

Standards Committee

Wednesday, 15 March 2017

18:00

Meeting Room A, Blackburn Town Hall

AGENDA

PART I: ITEMS FOR CONSIDERATION IN PUBLIC

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|------------|--|----------------|
| 1 | Welcome and Apologies | |
| 2 | Minutes of the Previous Meeting | |
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PART 2: ITEMS FOR CONSIDERATION IN PRIVATE

Date Published: Tuesday, 07 March 2017
Harry Catherall, Chief Executive

STANDARDS COMMITTEE
WEDNESDAY, 8TH FEBRUARY 2017

PRESENT- *Councillor V. McGurk (in the Chair), Councilors, Akhtar P, Brookfield, Gunn, McFall, Slater Julie, and Q Mahmood, Fletcher P, Hussain T, and Wild D.*

ALSO IN ATTENDANCE- *David Fairclough, Alan Eastwood, Asad Laher and Paul Conlon.*

1. Welcome and Apologies

The Chair welcomed members to the meeting and received apologies from Councilors Maxfield and Zamir Khan.

2. Minutes of the meeting held on 6th July and 7th December 2016

The minutes of the meetings held on 6th July and 7th December 2016 were submitted.

RESOLVED- That the minutes of the meetings held on 6th July and 7th December 2016 be approved as a correct record and signed by the Chair.

3. Declarations of Interest

There were no declarations of interest.

4. Member Training Update

The Committee received a report of the Monitoring Officer providing an update on the 2016/17 Member Training Programme and requesting members of the committee to consider the extension of Mandatory attendance for Members at certain training events.

Members discussed the sanctions that could be applied if a Member chose not to attend training that was defined as mandatory and the sanctions that existed for the existing mandatory training for Planning and Licensing committees that meant that Members who had not received the training could not sit on meetings of the committee. The limited measures that could be applied were outlined including reporting to group leaders, and reporting to full Council meetings and Members discussed the ways that Councilors could be encouraged to attend.

RESOLVED-

1. That the update report on this year's member training programme be noted;

2. That a list of training programmes that Members feel essential be drawn up with the assistance of the Executive Members and that group leaders be encouraged to ensure that this be considered when making annual appointments; and

3. That the Monitoring Officer be requested to produce a report to this committee in March each year on the attendance of members at training events.

5. Call in Procedure and Member Training

The Committee considered a report by the Monitoring Officer on the procedure related to call-ins. The Committee were informed that the recent meetings of the Call- in Committees had highlighted a need for further Member training to ensure that the maximum value could be gained from the process and that all Members involved understood the processes and procedures that were followed and outcomes.

RESOLVED-

1. That training for training on call-in process and procedure be made available to all members of the Council and where practicable Members should have attended the training prior to participating in a call in; and

2. that a clear overview of the procedural rules for a call-in be made publicly available both in advance of and at call-in meetings.

6. Exclusion of Press and Public

RESOLVED- that the press and public be excluded from the meeting for the following item of business as the information to be considered contains exempt information relating to an individual and is exempt by virtue of section 12A local Government Act 1972.

7. Update – Member Complaint and Investigation Report

The Committee considered a report of the Monitoring Officer relating to a complaint made against a Councillor for an alleged breach of the code of conduct and a report of findings of the Investigating Officer undertaken on behalf of the Monitoring Officer.

Members discussed the issues relating to this alleged breach and the investigations that had taken place to date. The issues related to interpretations of the actions as set out in the report. The options available to the Committee were outlined and the outcomes that could lead from this were also discussed.

RESOLVED-

1. That the Update report on the findings of the Investigation Report be noted;
2. That the Monitoring Officer be requested to report to the next meeting of the Committee on the Process and Procedure to be followed at a meeting of the Hearing Panel of the Standards Committee; and
3. That the Monitoring Officer be requested to convene a Hearing Panel of this Committee to consider and pursue the complaint and consider the alleged breach of the Code of Conduct as detailed in the investigation Report in relation to the complaint

8. Date of the Next Meeting

RESOLVED- It was noted that the next meeting of the Committee would take place on 15th March 2017, rather than 16th March 2017.

Signed.....

Chair of the meeting at which the Minutes were signed

Date.....

DECLARATIONS OF INTEREST IN ITEMS ON THIS AGENDA

Members attending a Council, Committee, Board or other meeting with a personal interest in a matter on the Agenda must disclose the existence and nature of the interest and, if it is a prejudicial interest, should leave the meeting during discussion and voting on the item.

Members declaring an interest(s) should complete this form and hand it to the Democratic Services Officer at the commencement of the meeting and declare such an interest at the appropriate point on the agenda.

MEETING: **Standards Committee**

DATE: **15th March 2017**

AGENDA ITEM NO.:

DESCRIPTION (BRIEF):

NATURE OF INTEREST:

PERSONAL/PREJUDICIAL (delete as appropriate)

SIGNED :

PRINT NAME:

(Paragraphs 8 to 13 of the Code of Conduct for Members of the Council refer)



REPORT OF:	Director of HR, Legal & Corporate Services
TO:	Standards Committee
DATE:	15th March 2017

SUBJECT: Establishment of a Standards Hearings Panel

1. PURPOSE OF THE REPORT

To enable the Standards Committee to consider the establishment of a Standards Hearings Panel for the local hearing of complaints against members.

2. RECOMMENDATIONS

The Committee is asked:

2.1 That the Standards Committee establish a Sub-Committee, constituted in accordance with the Council's Arrangements for dealing with complaints that Council Members have failed to comply with the Code ("the Arrangements"), to act as a Hearings Panel for the local hearing of complaints against Members.

2.2 That the Standards Committee delegates to the Hearings Panel the function to determine complaints, referred to it under the Arrangements.

2.3 Considers the draft procedure for the Hearings Panel for adoption (Appendix).

3. BACKGROUND

In July 2012 the Council adopted a new Code of Conduct for Members ("the Code") in accordance with the requirements of the Localism Act 2011, together with arrangements for dealing with complaints that Council Members have failed to comply with the Code ("the Arrangements").

Under the Arrangements there are a number of stages through which a complaint that a Member has breached the Code should pass. The first of these is an 'Initial Assessment' stage at the conclusion of which the Monitoring Officer, having consulted with the Council's Independent Person, will decide whether to reject the complaint, seek informal resolution of the matter or refer the complaint for formal investigation. Where a complaint is referred for investigation, the Monitoring Officer will appoint an Investigation Officer to investigate the matter in accordance with the Monitoring Officer's guidance on investigating allegations of breach of the Code. Where the Investigation Officer's final report concludes that there is sufficient evidence of a failure by the Member concerned to comply with the Code, the Monitoring Officer, having reviewed the report and consulted with the Independent

Person, will either seek local resolution of the matter or send it for local hearing before the hearing panel.

The Arrangements provide that a local hearing panel shall be a sub-committee of the Standards Committee. They further state that the membership of the sub-committee will comprise of at least one of the Independent Members of the Standards Committee along with three elected Members of the Standards Committee drawn from at least two different political parties.

Following the adoption of the new Code, a detailed procedure for the local hearing of complaints by a hearing panel has yet to be adopted. A draft procedure for the Hearings Panel has been produced and is attached to this report (Appendix).

4. RATIONALE

To hold local hearings of complaints against Members the Hearings Panel must be formally established in accordance with the Arrangements adopted by Council. In order to ensure fairness in determining such complaints the Hearings Panel must follow a procedure that accords with the principles of natural justice.

5. LEGAL IMPLICATIONS

The statutory provisions for the Standards Framework are set out in the Localism Act 2011. The Committee's role, functions and powers are contained in the Council's Constitution. This includes the adoption of such procedures for the hearing and determination of any complaints as the Committee considers appropriate, and to appoint a Hearings Panel of the committee for the purposes of conducting a local hearing into any complaint referred by the Monitoring Officer.

The Council has delegated to the Hearings Panel powers to take action in respect of Subject Members as may be necessary to promote and maintain high standards of conduct. The range of actions available to the Hearings Panel are referred to in the Arrangements and also reflected in the draft Hearings Panel Procedure.

6. POLICY IMPLICATIONS

A governance framework in local authorities is necessary to promote and maintain high ethical standards, and to ensure public confidence. This includes adopting adequate procedures for local hearing of complaints against Members, and where it is found that a Member has failed to follow the Code of Conduct to take appropriate action.

7. FINANCIAL IMPLICATIONS

None contained in this report.

8. CONSULTATIONS

The Council's arrangements for promoting and maintaining high standards of conduct have been consulted with Members through briefing sessions prior to formal adoption by Council in July 2012. The Standards Committee may provide views and comments on the draft procedure before formal adoption.

Chief Officer/Member

Contact Officer: Asad Laher, Deputy Council Solicitor/Deputy Monitoring Officer

Date: 31st January 2017

Background Papers:

Appendix: Blackburn with Darwen Borough Council Standards Committee - Hearings Panel Procedure (draft)

BLACKBURN WITH DARWEN BOROUGH COUNCIL

STANDARDS COMMITTEE – HEARINGS PANEL PROCEDURE

Item 4-1

Part 1 - The Pre-Hearing Process

The Pre-Hearing Process will only deal with procedural issues. It may be conducted in writing.

The Pre-Hearing Process exists to:-

- identify whether the Subject Member or the Independent Person disagrees with any findings of fact contained in the Investigation Officer's report;
- decide whether or not those disagreements are significant to the Hearing;
- decide whether or not to hear evidence about those disagreements during the Hearing;
- decide whether or not there are any parts of the Hearing that should be held in private, and
- decide whether or not any parts of the Investigation Officer's report, or other documents should be withheld from the public.

Stage One

An officer from Democratic Services will be appointed to provide administrative support to the Hearing Panel.

The Independent Person will have been provided with a draft of the Investigation Officer's report upon which to comment. The final version of the Investigation Officer's report will incorporate any comments made by the Independent Person.

The Democratic Services officer will write to the Subject Member and provide him/her with a copy of the final report, a copy of this procedure and propose a date for the Hearing. The officer will also ask for a written response from the Subject Member within [14] days to find out whether he/she:-

- disagrees with any of the findings of fact contained in the Investigation Officer's report and the reasons for such disagreements and/or provide details of any other evidence they consider relevant to the allegation;
- wants to be represented at the Hearing by either a solicitor, barrister or some other person (the Hearings Panel may refuse permission for non-lawyers if that person is directly involved in the matter to be determined);
- wants to give evidence either verbally or in writing;
- wants to call relevant witnesses to give evidence to the Hearings Panel and provide details of those witnesses;
- can attend the Hearing on the proposed date;
- wants to request any part of the Hearing to be held in private and the reasons for doing so, and/or
- wants to request any part of the Investigation Officer's report or any relevant background papers to be withheld from the public and the reasons for doing so.

The Democratic Services officer will also ask the Investigation Officer to confirm whether he/she:- Item 4.1

- wants to call relevant witnesses to give evidence to the Hearings Panel;
- wants to request any part of the Hearing to be held in private and the reasons for doing so, and/or
- wants to request any part of his/her report or any relevant background papers to be held from the public and the reasons for doing so.

Stage Two

The Democratic Services officer will then produce a covering report detailing the responses received from the Subject Member and the Investigation Officer, and provide a list of any witnesses whom the parties have indicated that they wish to call before the Hearings Panel.

Prior to the hearing the Hearings Panel may meet privately to review documentation to be presented and agree the main lines of enquiry. They will also consider any requests made by the Subject Member and the Investigation Officer in Stage One above. The Hearings Panel may seek legal advice from Monitoring Officer or the nominated Legal Advisor to the panel.

A copy of the agenda and papers, including:

- the procedure to be followed at the Hearing;
- the Investigation Officer's final report; and
- any responses received from the Subject Member;

will be provided to the Complainant], the Subject Member, the members of the Hearings Panel and the Independent Person at least 14 days before the Hearing.

Where the allegation relates to the conduct of a parish/town councillor, a copy of the agenda and papers will also be made available to the parish/town council clerk.

Copies of the agenda and papers will be made available to members of the press and public in accordance with access to information requirements and Schedule 12A Local Government Act 1972. Any information that is of a confidential or exempt nature will not be made publicly available.

Part 2 Hearings Panel: Procedure

Item 4.1

1. General

1.1 Definitions:

“Complainant”	The party who has made an allegation that a Member has failed to comply with the Members’ Code of Conduct.
“Independent Person”	A person appointed by the Council in relation to the investigation in accordance with Section 28 (7) of the Localism Act 2011.
“Interested Parties”	Covers the Complainant, the Subject Member and the Investigation Officer.
“Investigation Officer”	The Monitoring Officer or the person appointed by the Monitoring Officer to undertake the investigation. The investigation officer may be another officer of the Council, an officer of another authority or an external investigator.
“Legal Advisor”	The officer responsible for providing legal advice to the Hearings Panel. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.
“Subject Member”	The Member against whom the allegation has been made of a failure to comply with the Code of Conduct.

1.2 The Hearings Panel is a sub-committee of the Council’s Standards Committee consisting of at least one of the Independent Members co-opted to the Standards Committee and three members of the Committee drawn from at least two different political parties. Where the complaint is about a Town/Parish Council Member, the Hearings Panel will include at least one of Town/Parish Council Members co-opted to the Standards Committee.

1.3 The Chair/Vice Chair of the Standards Committee shall chair the Hearings Panel. If they are unable to sit, the Hearing Panel will agree a chair from the three members of the Committee nominated under paragraph 1.2 above (“the Chair”).

1.4 The quorum for a meeting of the Hearings Panel is three elected members and at least one Independent Member who must be present throughout the hearing.

1.5 The hearing will be attended by the Legal Advisor and a Democratic Services Officer who shall act as the clerk.

- 1.6** The role of the Democratic Services officer is to record the hearing and the decisions of the Hearings Panel, and to ensure efficient administration.
- 1.7** The Independent Person's views must be sought and taken into consideration before the Hearings Panel takes any decision on whether the Subject Member's conduct constitutes a failure to comply with the Members' Code of Conduct and as to any sanction to be taken following a finding of failure to comply with the Members' Code of Conduct. The Independent Person should normally be present throughout the Hearings Panel meeting (but not during the deliberations of the Hearings Panel in private) but in the event that this is not possible, may submit their views on the complaint to the Hearings Panel in writing instead.
- 1.8** The legal requirements for publishing agendas, minutes and calling meetings, will apply to the Hearings Panel. Schedule 12A Local Government Act 1972 (as amended) will be applied where it is necessary to exclude the public and press from meetings of the Hearings Panel where it is likely that confidential or exempt information will be disclosed.
- 1.9** The Hearings Panel may retire to consider the representations and evidence in private. Upon the Hearings Panel's return, the Chairman will announce the Hearings Panel's findings of fact and invite the Legal Advisor to relay any legal advice given during private session.
- 1.10** All matters/issues before the Hearings Panel will be decided by a simple majority of votes cast, with the Chair having a second or casting vote.
- 1.11** The Chair of the Hearings Panel may agree to vary this procedure in any particular instance where he/she is of the opinion that such variation is necessary in the interest of fairness.

2. Representation

The Subject Member may be represented or accompanied during the hearing by a solicitor, barrister or some other person (the Hearings Panel may refuse permission for non-lawyers if that person is directly involved in the matter to be determined). The Chair may choose to withdraw its permission to allow a representative if that representative disrupts the hearing.

3. Legal Advice

The committee may take legal advice from the Legal Adviser at any time during the hearing or while they are considering the outcome. The Subject Member and the Investigation Officer if they are present should be advised of the substance of any legal advice given by the legal adviser in the absence of the parties.

4. Introduction

Item 4.1

- 4.1** The Chair will introduce the members of the Hearing Panel, the Investigation Officer and the officers present. The Subject Member will introduce any person who is acting and his/her representative and any witnesses to be called on his/her behalf. The Investigation Officer will introduce any witnesses to be called.
- 4.2** The Chair will outline the procedure to be followed.
- 4.3** The Chair will confirm that the Subject Member and the Independent Person have seen the final report of the Investigation Officer.
- 4.4** The Legal Advisor will confirm whether any part of the hearing will be conducted in 'Part 2'.

5. Preliminary Issues

- 5.1** The Monitoring Officer/Legal Advisor will confirm whether the Pre-Hearing Process has identified any material disagreements about the facts contained in the Investigation Officer's report.
- 5.2** The Hearings Panel will record the agreed facts and establish the facts in dispute which they will be required to rule upon.
- 5.3** The Hearings Panel will then consider and decide on any other preliminary issues which have not been resolved as part of the Pre-Hearing Process (Stage 1). It may adjourn the meeting and move to another room to consider those issues. On its return, the Chair will announce the Hearings Panel's decision.
- 5.4** If a party raises an issue which has not been raised previously then that party shall be required to give a full explanation to the Hearings Panel as to why it was not raised earlier. The Hearings Panel may then:
 - a. Consider whether or not to allow the issue that has been raised to be dealt with at the hearing
 - b. Consider whether the hearing should be adjourned for further investigations to take place.

6. Making Findings of Fact

- 6.1** If there is no disagreement about the facts, the committee can move on to the next stage of the hearing. (Section 7 below).
- 6.2** If there is a disagreement about the facts which the Hearings Panel consider relevant to establishing whether the Code has been breached (or as to the seriousness of the breach), the Investigation Officer should be invited to make any necessary representations to support the relevant findings of fact in the report. With the Hearings Panel's permission, the Investigation Officer may

call any necessary supporting witnesses to give evidence. The Hearings Panel may give the Subject Member an opportunity to challenge any evidence put forward by any witness called by the Investigation Officer.

- 6.3** The Subject Member should then have the opportunity to make representations to support his or her version of the facts and, with the Hearings Panel's permission, to call any necessary witnesses to give evidence.
- 6.4** At any time, the Hearings Panel may question any of the people involved or any of the witnesses, and may allow the Investigation Officer to challenge any evidence put forward by witnesses called by the Subject Member.
- 6.5** If the Subject Member disagrees with any relevant fact in the Investigation Officer's report, without having given prior notice of the disagreement, he/she must give good reasons for not mentioning it before the hearing. If the Investigation Officer is not present, the Hearings Panel will consider whether or not it would be in the public interest to continue in his/ her absence. After considering the Subject Member's explanation for not raising the issue at an earlier stage, the Hearings Panel may then:
- a) Continue with the hearing, relying on the information in the Investigation Officer's report;
 - b) allow the Subject Member to make representations about the issue, and invite the Investigation Officer to respond and call any witnesses, as necessary; or
 - c) postpone the hearing to arrange for appropriate witnesses to be present, or for the Investigation Officer to be present if he or she is not already.
- 6.6** The parties will leave the room to allow the Hearing Panel to consider the representations and evidence in private.
- 6.7** On their return, the Chair will announce the Hearing Panel's findings of fact.

7. Did the Subject Member breach the Code of Conduct?

- 7.1** The Hearings Panels needs to consider whether or not, based on the determined facts it has found, the Subject Member has failed to follow the Code.
- 7.2** The Subject Member should be invited to give relevant reasons why the Hearings Panels should not decide that he/she has failed to follow the Code.
- 7.3** The Hearings Panels should then consider any verbal or written representations from the Investigation Officer.

- 7.4** The Hearings Panels may, at any time, question anyone involved on any point they raise in their representations. Item 4.1
- 7.5** The Subject Member should be invited to make any final relevant points.
- 7.6** The Hearings Panel will then ask the parties to leave the room to allow them to consider the representations.
- 7.7** On their return, the Chair will announce the committee's decision as to whether or not the Subject Member has failed to follow the Code of Conduct.

8. If the Subject Member has not breach the Code of Conduct

If the Hearings Panel decides that the Subject Member has not breached the Code of Conduct, the Hearings Panel can move on to consider whether it should make any recommendations to the Council.

9. If the Subject Member has failed to follow the Code of Conduct

- 9.1** If the Hearings Panel decides that the Subject Member has failed to follow the Code of Conduct, it will consider any verbal or written representations from the Investigation Officer and the Subject Member as to:

- (a) whether or not the Hearings Panel should apply a sanction; and
(b) what form any sanction should take.

- A sanction may include any one or a combination of the following
- Publish its findings in respect of the Subject Member's conduct;
- Report its finding to Council (or to the Town/Parish Council) for information;
- Recommend to Council that the Subject Member be censured;
- Recommend to the Subject Member's group leader (or in the case of ungrouped members) recommend to Council) that he/she be removed from any or all committees or sub committees of the Council;
- Recommend to the Leader of the Council that the Subject Member be removed from the Executive, or removed from their portfolio responsibilities;
- Instruct the Monitoring Officer to (or recommend that the Town/Parish Council) arrange training for the Subject Member;
- Recommend to Council (or recommend to the Town/Parish Council) that the Subject Member be removed from all outside bodies, appointments

to which they have been appointed or nominated by the Council (or by the Town/Parish Council); Item 4.1

- Withdraw or recommend to the Town/Parish Council that it withdraws facilities provided to the Subject Member by the Council such as a computer, website and/or e-mail and internet access; or
- Placing such restrictions on Subject Member's access to staff which may be reasonable in the circumstances and in accordance with the Member/Officer Protocol provided that such restrictions do not impede the Subject Member from carrying out their duties as a Councillor

9.2 The Hearings Panel may question the Investigation Officer and the Subject Member, and take legal advice, to make sure they have the information they need in order to make an informed decision.

9.3 The Hearings Panel will then ask the parties to leave the room to allow them to consider whether or not to impose a sanction on the member and, if so, what the sanction should be.

9.4 On their return, the Chair will announce the Hearings Panel's decision.

10. Recommendations to the Council

After considering any verbal or written representations from the Investigation Officer, the Hearings Panel will consider whether or not it should make any recommendations to the Council, with a view to promoting high standards of conduct among Members.

11. The Written Decision

The Hearings Panel will announce its decision on the day and provide a short written decision within one working day. It will issue a full written decision normally within 2 weeks. A copy of both decisions will be circulated to the Subject Member and the full Standards Committee.

12. Appeal

There is no right of appeal or review of the decision of the Hearings Panel. Any party dissatisfied by the outcome may consider whether it is appropriate to make a complaint to the Local Government Ombudsman and/or to take independent legal advice.



REPORT OF:	The Monitoring Officer
TO:	Standards Committee
DATE:	15th March 2017

SUBJECT: Member Training Update to the Standards Committee

1. PURPOSE OF THE REPORT

To update Members on the plans for the 2017/18 Member Training Programme.

2. RECOMMENDATIONS

The Committee is asked to:

Note the update report on the formulation of this year's member training programme.

3. BACKGROUND

At their meeting in February 2017, the Committee received a report outlining options for the development of a members training programme for 2017/18.

In fulfilling its role of advising, training or arranging to train members on matters related to the Code of Conduct, the Committee has regularly overseen the development of a member training and development programme, which seeks to ensure that councillors can fulfil their obligations in an effective and efficient way, supporting delivery of services to the Community whilst complying with the Code of Conduct.

The Committee also considered options for ensuring Councillors attended training which was important to the fulfilment of their role.

The Committee agreed that Chairs of Committees and Group leaders be consulted on the types of programme that should be planned for 2017/18.

The results of that engagement will be reported to the meeting and members will be invited to provide further views in advance of the programme being finalised and being approved at the next meeting of the Committee.

4. RATIONALE

The Committee has a role in promoting and maintaining high standards of conduct by councillors and co-opted members. The advising on the provision of training or

arranging to train councillors on matters related to the code of conduct is part of the Committees role and function as stated in the Constitution (Part 3, Section 5).

5. LEGAL IMPLICATIONS

The statutory provisions for the Standards Framework are set out in the Localism Act 2011. The Standards Committees role, functions and powers are stated in the Council's Constitution. This includes advising on the provision of training or arranging to train councillors on matters related to the code of conduct.

6. POLICY IMPLICATIONS

A governance framework in local authorities is necessary to promote and maintain high ethical standards, and to ensure public confidence.

7. FINANCIAL IMPLICATIONS

None contained in this report.

8. CONSULTATIONS

Feedback from members on the training programme has been collated from discussions at the early training events this year in the Programme and a recent survey of key members.

Chief Officer/Member

Contact Officer: David Fairclough

Date: 6 March 2017

Background Papers: Member Trainings & Standards



REPORT OF:	The Monitoring Officer
TO:	Standards Committee
DATE:	15th March 2017

SUBJECT: Complaints Update to the Standards Committee

1. PURPOSE OF THE REPORT

To update Members on complaints received regarding Members conduct under the Arrangements for dealing with complaints about the Code of Conduct for Members.

2. RECOMMENDATIONS

The Committee is asked:

- i) to note the update report.
- ii) to note that there are two complaints in progress at this time.

3. BACKGROUND

The Committee has a role in considering any complaints received relating to the conduct of Members of the Borough Council, co-opted Members and Parish Councils in its area. Members will be aware that not all complaints are proceeded with for various reasons (unsubstantiated complaints, vexatious complaints etc.) however it is important that members are aware of receipt of these and legitimate complaints that are being processed and progressed.

Members of the Committee are to be kept up to date on receipt of all complaints and progress at meetings of the Standards Committee where appropriate subject to any relevant provisions relating to confidentiality.

At the meeting in December 2016 the Monitoring Officer reported there were three matters ongoing subject to the Complaints process.

One of these cases is the subject of a separate report on this Agenda and remains subject to process.

One case was concluded when the Councillor apologised to the complainant who accepted the apology.

The other case was concluded by the Monitoring Officer at the initial assessment stage when it was determined the complaint be rejected on the grounds that the complaint was about something that happened so long ago that those involved are unlikely to remember it clearly enough to provide credible evidence and the lapse of time means there would be little benefit or point in taking action now. There was no overriding public benefit in carrying out an investigation after such a long period of time.

In addition over the preceding weeks to the December report four alleged complaints were received by the Monitoring Officer in general e-mail form, however when the complainants were asked to submit their complaint in accordance with the procedure having been sent the prescribed complaints form to complete, they did not proceed with their complaints, therefore no formal complaints were registered.

In January 2017 a further complaint was received which is currently the subject of initial assessment, bring the total numbers of complaints in due process at this time to two.

4. RATIONALE

The Localism Act requires Councils to put in place mechanisms for reporting and investigation of complaints. This report provides information for the Standards Committee in a clear and transparent way to ensure that all members of the committee are aware of complaints received, progress and outcomes.

5. LEGAL IMPLICATIONS

The statutory provisions for the Standards Framework are set out in the Localism Act 2011.

6. POLICY IMPLICATIONS

A governance framework in local authorities is necessary to promote and maintain high ethical standards, and to ensure public confidence.

7. FINANCIAL IMPLICATIONS

None contained in this report.

8. CONSULTATIONS

The Council's arrangements for promoting and maintaining high standards of conduct have been discussed by the Standards Committee and the arrangements for dealing with complaints about the Code of Conduct for Members are the subject of this report, to ensure openness and transparency to Members of the Committee on complaints received and progress.

Chief Officer/Member

Contact Officer: David Fairclough
Date: 15th February 2017

Background Papers: The Localism Act 2011

Arrangements for dealing with complaints about the Code of Conduct for Members

1. Introduction

- 1.1 These "Arrangements" are made under section 28 of the Localism Act 2011 and set out how you may make a complaint that a Member, Co-opted Member, Parish or Town Council Member has or may have failed to comply with the Code of Conduct for Members (Appendix 1), and sets out how Blackburn with Darwen Borough Council ("the Council") will deal with allegations of a failure to comply with the Code of Conduct.
- 1.2 The person making the complaint will be referred to as "the complainant" and the person against whom the complaint is made will be referred to as the "Subject Member".
- 1.3 No member or officer will participate in any stage of the Arrangements (other than as a witness) if he or she has, or may have, any personal conflict of interest in the matter.
- 1.4 For reference a flowchart of the process is set out at the end of this document.

2. Making a complaint

- 2.1 A complainant must be made in writing on the Council's standard form (available on the Council's website) either by post or e-mail to; The Monitoring Officer, HR & Legal, D Floor, Tower Block, Town Hall, Blackburn BB1 7DY.[*email details*]
- 2.2 The complainant must provide their name and a contact address or an email address, so that the Council can acknowledge receipt of the complaint, request any further information and keep the complainant informed of its progress. If the complainant would like to keep their name and address confidential, they must indicate this in writing, in which case the Council we will not disclose the complainant's name and address to the Subject Member until their request for confidentiality has been considered by the Monitoring Officer Section 5 (Confidentiality) below.
The Council will not investigate anonymous complaints, unless there is a clear public interest in doing so.
- 2.3 The Monitoring Officer will acknowledge receipt of the complaint within five working days of receiving it, and will keep the complainant informed of the progress of your complaint. At the same time the Monitoring Officer will write to the Subject Member (and in the case of a complaint about a Town/Parish Councillor to the Clerk of the Town/Parish Council also) with details of the allegations (subject to any representations from the complainant on confidentiality, which are accepted as valid by the Monitoring Officer under Section 5 (Confidentiality) below).

- 2.4 The Subject Member may, within five working days of receipt, make written representations to the Monitoring Officer which must be taken into account when deciding how the complaint should be dealt with. Representations received after this time may be taken into account, at the discretion of the Monitoring Officer, but will in any event not be considered after the Monitoring Officer has issued the initial assessment of the complaint.

3. Initial Assessment of Complaint

- 3.1 The Monitoring Officer will review the complaint and, following consultation with the Independent Person take a decision (initial assessment) as to whether it merits investigation, or another course of action. This decision will normally be taken within 20 working days of receipt of a complaint.

The complaint will be rejected if;

- The complaint is not against one or more named Members or co-opted Members of the Council or a Town/Parish Council within its district;
- The Subject Member was not in office at the time of the alleged conduct and a Code of Conduct was in force at the time.
- The complaint, if proven, would not be a breach of the Code of Conduct under which the Subject Member was operating at the time of the alleged misconduct.
- The complaint is anonymous (unless the Monitoring Officer determines that it is the public interest to consider it)

- 3.2 If the complaint has not been rejected on the grounds in 3.1 the Monitoring Officer will then go on to apply the following criteria in deciding whether a complaint should be considered;

- Whether a substantially similar allegation has previously been made by the complainant to Standards for England, or the Standards Committee, or the complaint has been the subject of an investigation by another regulatory authority;
- Whether the complaint is about something that happened so long ago that those involved are unlikely to remember it clearly enough to provide credible evidence, or where the lapse of time means there would be little benefit or point in taking action now;
- Whether the allegation discloses a potential breach of the Code of Conduct, but the complaint is not serious enough to merit any action and
 - i. The resources needed to investigate and determine the complaint are wholly disproportionate to the allegations and
 - ii. Whether in all the circumstances there is no overriding public benefit in carrying out an investigation.
- Whether the complaint appears to be malicious, vexatious, politically motivated or tit for tat;

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- Whether the complaint suggests that there is a wider problem throughout the Authority;
- Whether (after the Monitoring Officer making preliminary enquiries) it is apparent that the Subject Member is relatively inexperienced as a Member or has admitted making an error and the matter would not warrant a more serious sanction;
- Whether training or conciliation would be the appropriate response.

In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for an investigation.

Such informal resolution may involve the Subject Member accepting that his/her conduct was unacceptable and offering an apology, or taking other steps. Where the Subject Member or the Authority (in appropriate cases) makes a reasonable offer of local resolution, but it is rejected by the complainant, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

The Monitoring Officer will consult with the Independent Person and then give his decision on how the complaint will be dealt with. The Monitoring Officer may in exceptional circumstances refer the question of how to proceed to a Sub-Committee of the Standards Committee.

4. Additional Information

- 4.1 The Monitoring Officer may require additional information before coming to a decision and may request information from the Subject Member.
- 4.2 Where the complaint relates to a Town/Parish Councillor, the Monitoring Officer may also inform the Clerk of the Town/Parish Council of the complaint and seek the views of the Clerk of the Town/Parish Council before deciding whether the complaint merits formal investigation or other action.
- 4.3 If the complaint identifies criminal conduct or breach of other regulations by any person, the Monitoring Officer is authorised to report this to the Police or other prosecuting or regulatory authority, in addition to any action taken pursuant to the Code.
- 4.4 In circumstances of alleged criminal conduct as set out in paragraph 4.2 above the timescales relating to the handling of the complaint throughout this procedure will be amended to facilitate the investigation by the Police or other prosecuting regulatory authority.

5. Confidentiality

- 5.1 If a complainant has asked for their identity to be withheld, this request will be considered by the Monitoring Officer at the initial assessment stage.

5.2 As a matter of fairness and natural justice the Subject Member should usually be told who has complained about them and receive details of the complaint. However, in exceptional circumstances, the Monitoring Officer may withhold the complainant's identity if on request from the complainant, or otherwise, they are satisfied that the complainant has reasonable grounds for believing that they or any witness relevant to the complaint may be at risk of physical harm, or his or her employment may be jeopardised if their identity is disclosed, or where there are medical risks (supported by medical evidence) associated with the complainant's identity being disclosed.

5.3 If the Monitoring Officer decides to refuse a request by a complainant for confidentiality, they will offer the complainant the option to withdraw the complaint, rather than proceed with his or her identity being disclosed. The Monitoring Officer will balance whether the public interest in taking action on a complaint will outweigh the complainant's wish to have his or her identity withheld from the Subject Member.

6. Investigation

6.1 The Monitoring Officer will appoint an investigating officer where a complaint merits formal investigation. The Investigating Officer may be a Council officer, an officer from another council, or an external investigator.

6.2 The Investigating Officer will follow guidance issued by the Monitoring Officer on the investigation of complaints. The guidance will follow the principles of proportionality and the cost effective use of Council resources and shall be interpreted in line with these principles.

6.3 The Investigating Officer will ensure that the Subject Member receives a copy of the complaint – subject to the Monitoring Officer decision on confidentiality.

6.4 At the end of their investigation, the Investigating Officer will produce a draft report and will send copies of that draft report to the complainant and to the Subject Member, for comments. The Investigating Officer will take such comments into account before issuing their final report to the Monitoring Officer.

6.5 Although it is not possible to be prescriptive of the length of investigation, however normally it would be expected that any investigation once commenced would not normally exceed 20 working days. In any event both the Complainant and the Subject Member will be advised of the timescale and updated should this require amendment.

7. Investigating Officer finding of no failure to comply with the Code of Conduct

7.1 Where the Investigating Officer's report does not find that the Subject Member has failed to comply with the Code of Conduct, the Monitoring Officer, in consultation with the Independent Person, will review the Investigating Officer's report and if satisfied, will confirm the finding of no failure to comply with the Code of Conduct.

7.2 The Monitoring Officer will write to the complainant and the subject Member (and to the Clerk of the Town/Parish Council, where the complaint relates to a Town/Parish Councillor), with a copy of the decision and the Investigating Officer's report within 10 working days of receipt of the completed report.

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- 7.3 If the Monitoring Officer is not satisfied that the investigation has been conducted thoroughly, the Investigating Officer may be asked to reconsider the report and the conclusions.

8 Investigating Officer finding of sufficient evidence of failure to comply with the Code of Conduct.

Where the Investigating Officer's report does find that the Subject Member has failed to comply with the Code of Conduct, the Monitoring Officer will review the Investigating Officer's report and will then either send the matter for a hearing before the Hearings Panel normally within 20 working days of receiving the report or resolve the matter under section 9 below without the need for a hearing.

9. Resolution

If the Monitoring Officer considers that the matter can reasonably be resolved without the need for a hearing, they will consult with the Independent Person and the complainant and seek to agree a fair resolution. Such resolution may include the Subject Member accepting that their conduct was unacceptable and offering an apology, and/or other remedial action. If the Subject Member accepts the suggested resolution, the Monitoring Officer will report the outcome to the Standards Committee and the Clerk to the Town/Parish Council (if appropriate) for information, but will take no further action. If the complainant or the Subject Member refuses the resolution in principle or to engage with the agreed outcome, the Monitoring Officer will refer the matter normally within 20 working days for a hearing without further reference to the complainant or the Subject Member.

10. Hearing

Where, in the opinion of the Monitoring Officer, a resolution without a hearing is not appropriate or the complainant and/or Subject Member refuses to co-operate, then the Monitoring Officer will report the Investigating Officer's findings to the Hearings Panel which will conduct a hearing before deciding whether the Subject Member has failed to comply with a Code of Conduct and, if so, what action (if any) to take in respect of the Member.

The Standards Committee will agree and adopt a procedure for local hearings.

11. Constitution of the Hearings Panel

The Hearings Panel is a sub-committee of the Council's Standards Committee. The Council have decided that it will comprise of at least one of the independent members co-opted to the Standards Committee and three members of the Council drawn from at least two different political parties. Where the complaint is about a Town or a Parish Council Member, the Hearings Panel will include at least one of the Town/Parish Council Members co-opted to the Standards Committee.

The Independent Person is invited to attend all meetings of the Hearings Panel and their views must be sought and taken into consideration before the Hearings Panel takes any decision on whether the Subject Member's conduct constitutes a failure to comply with the

code of conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct. item 6.1

12. The Independent Person

The Independent Person must be a person who has applied for the post following advertisements of a vacancy for the post, and approved by a positive vote from a majority of all the Members of the Council at a meeting of the full Council.

A person is not eligible for appointment if they:

- are, or have been within the past five years a Member, co-opted Member or officer of the Council;
- are, or have been within the past five years a Member, co-opted Member or officer of a Town or Parish Council within the Borough; or
- are a relative or close friend of a person within bullet points 1 or 2 above.

For this purpose, "relative" means that:

- Spouse or civil partner;
- Living with the other person as husband and wife or as if they were civil partners;
- Grandparents of the other person;
- A lineal descendant of a grandparent of the other person;
- A parent, sibling or child of the person within the above bullet points;
- A spouse or civil partner of a person within the above bullet points; or
- Living with a person within the above bullet points or as husband and wife or as if they were civil partners.

13. Action

Where a Hearings Panel find that a Subject Member has failed to comply with the code of conduct, the Council has delegated to the Hearings Panel such of its powers to take action in respect of Subject Members as may be necessary to promote and maintain high standards of conduct. Accordingly, the Hearings Panel may –

- Publish its findings in respect of the Subject Member's conduct;
- Report its finding to Council (or to the Town/Parish Council) for information;
- Recommend to Council that the Subject Member be censured;
- Recommend to the Subject Member's group leader (or in the case of ungrouped members recommend to Council) that he/she be removed from any or all committees or sub committees of the Council;
- Recommend to the Leader of the Council that the Subject Member be removed from the Executive, or removed from their portfolio responsibilities;

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- Instruct the Monitoring Officer to (or recommend that the Town/Parish Council) arrange training for the Subject Member;
- Recommend to Council (or recommend to the Town/Parish Council) that the Subject Member be removed from all outside bodies, appointments to which they have been appointed or nominated by the Council (or by the Town/Parish Council);
- Withdraw (or recommend to the Town/Parish Council that it withdraws) facilities provided to the Subject Member by the Council such as a computer, website and/or e-mail and internet access; or
- Placing such restrictions on Subject Member's access to staff which may be reasonable in the circumstances and in accordance with the Member/Officer Protocol provided that such restrictions do not impede the Subject Member from carrying out their duties as a Councillor

14 Withdrawal of a Complaint

In the event that a complainant withdraws a complaint at any time prior to a decision having been made by a Hearings Panel, the Monitoring Officer may, following consultation with the Independent Person, decide that no further steps be taken in respect of that complaint but shall, in taking such a decision take into account any issues which may arise under Paragraph 3.1(c) of the Code of Conduct.

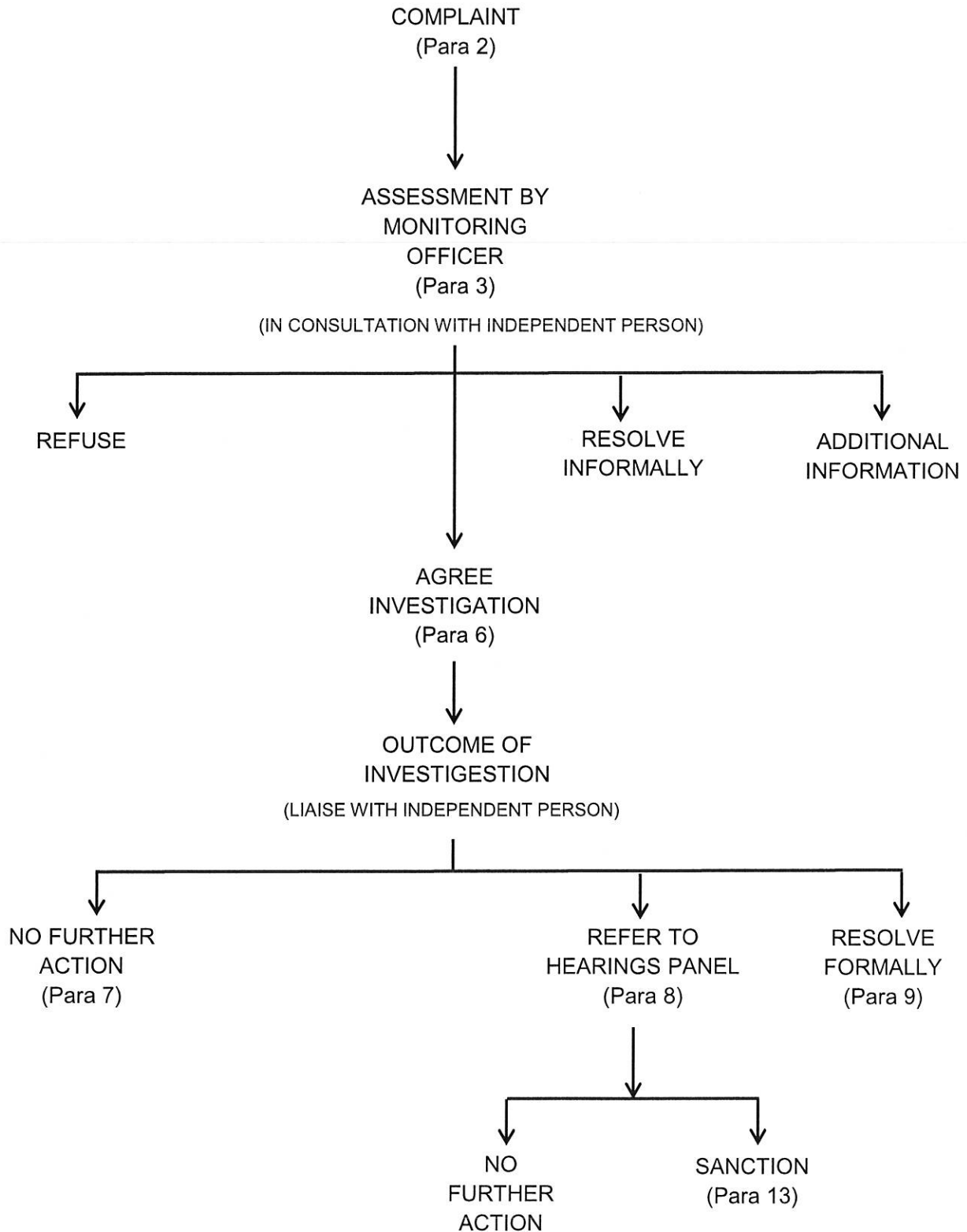
15 Revision of these Arrangements

The Council may by resolution or delegation to the Monitoring Officer agree to amend these arrangements and has delegated to the Chair of the Hearings Panel the right to depart from these arrangements where they consider that it is expedient to do so in order to secure the effective threat and fair consideration of any matters.

16. Appeals

Subject to judicial review or a decision of a Local Government Ombudsman, there is no right of appeal against the decision of a Monitoring Officer or of the Hearings Panel.

FLOW CHART COMPLAINTS





REPORT OF:	The Monitoring Officer
TO:	Standards Committee
DATE:	15th March 2017

SUBJECT: Hearing Panel Arrangements – Complaint received re Councillor

1. PURPOSE OF THE REPORT

To provide an update to the Standards Committee in relation to the complaint made against a Councillor for an alleged breach of the Code of Conduct, and to make the arrangements for a meeting of the Hearings Panel.

2. RECOMMENDATIONS

The Committee is asked to:

2.1 Note the Monitoring Officers action to refer the matter of the Complaint into the conduct of a Councillor to a Hearing Panel.

2.2 To nominate the Members of the Standards Committee to form a Hearing Panel to consider the matter of the Complaint into the conduct of a Subject Councillor as referenced in the report.

3. BACKGROUND

The Committee has a role in promoting and maintaining high standards of conduct by councillors/members.

The Council Constitution sets out how matters such as complaints received in respect of alleged breaches of the Code of Conduct for Members should be addressed and handled ('Arrangements for dealing with complaints about the Code of Conduct for Members' – Part 5, Section 1 refers). **Appendix A**

At their meeting on 8th February 2017, the Standards Committee considered a report under part 2 where the Monitoring Officer sought a view from the Standards Committee in respect of the outcome of an Investigating Officers report relating to a complaint about the conduct of a Councillor.

The Committee resolved that they would recommend the Monitoring Officer to report the Investigating Officers findings to a Hearings Panel.

This report asks the Standards Committee to make the arrangements for that hearing.

Constitution of the Hearings Panel

A report also on this Agenda sets out the establishment of the Standards Hearings Panel for the local hearing of complaints against members

As outlined in that report the Hearings Panel is a sub-committee of the Council's Standards Committee. The Council has decided that it will comprise of at least one of the independent members co-opted to the Standards Committee and three members of the Council drawn from at least two different political parties.

The Standards Committee therefore need to agree within this context who they are to nominate to constitute the Hearings Panel for this Councillor Complaint.

Procedure for the Hearing

The separate report on this Agenda also sets out a proposed Procedure for adoption for the Hearings Panel meeting subject to the requirements of which the Standards Committee.

4. RATIONALE

The Committee has a role in promoting and maintaining high standards of conduct by councillors and co-opted members. To facilitate an effective process in accordance with the requirements of the Council Constitution, the Standards Committee must determine the membership of the Hearings Panel and the scheduling of the meeting to consider the related report.

5. LEGAL IMPLICATIONS

The statutory provisions for the Standards Framework are set out in the Localism Act 2011. The Committee's role, functions and powers are contained in the Council's Constitution. This includes the adoption of such procedures for the hearing and determination of any complaints as the Committee considers appropriate, and to appoint a Hearings Panel of the committee for the purposes of conducting a local hearing into any complaint referred by the Monitoring Officer.

The Council has delegated to the Hearings Panel powers to take action in respect of Subject Members as may be necessary to promote and maintain high standards of conduct. The range of actions available to the Hearings Panel are referred to in the Arrangements and also reflected in the draft Hearings Panel Procedure.

6. POLICY IMPLICATIONS

A governance framework in local authorities is necessary to promote and maintain high ethical standards, and to ensure public confidence. This includes adopting adequate procedures for local hearing of complaints against Members, and where it is found that a Member has failed to follow the Code of Conduct to take appropriate action in accordance with the provisions of the relevant procedures.

7. FINANCIAL IMPLICATIONS

None contained in this report.

8. CONSULTATIONS

The Council's arrangements for promoting and maintaining high standards of conduct have been discussed and agreed previously by the Standards Committee.

Chief Officer/Member

Contact Officer: David Fairclough
Date: 15th February 2017

Background Papers:

Appendix: Arrangements for dealing with complaints about the Code of Conduct for Members