a number of reasons why you might outsource an investigation. This may be because of the complexity of the matters means that you want an experienced investigator to carry out the investigation. High-profile or politically contentious cases may require a greater degree of independence from the authority to be demonstrated. It may also be because the authority's investigatory resources internally are limited or at capacity due to other workloads.

In addition, most successful investigation report writers have experience of writing reports for lay people or councillors. They understand that their reports need to be clear enough for someone with no legal background to understand how they reached their decision. They also need to be clear enough to show what factors were taken into account when reaching that decision. You would need to consider if you have that capacity in your organisation.

Objectivity is also important. It may be difficult for an officer to consider whether a colleague was bullied or treated disrespectfully for example. There will be cases when an officer can investigate a complaint where a



colleague is the complainant. However, this can only be done if you are sure that they have the necessary impartiality to conduct the investigation, with no perception of bias.

It is important, however, to stay in control of outsourced investigations. To do so you will need to do the following:

1. Agree the scope of any delegation. In particular be clear who has responsibility for preparing the investigation report and if necessary, presenting it to a hearing panel;
2. Agree the scope of the investigation. In particular be clear what allegations are being investigated and what should happen if the investigator discovers evidence of further potential breaches of the Code of Conduct;
3. Agree a firm deadline. You need to agree when the case will be completed and consider whether there will be any financial implications if the case is not completed on time;
4. Agree interim deadlines. You should agree when you will receive key pieces of work including the investigation plan, the draft report and the final report. If the investigating officer is new, then you may wish to programme in regular investigation updates;

Agree the payment structure. You may want to consider how you structure the payment for investigations. It is not unreasonable to pay per stage of work completed, and for any additional investigative stages to be agreed as and when they occur.

## **Start of an investigation**

Draw up an investigation plan. This will help focus you on making the investigation as effective as possible. The plan should include:

- The complaint made against the subject member. You may find it necessary to seek clarification from the complainant;
- The paragraphs of the Code of Conduct that may have been breached. Please note that you do not need to accept the complainant's interpretation of what paragraphs may have been breached. It is helpful to breakdown each potential failure to comply into the component parts of each provision. For example,

in considering whether a councillor has misused their position improperly to gain an advantage you may need evidence to demonstrate that:

- 1) the councillor used their position;
- 2) the councillor used their position improperly;
- 3) the councillor conferred or attempted to confer an advantage or disadvantage.
  - The facts which need to be determined to establish if the councillor breached the Code and to decide what the appropriate finding might be. They need to include:
    - 1) facts which would establish if the conduct happened as alleged;
    - 2) facts that would need to be proven to show that the conduct constituted a breach of the Code;
    - 3) facts which might aggravate or mitigate the alleged breach, for example, provocation or an apology.

- The evidence that you would need to determine the issues outlined in your plan. This includes who you will need to interview and why;
- The evidence that has already been supplied by the complainant;
- How you plan to gather any further evidence you are likely to need;
- Any documents you are likely to need to see such as minutes of meetings or register of interest forms and you can get them from;
- If you are not the monitoring officer and are doing the investigation under delegation, make sure you have confirmation on the extent and scope of the investigation and build in check-in points with the monitoring officer on progress;
- How long you think it is likely to take you.

If at any stage in the investigative process there are significant changes to any of the above areas, an investigation plan review may need to be completed.

Contact the complainant and subject member to advise them of your contact details and provide them with a preliminary timescale for the investigation. You should also remind the subject member of their right to seek the views of an Independent Person.

At the end of your investigation, you should have documents which chart the approach you took to the investigation, the reasons for this approach, and when you changed your approach if appropriate. You do not need to share these documents with the parties involved in the investigation – they are for you to use as you wish. Their main function is as a planning tool, but they also provide an audit trail should your investigation be the subject of a complaint or review.

## **The investigation**

### **Information requests**

Documentary evidence should be sought before you conduct any interviews and at the earliest opportunity. The list in your investigation plan should form the basis of the first contact you make with the parties and other witnesses.

You may invite the subject member to provide an initial response to the allegation in writing when first making written contact with them. This gives councillors the opportunity to admit to the breach if they would like to do so, and could then save time and effort for all involved. A written response may also provide you with additional useful information before the interview stage.

Where you make a specific request for information this should be made in writing, even if the initial contact is made by phone. Explain the authority you have for asking for the documents and the broad purpose for which you need the document, for example 'an investigation into the conduct of Councillor X'. You do not need to provide the detail of the complaint against the councillor at this stage. You should also outline the confidentiality requirements that relate to the information request and set a deadline for response.

In certain cases, you may wish for a subject member or other party not to be made aware of a request for evidence. For example, if you consider that this might lead to destruction of evidence by one of the parties or to the improper collaboration of witnesses. In such circumstances it may be appropriate to arrange to meet with the witness, having given them a brief outline of your role. You can then make your request for the relevant documents during the meeting. It is important here that you explain what powers you have to obtain information. If in doubt, it may be prudent to seek legal advice on how to proceed.

If the request for information is refused it is likely to prove time consuming and legally complex to try to pursue the matter. It may be easier to see if there is another route to obtaining the same information.

## **Interviewing**

Your goal in interviewing is to obtain the most informed, reliable evidence possible. It is not to ambush or catch out interviewees.

## **Order of interviews**

You may have spoken the subject member initially for their initial reaction, but you will normally interview the subject member again formally at the end of the investigation, when you have gathered all your evidence, if they have not admitted to the breach at first contact. This will give you the opportunity to put that evidence to the subject member and obtain their responses to it.

Where practicable it may be best to carry out consecutive interviews on the same day if you are concerned that witnesses may collude or use information provided to them.

You may also wish to re-interview the complainant near the end of the investigation on the same timescale as you are interviewing the subject member. This may allow you to get them to agree facts. It also gives them an opportunity to comment on issues that have been raised during the course of the investigation and provides an opportunity to present potential inconsistencies to the relevant parties for comment.

## The format of the interview

It might be more appropriate to conduct face-to-face or virtual interviews than telephone interviews if:

1. the matters involved are sensitive;
2. the interviewee is vulnerable;
3. you or they will need to refer to multiple documents during the interview;
4. the interviewee wishes to have a representative or colleague present;
5. the interview is with the subject member.

It may be more appropriate to conduct a telephone interview if:

1. there are significant resource implications, either in terms of cost or time in conducting a face-to-face interview;
2. the interview does not fall into one of the categories outlined above.

If a subject member or witness insists on a face-to-face interview, then serious consideration should be given to their request. You should specifically check that there is no medical or disability-related reason for their request. If there is, then you should conduct a face-to-face interview. If there is no medical or disability-related reason, then the decision is at your discretion. If you still wish to proceed with a telephone interview despite their request, then you should outline your decision in writing on the file. This is to show that it was both proportionate and reasonable.

Do not conduct joint interviews. It is important that each witness gives their own account without having their recollection influenced by hearing another person's account. An interviewee may, however, have a friend or adviser present. If so that person should not be someone who is a witness, and they should be asked to keep the matters confidential. If an interviewee is a vulnerable person or a minor, you may wish to ensure that you are accompanied by another person.

## **The venue**

If you are conducting a face-to-face interview, try to ensure that the venue is:

1. mutually convenient on neutral territory – this would generally include local authority offices but this may not always be appropriate;
2. in a private room where you cannot be overheard;
3. a place where the interviewee will feel comfortable and is unlikely to be seen by people whose presence may intimidate or upset them, for example, the complainant or subject member;
4. is safe for you, the investigating officer - please refer to any authority policy on lone working.

Occasionally it may be appropriate to conduct an interview at the home of the interviewee. This should generally be at the request of the interviewee, but you should only do this if you feel safe and there is no suitable alternative.

## **Information you should provide interviewees**

You should provide the following information in writing to the interviewee:

1. Confirmation of the agreed time, date and venue or that it is a telephone or virtual interview.
2. Confirmation that the interview will be recorded, if appropriate.
3. Confirmation that the interviewee can have a legal or other representative with them, but that the representative must not be a potential witness in the investigation. Ask that they provide you with the name and status of their representative before the interview.
4. Why you are conducting the interview.
5. How the information they give you in the interview may be used.
6. The circumstances in which the information that they give you during the interview may be made public.
7. The confidentiality requirements that they are under as an interviewee.

8. Details and copies of any documents you may refer to during the interview.

9. In the case of the subject member, details and copies of any evidence you have gathered and which you may refer to in your report.

You do not have to disclose witness testimony prior to the interview, depending on the nature of that testimony and whether you want the interviewee's account prior to putting the witness's testimony to them. However, you may wish to disclose a witness's testimony during an interview once you have obtained the interviewee's own account.

You could also consider providing an outline of the areas you intend to cover at interview.

Note: if you only need to confirm one or two factual details with a local authority officer you may contact them by phone and do not need to forewarn them. However, when obtaining this information, you should:

1. orally outline all of the information you would otherwise have provided in writing as set out above;
2. check that they are happy to give it to you then, rather than at an agreed date in the future;
3. confirm the detail of information they do provide, in writing.

## Special circumstances

If an interviewee has additional needs, for example a disability (seen or unseen) or language barrier you should make reasonable provisions to cater for their specific needs. If an interviewee is vulnerable or a minor, then they should always be accompanied by a third party at the interview.

## Structuring an interview

Interviews should be planned in advance. You can plan your questions using the following suggested format:

1. Divide the information you require into discrete issues. For example, **Issue 1**: The planning meeting on date x; **Issue 2**: The

planning meeting on date y.

2. Make a note of the evidence you have already obtained about each issue.
3. Note how you would briefly summarise the evidence to the interviewee.

## **Conducting the interview**

All important interviews should be recorded where possible or else detailed notes taken which are agreed afterwards with the interviewee. The only exception is when the interview is likely to cover only a small number of factual matters. In this case, it may be more appropriate to resolve these factual matters in writing. Before recording an interview, you should:

1. obtain the consent of the interviewee before you start recording the interview;
2. ask them to record their consent on the record once you have started and; offer to send the interviewee a copy of the transcript or draft interview statement, whichever is applicable.

If they ask, you can send them a copy of the recording too. If you are concerned that the interviewee may share the transcript with other witnesses, you can delay sending the transcript or recording until you have completed all of your interviews.

The interviewee should not normally be allowed to make a recording of the interview. This is to prevent collusion between interviewees and any possibility of record tampering.

Interview recordings should be destroyed as soon as a transcript of the interview has been produced and agreed as accurate.

## **At the start of the interview**

When the interviewee arrives, try and put them at ease;

1. Before you start the formal interview, inform the interviewee that there is a standard interview preamble that you must take them through. This ensures that any rapport you have established is



unlikely to be lost when you take them through the legal framework of the interview;

2. Confirm that the interview will be recorded and put the recording device in a visible place on the desk;
3. With their permission start recording;
4. Ask them to confirm for the record that they consent to the recording;
5. Confirm for the record who you are, and why you are conducting the Interview;
6. State the date and time for the record;
7. Confirm that they received your letter outlining the arrangements for the interview;
8. Confirm that they read and understood your letter and ask if they have any questions about any of the information within it;
9. If the interview is with the subject member, repeat orally all of the information contained in your letter;
10. If the interviewee is at all unclear about anything, then repeat orally all of the information contained in your letter;
11. Explain that they can take a break whenever they choose;
12. Explain that you will offer them a break if the interview goes over an hour, even if they have not said that they want one;
13. Tell them how long the interview is likely to take and ask them if they have a time by which it needs to end;
14. Explain that they can ask you to rephrase a question if they don't understand it.

### **During the interview**

1. Start the interview with the subject member with some background questions. These could include 'how long have you been a councillor, or 'what training have you had on the Code of Conduct?'
2. Do not ask multiple questions. Ask one question at a time, and do not ask another question until the interviewee has answered your first question;
3. Do not dart back and forth between different issues as you are liable to confuse yourself and the interviewee;

4. Tackle one subject issue at a time;
5. Ask open questions about information the interviewee or other witnesses have provided about the issue;
6. Drill down. In other words, ask open questions about one specific issue until you have all the information you need on it;
7. Where relevant ask the interviewee to reconcile differing accounts;
8. Ask closed questions to confirm the information you have obtained about the specific issue;
9. Move onto the next issue using the same method. Start with a broad open question about the subject, drill down for information with specific open questions. Conclude the area by asking closed questions to confirm what you have been told;
10. Do not ask leading questions, for example, 'You said this to the clerk, didn't you?';
11. Do not ask the interviewee to speculate;
12. Accurately put the evidence of other interviewees to the interviewee and ask for their response;
13. When asked, explain the relevance of your question;
14. Do not allow the interviewee's lawyer or representative to answer a question;
15. You must allow the interviewee to stop and obtain advice whenever they choose;
16. If the interviewee becomes upset or unwell you must offer them a break;
17. Never raise your voice. Only interrupt if the interviewee is being unreasonable or is not providing relevant information;
18. You should be mindful of avoiding oppressive or repetitive questioning. If an interviewee will not properly answer a question, despite significant attempts to obtain a satisfactory response, then you should move on to another point or issue;
19. Do not question the subject member about matters which fall outside the scope of the complaint;
20. If the interviewee wants a break, record the time of the break on the record and the time you resume the interview. Ask the interviewee to confirm for the record that you did not discuss anything about the case with them during the break.

## **Closing the interview**

1. State the time the interview finished;
2. Thank the interviewee for their time and outline what will happen next;

## **After the interview**

1. Send the interviewee a copy of the transcript;
2. State in the letter that if you do not hear from them by a specified date, you will assume the transcript is agreed;
3. If the content of the transcript is disputed, check the discrepancies against the recording;
4. If the transcript is confirmed by the recording, write to the interviewee to inform them of this. In these circumstances, if the matter is referred to a hearing, submit the transcript, the recording, the interviewee's letter outlining the dispute, and your response.

## **Evaluating the information after an interview**

1. Review your investigation plan in light of the information gathered during the interview;
2. Review all the evidence you have gathered to determine if there are any gaps in it;
3. Take a view on all disputed relevant matters. Your own opinion on the evidence is sufficient. However, if you are unable to come to a decision, you may need to seek further information or decide that you are unable to reach a conclusion;
4. Weigh up all the evidence and decide if the alleged conduct occurred;
5. If you decide that the subject member acted as alleged, you will need to consider whether their conduct involved a failure to comply with the Code of Conduct;
6. If you decide the subject member breached the Code, consider whether you have evidence of any mitigating or aggravating circumstances. If not, you may need to seek further information.

## Drafting the report

When you have concluded your investigation, you will need to write up your findings in a report which should contain the following information:

1. who the report is for;
2. who the report is by;
3. the date of the report.

## Executive summary

This should include:

1. the full allegation and who it was made by;
2. the provisions of the Code of Conduct that were considered;
3. a conclusion as to whether there has been a failure to comply with the Code the finding;
4. any relevant extracts from the Code and any other legislation or protocols considered in the report.

## Evidence gathered and the investigator's consideration

1. Set out all the relevant evidence you have gathered even if it does not support the conclusions you have reached;
2. State what you consider has taken place based upon your evaluation of this evidence;
3. Set out undisputed facts as facts. Do not summarise them or preface them 'he said' or 'the minutes state'. If they are undisputed just state them as fact.
4. Where there is a disputed fact, outline the different views and your conclusion on them. You need to form a conclusion based on the balance of probabilities. Also state why you have reached this conclusion. For example:
  - The clerk, Councillor Jones and Councillor Smith met at Councillor Jones's house on y date at x time;
  - At interview the clerk stated that Councillor Jones said.....
  - At interview Councillor Smith stated that Councillor Jones told the clerk...

- At interview Councillor Jones stated that he told the clerk...
- I have considered the following issues when deciding what Councillor Jones said to the clerk... I consider at on the balance of probabilities Councillor Jones told the clerk...because...

5. Include any mitigating or aggravating factors, such as the state of mind of those involved.

6. When you refer in the report to material in the evidence bundle, identify the document referred to.

### **Summary of the material facts**

Summarise the facts needed to confirm the conclusions you have reached. Where there was a disputed fact, you will only need to include the conclusion you came to.

If the subject member has made additional submissions which you do not consider relevant to the case outline why you do not deem information or opinions submitted by the subject member to be relevant.

### **Reasoning as to whether there has been a failure to comply with the Code of Conduct**

1. Make each alleged breach in turn.
2. Outline which part of the Code of Conduct you are considering. Explain the test you are applying when determining if there has been a failure to comply with the Code.
3. Explain in detail, giving reasons, why you do or do not consider that the conduct constitutes a breach of the Code.
4. Do not introduce any new facts or opinions. You must only refer to evidence or opinions that have been outlined earlier in the report.

Make sure your explanation of the test you are applying, and the reasons for your conclusions, are detailed and clear enough to understand for a lay person with no legal background.

### **Finding**

You should make a finding about each alleged breach of the Code:

1. Outline in detail the reason for your decision
2. Refer to aggravating or mitigating facts, which must be outlined in the facts section earlier in the report.

## **Schedule**

Your report should include any documents taken into account:

1. Exhibit all the evidence upon which you have relied when reaching your conclusion;
2. In complex cases it may be appropriate to provide a chronology;
3. Provide a list of unused material if appropriate.

## **Issuing a draft report**

You should send a draft report, sending a copy to the subject member and the complainant and inviting their comments by a specified date. If you have carried out an investigation on behalf of the monitoring officer, you should first of all make sure they are happy that the draft is to an acceptable standard.

The draft should not be sent to other witnesses or parties interviewed, but you should seek confirmation of their evidence from them before issuing the report.

Ensure that the draft report is clearly marked as 'Draft' and 'Confidential' (though it can be discussed with a legal representative) and make clear that the report may be subject to change and does not represent your final conclusion.

If you have found the subject member in breach, make sure that the evidence that you have relied upon when reaching this conclusion is clearly marked in the report.

You must consider whether any of the information in the draft report is sensitive personal information that should not go into the public domain, for example, medical reports details or personal contact details. Information of this nature should be edited from the draft and final report unless it is essential to the reasoning.

## **Comments on the draft**

Responses to your draft may reveal the need for further investigation, or they may add nothing of relevance. Occasionally changes may be significant enough for you to consider issuing a second draft.

Once you have considered whether the responses add anything of substance to the investigation, you will be able to make your final conclusions and recommendations.

Where comments on the draft are critical of the investigation or the investigator, you may need to consider how to respond to the complaints made. You should not let such criticisms prevent a draft report being finalised, however, unless this is unavoidable. In particular, the investigation process, including writing the report, should not be suspended while a complaint about the investigation is dealt with. Complaints about the conduct of investigators should be dealt with in the same way as other service complaints.

You should keep a written record of your consideration of any comments received on the draft. It is best practice to provide a written response to the party explaining your position or referring them to the relevant paragraph of the report. This can be done when they are sent the final report. You should avoid getting drawn into lengthy correspondence with the subject member or other interested parties where they disagree with the draft. You should confine comments to matters of fact rather than personal opinions as to how the investigation was done or the opinion you have reached. However, you will need to show that you took all reasonable steps to address concerns.

If you receive further comments after the final report has been issued you should explain that the investigation is now closed and refer them to the person who is dealing with any hearing if appropriate.

## **The final report**

You must state that the report represents your final finding. If you have found the subject member in breach you should make sure the reasoning for that conclusion and any supporting evidence is clear. You

must consider whether any of the information in the report or evidence bundle is confidential information that should not go into the public domain, for example, medical details, personal contact details or signatures. All information of this nature should be edited from the final report unless it is essential to the reasoning.

You should send the final report to the monitoring officer if you are not the monitoring officer who will then issue the report. If you are the monitoring officer, you must send your report to:

1. The subject member
2. The Independent Person

A copy may also be made available to the complainant and others as you think appropriate.

The monitoring officer must decide whether:

1. There has been no breach and therefore no further action will be taken;
2. There have been one or more breaches, but no further action is needed;
3. There have been one or more breaches, but the matters should be resolved in a way other than by a hearing; or
4. That the matters be referred to a hearing.

This should be made clear in the letter accompanying the report and if the monitoring officer decides that the matter should be referred to a hearing panel, they should arrange for that to happen as soon as possible (see separate section on hearings). The letter should also make clear what if any aspects of the report are confidential but that it can be discussed with a legal representative. If the matter is being referred to a hearing it should be made clear that the whole report remains confidential until the time of the Hearing to avoid prejudicing any considerations.



## Confidentiality during the investigation

While it is important during the course of an investigation to preserve confidentiality so as not to compromise the integrity of the investigation, in practice in some circumstances, maintaining the confidentiality of an investigation can be difficult. However, it is important that you take all reasonable steps to maintain the confidentiality of your investigation, as failure to do so may compromise the investigation. To help maintain confidentiality:

1. Mark all of your letters, transcripts and reports as confidential;
2. Outline why you have marked it confidential but clearly inform subject members in writing that they can appoint a solicitor, or other person, to act as their representative. You must also clearly inform them that they can disclose any relevant document to this representative.
3. You should state that their representative should not be someone who may be involved in the investigation;
4. It is important that you make it clear to all parties that they should make any approach to witnesses in writing. This is to avoid confusion that might arise about the investigative process;
5. When arranging interviews ask interviewees to identify the name of any person who is accompanying them to the interview. Also ask them to state what their relationship is to the interviewee. You should explicitly state, in writing, that they should not be accompanied by anyone who may be called as a witness in the investigation;
6. If you think it is possible that witnesses may discuss their testimonies with each other, you should not send the transcripts of any interviews until all of the interviews have been concluded. This may mean that you send interview transcripts out with the draft report;
7. Where you are interviewing a number of people who have close relationships with one another, it may be prudent to interview them immediately after each other. This reduces any opportunity for collaboration.

If confidentiality is breached you should write to the party reminding them of the confidentiality requirements and, if they are a councillor, of their duties under the Model Code of Conduct. If you have evidence that information was disclosed to a party prior to their interview, you can take this into account when evaluating the reliability of the witness's evidence. If the disclosure was made by a councillor, you can consider making a formal complaint about their conduct.

## **6. The hearings process**

Once a formal investigation has taken place, the monitoring officer may refer the matter to a hearing.

There is no prescription in the legislation that says a matter has to go to a hearing or how that hearing may be conducted. Whatever approach you decide to take it must follow the rules of natural justice and comply with the obligations to ensure a fair hearing under Article 6 of the Human Rights Act. In line with the principle of proportionality the approach you take may depend upon the seriousness of the issue. For example, if you are satisfied that the investigation has allowed all sides to have their say the panel may simply review the report without further reference to the parties.

This guidance is written however on the presumption that a hearings panel of some form, consisting of elected councillors, will be convened.

The legislation stipulates that, where it is a town or parish council case, the matter is dealt with by the principal authority.

Throughout this guidance we will refer to panel, but by that we mean a committee or a sub-committee which the local authority (or a committee, such as an Audit or Standards Committee) has delegated responsibility to determine the outcome of certain complaints that individual councillors have breached the Code of Conduct.

## Convening a hearing

At the end of the investigation, a hearing may be called where the investigator has concluded that there has been a breach of the Code of Conduct and the monitoring officer has concluded that the matter cannot otherwise be resolved informally (see guidance on informal resolution).

For reasons of fairness and proportionality a hearing should wherever possible take place within three months of the date on which the investigator's report was completed. Where that is not possible, for example because the matter is awaiting the outcome of other matters being dealt with by outside bodies or other investigations into the subject member, the monitoring officer should notify the relevant parties of the reason for the delay and provide an estimated timescale.

However, the hearing should not take place sooner than 14 days after the investigation report has been issued unless the subject member agrees. This is to allow them sufficient time to prepare their defence and consider any witnesses they may wish to call for example (see section on the pre-hearing process below)

Once a date has been set for a Hearing the monitoring officer should notify:

- the subject member;
- the investigator;
- the relevant Independent Person;
- the complainant if appropriate;
- the clerk of any relevant town or parish council.

They should also outline the hearing procedure; the subject member's rights and they should additionally ask for a written response from the subject member within a set time. This is to find out whether the subject member:

- wants to be represented at the hearing
- disagrees with any of the findings of fact in the investigation report, including reasons for any of these disagreements

- wants to give evidence to the hearing, either verbally or in writing
- wants to call relevant witnesses to give evidence to the standards committee
- wants to request any part of the hearing to be held in private
- wants to request any part of the investigation report or other relevant documents to be withheld from the public.

The investigator should also be asked if they wish to call any witnesses.

If the subject member is unable to make the specified date the panel may arrange for the hearing to be held on a different date, provided that they are satisfied that the subject member has given an acceptable reason. Where the subject member does not give an acceptable reason or does not reply within a specified time, the panel should proceed with the date and may consider the report in the subject member's absence if the subject member does not go to the hearing. The subject member should not be able to evade having the case heard simply by refusing to cooperate and the Model Code makes failure to cooperate a potential breach. However, the panel should make clear at the start of the hearing that they have considered whether they can proceed in the absence of the subject member and should record their reasons.

If one or more witnesses are unavailable on the given date the monitoring officer, in consultation with the chair of the panel, should decide how material they would be to the hearing and whether another date needs to be looked for. Witnesses, especially members of the public, often play an important part in the process and should be treated with courtesy and respect although it may be that their views were already sought as part of the investigation so the panel would need to evaluate how they could proceed without them. Witnesses should be kept promptly informed of the relevant dates, times and location of the hearing.

Except in the most complicated cases, the panel should aim to complete a hearing in one sitting or in consecutive sittings of no more than one working day in total. When scheduling hearings, you should

bear in mind that late- night and very lengthy hearings are not ideal for effective decision-making. Equally, having long gaps between sittings can lead to repetition or important matters being forgotten.

## **Role of the monitoring officer**

It is important that the panel receives high quality, independent advice. For this reason, a monitoring officer should be the main adviser to the standards committee, unless they have an interest in the matter that would prevent them from performing this role independently. This may be because they have carried out the investigation or have another conflict (see guide on investigations). If this situation arises, a monitoring officer should arrange for another appropriately qualified officer to advise the standards committee.

The monitoring officer or other legal adviser's role in advising the panel is to:

- make sure that members of the standards committee understand their powers and procedures
- make sure that the procedure is fair and will allow the complaint to be dealt with as efficiently and effectively as possible
- make sure that the subject member understands the procedures the panel will follow
- provide advice to the panel during the hearing and their deliberations.
- help the panel produce a written decision and a summary of that decision.

Monitoring officers play an important role in advising their councillors on a day-to-day basis. When performing this role, monitoring officers need to be aware of the potential conflicts of interest that can arise, as these conflicts could prevent them from advising the panel at a later stage.

Monitoring officers will need to be aware of the potential conflicts involved in investigating a matter, advising the panel and advising councillors (see also guidance on investigations).

However, conflicts of interest are not likely to arise simply from informal discussions between councillors and monitoring officers.

You may wish to consider options for reducing the likelihood of such conflicts, including:

- arranging for another officer to advise councillors
- continuing to advise councillors, while identifying possible scenarios that may lead to future conflicts.

You should also ensure that if your advice could be relevant to an investigation, you have another appropriately experienced officer who is prepared to support the panel in its hearings and deliberations.

Smaller authorities in particular may find it useful to make arrangements with neighbouring authorities to make sure that when a conflict arises, an appropriately experienced officer is available to advise the panel.

## **Composition of the panel**

The panel should be drawn from the main body of the standards committee. If the panel includes independent representatives or parish representatives, they do not have voting rights by law.

You will need to be clear whether political proportionality applies to the panel or whether it has been waived by the local authority.

All panel members should have undergone suitable training.

## **Holding a pre-hearing**

As soon as a date has been set for a hearing the panel should hold a private pre-hearing. This could be done in writing or just between the monitoring officer and the Committee chair for expediency. The purpose of the pre-hearing process is to allow matters at the hearing to be dealt with more fairly and economically. This is because it quickly alerts parties to possible areas of difficulty and, if possible, allows them to be resolved before the hearing itself. The pre-hearing should also decide who will chair the panel.

At the pre-hearing the panel should:

- Decide whether any of the findings of fact in the investigation report are in dispute and, if so, how relevant they are likely to be at the hearing. For example, if the dispute is about the time of a particular conversation but that time is not relevant to whether the Code has been breached or not, there would be little point focussing on that. On the other hand, if that alleged discrepancy were material the panel needs to satisfy itself how it would resolve that difference at the hearing.
- Consider any additional evidence it considers is required at the hearing.
- Identify any witnesses it thinks it would want to hear from.
- Decide if witnesses which the subject member or investigator may want to call are relevant bearing in mind the nature of the issue and the need for proportionality. For example, if an incident has occurred at full council there would be no need to call every member as a witness but equally the panel may feel it needs to hear from a couple of witnesses representing different sides. Similarly, if the subject member decides to call a number of character witnesses the panel should take a view as to how relevant that is and how many would suffice.
- Consider whether there are any parts of the hearing that are likely to be held in private or whether any parts of the investigation report or other documents should be withheld from the public prior to the hearing, on the grounds that they contain 'exempt' material (see section on confidentiality below) though the final decision will rest with the panel on the day. The presumption should be to hold a public hearing unless there is specific exempt or confidential information as defined by Part VA of the Local Government Act 1972 so identifying that at the pre-hearing will have some bearing on publication of any relevant papers.
- Identify any potential conflicts of interest, for example any close associations with the people involved or potential witnesses. The monitoring officer will advise if any conflicts mean that a councillor should stand down from the panel.

It is important that at the pre-hearing panel members do not debate the merits of the case.

Note that this pre-hearing would not of itself be a formal meeting so would not be open and often these matters can be dealt with through correspondence. Once the pre-hearing has been held the monitoring officer should write to everyone involved in the complaint at least two weeks before the hearing. This should confirm the date, time and place for the hearing, note whether the subject member or investigator will be represented at the hearing. It should also list those witnesses, if any, who will be asked to give evidence and outline the proposed procedure for the hearing.

## **The hearing**

A hearing is like any other committee or sub-committee of the authority and as such must follow the rules that apply to committees. This means that it must reflect the political proportionality of the local authority as a whole unless the authority has waived proportionality and that only elected members of the authority are entitled to vote at the Hearing. The rules around access to information also apply as they do to other committees – that is the hearing will be in public unless there are lawful reasons for all or part of it to be heard as exempt or confidential matters.

Panel members should bear in mind that it is not a court of law. It does not hear evidence under oath, but it does decide factual evidence on the balance of probabilities.

The panel should work at all times in a demonstrably fair, independent and politically impartial way. This helps to ensure that members of the public, and councillors, have confidence in its procedures and findings. Decisions should be seen as open, unprejudiced and unbiased. All concerned should treat the hearing process with respect and with regard to the potential seriousness of the outcome, for the subject member, the local authority and the public. For the subject member, an adverse decision by the committee can result in significant reputational damage.



## Representatives

The subject member may choose to be represented by counsel, a solicitor, or by any other person they wish. This should have been agreed at the pre-hearing and if the panel has any concern about the person chosen to represent the subject member, they should have made that clear beforehand. The panel does, however, have the right to withdraw its permission to allow a representative if that representative disrupts the hearing. However, an appropriate warning will usually be enough to prevent more disruptions and should normally be given before permission is withdrawn.

## Evidence

The panel, through its chair, controls the procedure and evidence presented at a hearing, including the number of witnesses and the way witnesses are questioned.

In many cases, the panel may not need to consider any evidence other than the investigation report and any other supporting documents. However, the panel may need to hear from witnesses if more evidence is needed, or if people do not agree with certain findings of fact in the report.

The panel can allow witnesses to be questioned and cross-examined by the subject member, the investigator or their representatives. Alternatively, the panel can ask that these questions be directed through the chair. The panel can also question witnesses directly and the Independent Person should also be asked if they wish to ask any questions. It is not a legal requirement that the Independent Person attend the hearing, but it is best practice and the authority must have regard to their views when reaching a decision. If the Independent Person does not attend therefore, there must be an agreed mechanism for receiving their views.

If the panel believes, however, that questions are irrelevant or oppressive then the chair should stop that particular line of questioning.

Generally, the subject member is entitled to present their case as they see fit, which includes calling the witnesses they may want and which are relevant to the matters to be heard. However, the panel has the right to govern its own procedures as long as it acts fairly. For this reason, the panel may limit the number of witnesses if the number is unreasonable. This should have been agreed at the pre-hearing.

## **Making a finding**

Once the panel has heard all the relevant evidence it should suspend the hearing and retire in private to consider its finding.

Before retiring the chair should invite the Independent Person to give their views to the panel which the local authority must have regard to. These views should be given in the open session so that all sides can have a chance to challenge them as necessary. If the Independent Person retires with the panel, they should not take part in any decision making as they are not part of the formal decision-making process. In addition, they should ensure that any views they give to the panel are also made publicly to the meeting.

Any officer who retires with the panel is there to advise on matters of procedure and law. Any advice given, however, must then be conveyed back publicly to the meeting.

If the panel, after retiring, decides that it needs to reconsider certain matters it is able of reconvening to ask further questions.

Once the panel has reached its decision it should reconvene to inform the subject member. Where a breach has been found, it should then invite representations as to any aggravating or mitigating factors (see below) before retiring again to consider an appropriate sanction.

It is good practice to make a short written decision available on the day of the hearing, and to prepare the full written decision in draft on that day, before people's memories fade. The officer providing administrative support to the panel will normally also draft minutes of the meeting.

The panel should give its full written decision to the relevant parties as soon as possible after the hearing. In most cases this should be within one week of the hearing.

The relevant parties are:

- the subject member
- the complainant
- the relevant Independent Person
- any parish or town councils concerned.

Where appropriate the subject member's political group may also be informed of the decision if the sanction requires group action (see below) and should also be sent to the next full council meeting.

## Sanctions

There is no definitive list of possible sanctions (*The Government's response to the Committee on Standard in public life 2019 is awaited*). If the panel finds that a subject member has failed to follow the Code of Conduct and that they should be sanctioned, it needs to be clear which sanctions it has the power to impose and which matters are reserved to council or need to be referred to a relevant political group.

Typical sanctions may include one or a combination of the following:

- report its findings in respect of the subject member's conduct to council (or the relevant parish council)
- issue (or recommend to the parish council to issue) a formal censure
- recommend to the subject member's group leader (or in the case of un-grouped councillors, recommend to council) that they be removed from any or all committees or sub-committees of the authority (or recommend such action to the parish council)
- recommend to the leader of the authority that the subject member be removed from positions of responsibility
- instruct the monitoring officer to (or recommend that the parish council) arrange training for the subject member

- recommend to council (or recommend to the parish council) that the subject member be removed from all outside appointments to which they have been appointed or nominated by the authority (or by the parish council);
- recommend to council (or recommend to the parish council) that it withdraws facilities provided to the subject member by the authority for a specified period, such as a computer, website and/or email and internet access; or
- recommend to council (or recommend that the parish council) that it excludes the subject member from the authority's offices or other premises for a specified period, with the exception of meeting rooms as necessary for attending council, committee and sub-committee meetings and/or restricts contact with officers to named officers only
- if relevant recommend to council that the subject member be removed from their role as leader of the authority
- if relevant recommend to the secretary or appropriate official of a political group that the councillor be removed as group leader or other position of responsibility.

Note that where the subject member is a parish or town councillor, the matter is referred back to their council to say that a breach of the Code has been found and with a recommended sanction. The town or parish council must then meet to consider whether to impose that sanction or to replace it with another relevant sanction. They cannot overturn the finding that there has been a breach of the Code and if they wish to impose a different sanction they should seek advice from the clerk and/or the monitoring officer. The panel should also ask the parish or town council to report back to the monitoring officer within three months to confirm that they have met to discuss the sanction, and if necessary, to write again once the sanction has been fulfilled.

Note that under the Model Code of Conduct failure to comply with a sanction may of itself be a breach of the Code.

When deciding on a sanction, the panel should ensure that it is reasonable, proportionate and relevant to the subject member's behaviour. Before deciding what sanction to issue, the panel should

consider the following questions, along with any other relevant circumstances:

- What was the subject member's intention?
- Did the subject member know that they were failing to follow the Code of Conduct?
- Did the subject member get advice from officers before the incident? Was that advice acted on or ignored?
- Has there been a breach of trust?
- Has there been financial impropriety, for example improper expense claims or procedural irregularities?
- What was the result or potential result of failing to follow the Code of Conduct?
- How serious was the incident?
- Does the subject member accept they were at fault?
- Did the subject member apologise to the relevant people?
- Has the subject member previously been warned or reprimanded for similar misconduct or failed to follow the Code of Conduct before?
- Is the subject member likely to do the same thing again?
- How will the sanction impact on the subject member's ability to carry out their role?

Sanctions involving restricting access to an authority's premises or equipment or contact with officers should not unnecessarily restrict the subject member's ability to carry out their responsibilities as an elected representative or co-opted member.

Mitigating factors may include:

- an honestly held, although mistaken, view that the action concerned did not constitute a failure to follow the provisions of the Code of Conduct, particularly where such a view has been formed after taking appropriate advice;
- a councillor's previous record of good service;
- substantiated evidence that the councillor's actions have been affected by ill-health;

- recognition that there has been a failure to follow the Code; co-operation in rectifying the effects of that failure; an apology to affected persons where that is appropriate, self-reporting of the breach by the councillor;
- compliance with the Code since the events giving rise to the complaint.

Aggravating factors may include:

- dishonesty or breaches of trust;
- trying to gain an advantage or disadvantage for themselves or others;
- bullying;
- continuing to deny the facts despite clear contrary evidence;
- seeking unfairly to blame other people;
- failing to heed appropriate advice or warnings or previous findings of a failure to follow the provisions of the Code;
- persisting with a pattern of behaviour which involves repeatedly failing to abide by the provisions of the Code.

## **Publicising the findings**

The panel should arrange for a decision notice to be published on the website of any authorities concerned, and anywhere else the panel considers appropriate.

If the panel finds that the subject member did not fail to follow the authority's Code of Conduct, the public summary must say this and give reasons for this finding.

If the panel finds that the subject member failed to follow the Code but that no action is needed, the public summary should:

- say that the councillor failed to follow the Code, but that no action needs to be taken;
- outline what happened;
- give reasons for the panel's decision not to take any action.

If the panel finds that a councillor failed to follow the Code and it imposed a sanction, the public summary should:

- say that the councillor failed to follow the Code;
- outline what happened;
- explain what sanction has been imposed;
- give reasons for the decision made by the panel.

The panel's reports and minutes should be available for public inspection in the same way as other local authority committee papers.

## **Appeals**

Given that the framework and sanctions are meant to be light-touch and proportionate, there should be no right of appeal against a decision on a Code of Conduct complaint.

**London Borough of Hammersmith and Fulham  
Arrangements for dealing with complaints alleging a breach of the Members’  
Code of Conduct**

**1. Context**

- 1.1 Under Section 28 of the Localism Act 2011, the Council must have in place “arrangements”, under which allegations that a Member or co-opted Member of the Council, or of a Committee or Sub Committee of the Council (as defined by sub section 27 (4) ), has failed to comply with the Members’ Code of Conduct can be investigated and decisions made on such allegations.
- 1.2 These “arrangements” set out how you may make a complaint that an elected or co-opted Member of the **London Borough of Hammersmith and Fulham** (“the Council”) has failed to comply with the Members’ Code of Conduct (“the Code”) and sets out how the Council will deal with allegations of a failure to comply with the Code.
- 1.3 Such arrangements must provide for the Council to appoint at least one Independent Person, whose views must be sought by the Council before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the Council at any other stage, or by a Member or co-opted Member against whom an allegation has been made.

**2. The Code**

- 2.1 The Code adopted by the Council is on the Council’s website and paper copies can be requested from Governance and Scrutiny Team, Town Hall, King Street, London, W6 9JU.

**3. Making a complaint**

- 3.1 If you wish to make a complaint, please complete a copy of the complaint form, available on the Council’s website or on request from Governance Services, and send or email it to:

The Monitoring Officer  
Legal and Democratic Services  
Town Hall  
King Street  
London W6 9JU

email [MonitoringOfficer@lbhf.gov.uk](mailto:MonitoringOfficer@lbhf.gov.uk)

- 3.2 The Monitoring Officer is a senior officer of the Council who has statutory responsibility for maintaining the Register of Members’ Interests and who is responsible for administering these arrangements.



- 3.3 Please provide all the details requested on the complaint form. If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form. The Monitoring Officer will consider your request but in the interests of fairness the presumption is that the Member concerned is entitled to know who has made the complaint. If, in exceptional circumstances, your request is granted we will not disclose your name and address to the Member against whom you make the complaint without your prior consent.
- 3.4 The Council will not investigate anonymous complaints unless the Monitoring Officer considers that there is a strong and clear public interest in doing so.
- 3.5 The Monitoring Officer will acknowledge receipt of your complaint within five working days of receiving it and will keep you informed of the progress of your complaint.

#### **4. Will your complaint be investigated?**

- 4.1 The Monitoring Officer will consider each complaint received and will decide on the basis of the information set out in the complaint form or submitted with the complaint, whether it merits formal investigation. Whilst complainants must be confident that complaints are taken seriously and dealt with appropriately, investigating a complaint involves spending public money as well as the cost of officer and Member time. The Council, therefore, takes a proportionate approach to the issue of whether or not a complaint merits investigation bearing in mind the sanctions which can be imposed if a Member is found to be in breach of the Code, and the costs to the Council and, therefore, to the public of undertaking an investigation. The performance of Members in terms of how they represent those in their wards is ultimately a matter for the electorate if a Member seeks re-election.
- 4.2 A complaint will only be considered to merit formal investigation if it complies with all the criteria in paragraph 4.3 or one or more of the criteria in paragraph 4.4 below. The Monitoring Officer will consult the Independent Person before coming to a final decision as to whether a complaint meets the relevant criteria and should be investigated.
- 4.3 The relevant criteria are:
- a) The complaint raises matters which would be a breach of the Code;
  - b) The complaint is sufficiently serious to warrant investigation;
  - c) The complaint is not “tit-for-tat”;
  - d) The complaint appears not to be politically motivated;
  - e) It is about someone who is still a Member or co-opted Member of the Council;

- f) The complaint has been received within 3 months of the alleged failure to comply with the Code unless there are exceptional circumstances for the delay and the delay does not mean that it would be difficult for a fair investigation to be carried out;
  - g) The same, or similar, complaint has not already been investigated;
  - h) It is not an anonymous complaint, unless it includes sufficient documentary evidence to show a significant breach of the Code;
  - i) The Member complained about has not already apologised and/or admitted making an error; and
  - j) If the complaint reveals a criminal offence and a complaint has been made to the Police, that the Police investigation and any proceedings have concluded or the Police have confirmed no proceedings will be issued.
- 4.4 a) The complaint reveals a continuing pattern of behaviour that is significantly and unreasonably disrupting the business of the Council and there is no other avenue left to deal with it other than by way of an investigation; or
- b) The complaint is made by the Chief Executive or the Monitoring Officer
- 4.5 This decision will normally be taken within 28 working days of receipt of your complaint. The Monitoring Officer will inform you of his/her decision and the reasons for that decision.
- 4.6 In appropriate cases, where the Monitoring Officer has decided in accordance with the criteria set out above that a complaint would merit investigation, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the Member accepting that his/her conduct was in breach of the Code and offering an apology, or other remedial action such as correcting the Register of Interests. Where the Member makes a reasonable offer of informal resolution, but you are not willing to accept the offer, the Monitoring Officer will take account of this in deciding whether the complaint should be investigated.
- 4.7 In consultation with the Independent Persons and Chairman of the Standards Committee, the Monitoring Officer will refer to the Police for investigation a complaint which falls under Section 34 of the Act which makes it a criminal offence if a Member or co-opted Member fails, without reasonable excuse, to comply with requirements to register or declare disclosable pecuniary interests (but not other such interests as the Council may include in its Code), or takes part in Council business at meetings or when acting alone when prevented from doing so.

## **5 How is the investigation conducted?**

- 5.1 If the Monitoring Officer decides that a complaint merits investigation, he/she may conduct the investigation but will normally appoint an investigating officer, who may be another senior officer of the Council, an officer of another Council or an external investigator (“the Investigating Officer”). The Investigating Officer will decide whether he/she needs to meet or speak to you to understand the detail of your complaint and so that you can explain your understanding of events and suggest what documents need to be seen and who needs to be interviewed.
- 5.2 The Investigating Officer will normally write to the Member against whom you have complained and provide him/her with a copy of your complaint and ask the Member to provide his/her explanation of events, and to identify what documents he needs to see and who he needs to interview.

In exceptional cases, where the Monitoring Officer has decided to keep your identity confidential your name and address will be deleted from the papers given to the Member.

- 5.3 At the end of his/her investigation, the Investigating Officer will produce a draft report (“the Investigation Report”) and will send copies of that draft report, in confidence, to you and to the Member concerned, to give you both an opportunity to correct any factual inaccuracies.
- 5.4 Having received and taken account of any comments which you may make on the draft Investigation Report, the Investigating Officer will send his/her final report to the Monitoring Officer.

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

- 6.1 The Monitoring Officer will review the Investigating Officer’s report and, if he/she is satisfied that the Investigating Officer’s report is sufficient, the Monitoring Officer will write to you and to the Member concerned notifying you that he/she is satisfied that no further action is required, and give you both a copy of the final Investigation Report. There is no right of appeal for you as complainant or for the Member against a decision of the Monitoring Officer.

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

- 7.1 If an Investigating Officer has been appointed the Monitoring Officer will review the Investigating Officer’s report, seek the views of the Independent Person, and will then arrange for the Standards (Complaints) Sub Committee to consider the complaint. The Sub Committee will consider the Investigator’s Report, the written opinion of the Independent Person and any written representations from the Member concerned before deciding whether the

Member has failed to comply with the Code and, if so, whether to take any action in respect of the Member.

- 7.3 The meeting will be held in public so you may attend the meeting as can other members of the public. The Committee will usually consider the matters on the papers but, in exceptional cases, the Member may be permitted by the Committee to make representations on his or her own behalf, although he or she will not be entitled to be represented by a solicitor or other legal representative.
- 7.4 The Committee, with the benefit of any advice from the Independent Person, may conclude that the Member did not fail to comply with the Code, and dismiss the complaint. If the Committee concludes that the Member did fail to comply with the Code, the Chair will inform those present at the meeting of this finding and the Committee will then consider what action, if any, the Committee should take as a result of the Member's failure to comply with the Code. In doing this, the Committee may give the Member an opportunity to make representations but will consider any written representations from the Member and take into account the views of the Independent Person, before deciding what action, if any, to take in respect of the matter.

## **8 What action can the Standards Committee or Council, Leader or appropriate official of the Political Groups take where a Member has failed to comply with the Code of Conduct?**

### **8.1 A Panel of the Standards Committee**

A panel may take any one or more of the following steps:

- (1) determine that the matter requires no further action.
- (2) refer the matter to or back to the monitoring officer to seek or to continue to seek an informal resolution to the matter, to be referred back to the panel if that fails.
- (3) report its findings in respect of the subject member's conduct to council
- (4) issue a formal censure
- (5) recommend to the subject member's group leader (or in the case of ungrouped councillors, recommend to council) that they be removed from any or all committees or sub-committees of the authority
- (6) recommend to the leader of the authority that the subject member be removed from positions of responsibility
- (7) instruct the monitoring officer to arrange training for the subject member
- (8) recommend to council that the subject member be removed from all outside appointments to which they have been appointed or nominated by the authority
- (9) recommend to council that it withdraws facilities provided to the subject member by the authority for a specified period, such as a computer, website and/or email and internet access
- (10) recommend to council that it excludes the subject member from the authority's offices or other premises for a specified period, with the exception of meeting rooms as necessary for attending council, committee and sub -

committee meetings and/or restricts contact with officers to named officers only

(11) if relevant recommend to council that the subject member be removed from their role as leader of the authority

(12) if relevant recommend to the secretary or appropriate official of a political group that the Councillor be removed as group leader or other position of responsibility.

## **8.2 Council, Leader or appropriate official of the Political Groups**

Where a report or recommendation has been made to the council or other body or person, the council or that body or that person may take any one or more of the following steps:

(1) note the report.

(2) follow and act upon the recommendation.

(3) reject the report or recommendation with reasons.

(4) refer the matter back to the panel with or without a recommendation to take any other step which had been open to the panel.

(5) impose any other step which had been open to the Council, Leader or appropriate official of the Political Group.

## **9 What happens at the end of the hearing?**

9.1 At the end of the hearing, the Chair will announce the decision of the Committee as to whether the Member failed to comply with the Code and as to any sanctions imposed.

9.2 As soon as reasonably practicable thereafter, the Monitoring Officer will write to you and the Member concerned confirming the decisions taken.

## **10. Appeals**

10.1 Where a Member is dissatisfied with the decision of the Standards (Complaints) Sub-Committee in respect of a complaint against him/her, he/she may appeal to a Standards (Appeals) Sub-Committee comprising a different membership to the original Sub-Committee, to reconsider the decision. The Member will be required to set out in detail, within 14 days of the Committee meeting, the grounds upon which an appeal is sought.

10.2 Upon receipt of notification of appeal, the Monitoring Officer will consult an Independent Person for his/her views. The Monitoring Officer will forward a report detailing the allegations, views of the Independent Person and the findings of the investigation to the Standards (Appeals) Committee who will determine the appeal. The Appeals Sub-Committee can either endorse the previous decision or conclude that there is no breach and dismiss the complaint.

## **11 What are the responsibilities of the Standards Committee?**

11.1 The Standards Committee is charged with considering those written complaints that a Member or co-opted Member has failed to comply with the Code referred to it following an investigation of the complaint. The Committee may decide to impose a sanction if it finds that the Member has failed to comply with the Code. The duty to consider complaints has been delegated to its Complaints Sub Committee.

## **12 Who is the Independent Person?**

12.1 The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post and has been appointed by the Council. There are a number of statutory restrictions on who may be appointed. For example, a person cannot be appointed as an independent person if he or she is, or has been within the past 5 years, a Member, co-opted Member or officer of the Council.

12.2 The Independent Person may be invited to attend meetings of the Committee and his/her views are sought and taken into consideration before the Committee takes any decision on whether the Member's conduct constitutes a failure to comply with the Code and as to any action to be taken following a finding of failure to comply with the Code.

## **13 Revision of these arrangements**

13.1 The Council may by resolution agree to amend these arrangements.