

Appendix B

Section 1 Members Code of Conduct

Code of Conduct for Members and Guidance

1. Introduction

The Council is determined to provide excellent local government for the people of the Borough. It promotes and maintains high standards of conduct by Members and Co-opted Members and has adopted a Code of Conduct for Members, in line with its obligations under section 27(2) of the Localism Act 2011. To help Members understand their conduct responsibilities, they should make sure they read and understand the General Principles below

2. General Principles of Conduct for Members and Co-opted Members

Members and co-opted Members must behave according to the highest standards of personal conduct in everything they do as a Member. In particular, they must observe the following principles of conduct, some of which are set out in law.

2.1 Selflessness

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

2.2 Honesty and Integrity

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

2.3 Objectivity

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

2.4 Accountability

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

2.5 Openness

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

2.6 **Personal Judgement**

Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

2.7 **Respect for Others**

Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.

2.8 **Duty to Uphold the Law**

Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

2.9 **Stewardship**

Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

2.10 **Leadership**

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

3. **Training**

Each Member must attend annual training on the Code of Conduct/ethical standards, in addition to any current requirements to receive training for specific Committees, for example Planning & Highways or Licensing Committees.

THE CODE OF CONDUCT

Part 1

GENERAL PROVISIONS

1. Introduction and interpretation

- 1.1 This Code applies to you as a member of the Council.
- 1.2 It is your responsibility to comply with this Code. Failure to do so may result in a sanction being applied by the Council. Failure to take appropriate action in respect of a Disclosable Pecuniary Interest may result in a criminal conviction and a fine of up to £5,000 and /or disqualification from office for a period of up to 5 years.
- 1.3 In this Code: -
 - 1.3.1 “meeting” means any meeting of:
 - (a) the Council;
 - (b) any of the Council’s committees or sub-committees, joint committees or joint sub-committees;
 - 1.3.2 “member” includes a co-opted member and an appointed member.

2. Scope

- 2.1 The Code of Conduct applies to you:
 - (a) Whenever you act in your official capacity, including whenever you conduct the business of your authority or act, claim to act or give the impression you are acting, in your official capacity or as a representative of your authority;
 - (b) At any time, where your conduct has led to a criminal conviction. However, the Code of Conduct does not apply to your private life.
- 2.2 Where you act as a representative of the Council—
 - (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority’s code of conduct; or
 - (b) on any other body, you must, when acting for that other body, comply with this Code, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

3. General obligations

- 3.1 You must not:
 - (a) do anything which may knowingly cause your authority to breach the Equality Act 2010;
 - (b) bully, **harass** or be abusive to any person;

- (c) intimidate or attempt to intimidate any person who is or is likely to be:
 - (i) a complainant,
 - (ii) a witness, or
 - iii) involved in the administration of any investigation or proceedings, in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or
- (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Council.

Definitions and Examples

Bullying is a particular form of harassment and may be characterised as persistent, offensive, intimidating, malicious or insulting behaviour, possibly through an abuse or misuse of position or power where the intention or outcome is to undermine, humiliate, denigrate or injure the recipient. Examples of bullying include: shouting at others in public or in private; personal insults; ignoring or excluding individuals; persistent, excessive, unfair or unjustified criticism; setting impossible deadlines or targets/objectives or making inconsistent demands. This list is not exhaustive.

Harassment is, in general terms, unwanted, unreasonable and offensive conduct affecting the dignity of the individual. It includes verbal, non-verbal and physical conduct that may be related to age, gender, race, disability, sexual orientation, religion and belief, nationality or any personal characteristic of the individual, and may be persistent or an isolated incident. Examples of harassment include: unwanted physical contact, offensive jokes or banter, offensive emails, pictures or graffiti, unwelcome sexual advances, exclusion and victimisation. This list is not exhaustive.

Victimisation is treating someone less favourably than others because the individual has, in good faith, complained (whether formally or otherwise) that someone has been bullying or harassing them or someone else, or supported someone to make a complaint or given evidence in relation to a complaint. Examples include: Isolating someone because the individual has made a complaint or treating them differently.

4. You must not:

- (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:
 - (i) you have the consent of a person authorised to give it;
 - (ii) you are required by law to do so;
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - (iv) the disclosure is:
 - (a) reasonable and in the public interest; and

- (b) made in good faith and in compliance with the reasonable requirements of the Council; or
- (b) prevent another person from gaining access to information to which that person is entitled by law.
- 5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Council into disrepute.
- 6. You:
 - (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
 - (b) must, when using or authorising the use by others of the resources of your authority:
 - (i) act in accordance with the Council's reasonable requirements; and
 - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
 - (c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
- 7. (1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by
 - (a) The Council's chief finance officer; or
 - (b) The Council's monitoring officer,

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

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

Part 2

DISCLOSABLE PECUNIARY INTERESTS

8. Disclosable Pecuniary Interests" are defined from time to time by the Secretary of State in Regulations. The Regulations current at the time of adoption of this Code are The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 and are set out below.

A 'disclosable Pecuniary Interest' is an interest of yourself or your partner (which means spouse or civil partner, 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) within the following descriptions:

<i>Subject</i>	<i>Prescribed description</i>
Employment, office, trade, profession or vacation	Any employment, office, trade, profession or vocation carried on for profit or gain.

Sponsorship	<p>Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.</p>
Contracts	<p>Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority—</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	<p>Any tenancy where (to M's knowledge)—</p> <p>(a) the landlord is the relevant authority; and</p> <p>(b) the tenant is a body in which the relevant person has a beneficial interest.</p>
Securities	<p>Any beneficial interest in securities of a body where—</p> <p>(a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and</p> <p>(b) either—</p> <p>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p>

Definitions

“the Act” means the Localism Act 2011;

“body in which the relevant person has a beneficial interest” means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;

“director” includes a member of the committee of management of an industrial and provident society;

“land” excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;

“M” means a member of a relevant authority;

“meeting” means any meeting of the Council, the Executive, any of the Council’s or Executive’s committees, sub-committees, joint committees, joint sub-committees, or area committees.

“member” includes a co-opted member;

“relevant authority” means the authority of which M is a member;

“relevant period” means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) or section 31(7), as the case may be, of the Act;

“relevant person” means M or any other person referred to in section 30(3)(b) of the Act;

“securities” means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

9. Registering and declaring Disclosable Pecuniary Interests

- 9.1 You must, within 28 days of your election or appointment to office as a member or co-opted member notify the Council’s Monitoring officer of any Disclosable Pecuniary Interests you have (see paragraph 8 above)
- 9.2 You must, notify the Council’s Monitoring Officer within 28 days of becoming aware of any changes to a Disclosable Pecuniary Interest previously notified or of any new Disclosable Pecuniary Interest not previously notified, and provide an update to the Monitoring Officer once every 12 months.
- 9.3 If a Disclosable Pecuniary Interest, has not been entered onto the Council’s register, then the member or co-opted member must disclose the interest to any meeting of the Council at which they are present, where they have a Disclosable Pecuniary Interest and where the matter is not a “sensitive interest”.
- 9.4 Following disclosure of a Disclosable Pecuniary Interest not on the Council’s register or the subject of pending notification, you must notify the Monitoring Officer of the interest within 28 days beginning with the date of disclosure.
- 9.5 Unless dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a Disclosable Pecuniary Interest.
- 9.6 Any interests notified to the Monitoring Officer will be included in the register of interests. A copy of the register will be available for public inspection and will be published on the authority’s website

10 Sensitive Interests

Where you consider that disclosure of the details of a Disclosable Pecuniary Interest could lead to you, or a person connected with you, being subject to violence or intimidation, and the Monitoring Officer agrees, if the interest is entered on the register, copies of the register that are made available for inspection and any published version of the register will exclude details of the interest, but may state that you have a Disclosable Pecuniary Interest, the details of which are withheld under Section 32(2) of the Localism Act 2011

11 Effect of Disclosable Pecuniary Interests on Participation

11.1 If you are present at a meeting of the authority and you have a Disclosable Pecuniary Interest in any matter to be considered or being considered at the meeting:

- (a) You may not participate in any discussion of the matter at the meeting.
- (b) You may not participate in any vote taken on the matter at the meeting.
- (c) If the interest is not registered, you must disclose the interest to the meeting.
- (d) If the interest is not registered and is not the subject matter of a pending notification, you must notify the Monitoring Officer of the interest within 28 days.

Note: In addition the Council Procedure Rules require you to leave the room where the meeting is held while any discussion or voting takes place

11.2 Where an Executive Member discharging a function alone and becomes aware of a Disclosable Pecuniary Interest in a matter being dealt with or to be dealt with by him/her, the Executive Member must notify the Monitoring Officer of the Interest and must not take any steps or further steps in the matter

12 Dispensations

The authority may grant you a dispensation, but only in limited circumstances, to enable you to participate and vote on a matter on which you have a Disclosable Pecuniary Interest

13 Offences

It is a criminal offence to:

- Fail to notify the Monitoring Officer of any Disclosable Pecuniary Interest within 28 days of election
- Fail to disclose a Disclosable Pecuniary Interest at a meeting if it is not on the register
- Fail to notify the Monitoring Officer within 28 days of a Disclosable Pecuniary Interest that is not on the register that you have disclosed to a meeting
- Participate in any discussion or vote on a matter in which you have a Disclosable Pecuniary Interest
- As an Executive Member discharging a function, acting alone, and having a Disclosable Pecuniary Interest in such a matter, failing to notify the Monitoring Officer within 28 days of the interest.
- Knowingly or recklessly providing information that is false or misleading in notifying the Monitoring Officer of a Disclosable Pecuniary Interest or in disclosing such interest to a meeting.

The criminal penalties available to a court are to impose a fine not exceeding level 5 on the standard scale and disqualification from being a councillor for up to 5 years.

Part 3

OTHER INTERESTS

14 Notification of Other Interests

- 14.1 In addition to Disclosable Pecuniary Interests you must, within 28 days of your election or appointment to office as a member or co-opted member notify the Monitoring Officer in writing of details of your interests within the following categories, for inclusion in the register of interests:
- (a) Details of any body of which you are a member or in a position of general control or management to which you are appointed or nominated by your authority;
 - (b) Details of any body exercising functions of a public nature, any body directed to charitable purposes or any body 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;
 - (c) Details of any gift or hospitality with an estimated value of at least £25 that you have received in connection with your role as a member of the Council, and details of the donor
- 14.2 You must, within 28 days of becoming aware of any new interest or change to any interest registered under this paragraph notify the Monitoring Officer of the details of that new interest or change.
- 14.3 Any interests notified to the Monitoring Officer will be included in the register of interests. A copy of the register will be available for public inspection and will be published on the authority's website.
- 14.4 Where a Disclosable Pecuniary Interest is notified to the Monitoring Officer under Part 2, paragraph 9 above it need not be separately notified or separately registered again as an interest under this Part 3 of the Code.

15 Disclosure of Other Interests

- 15.1 Subject to 15.2 to 15.5, where you have an interest described in paragraph 14 above or in 15.2 below in any business of your authority, and where you are aware or ought reasonably to be aware of the existence of that interest, and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.
- 15.2 You have an interest in any business of your authority where a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a member of your family or any person with whom you have a close association.
- 15.3 Where you have an interest in any business of the authority of the type mentioned in paragraph 14(c), (gifts and hospitality) you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.

- 15.4 Where you have an interest by virtue of paragraph 14 but, by virtue of paragraph 17 below, (Sensitive interests) relating to it is not registered in the register of members' interests, you must indicate to the meeting that you have an interest, but need not disclose the sensitive information to the meeting.
- 15.5 Where you have an interest in any business of your authority by virtue of paragraph 14 or 15.2, and you have made an Executive Decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.

16 Non participation in case of certain other interests

- 16.1 Where you have an interest in any business of your authority by virtue of paragraph 14 or 15.2 **AND** the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgment of the public interest **AND** where that business:
- (a) affects your financial position or the financial position of a person or body through whom the interest arises; or
 - (b) relates to the determining of any approval, consent, licence, permission or registration in relation to you or any person through whom the interest arises,

you may not participate in any discussion of the matter at the meeting, and you may not participate in any vote taken on the matter at the meeting.

Note: In addition, the Council Procedure Rules require you to leave the room where the meeting is held while any discussion or voting takes place.

- 16.2 Where you have an interest in any business of your authority to which paragraph 16.1 applies, you may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise, and provided that you leave the room where the meeting is held immediately after making representations, answering questions or giving evidence.
- 16.3 Subject to you disclosing the interest at the meeting, you may attend a meeting and vote on a matter where you have an interest under paragraph 16.1 that relates to the functions of your authority in respect of:
- (a) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
 - (b) an allowance, payment or indemnity given to members;
 - (c) any ceremonial honour given to members; and
 - (d) setting council tax or a precept under the Local Government Finance Act 1992.
- 16.4 Where, as an Executive Member, you may discharge a function alone, and you become aware of an interest under paragraph 16.1 in a matter being dealt with, or to be dealt with by you, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter, or seek improperly to influence a decision about the matter.

17 Sensitive interests

Where you consider that disclosure of the details of an interest could lead to you, or a person connected with you, being subject to violence or intimidation, and the Monitoring Officer agrees, if the interest is entered on the register, copies of the register that are made available for inspection and any published version of the register will exclude details of the interest, but may state that you have an interest, the details of which are withheld.

BLACKBURN WITH DARWEN BOROUGH COUNCIL

Protocol on Member to Member Relations

Councillors at all times must promote and maintain high standards and adopted a Code of Conduct for Members in line with its obligations under section 27(2) of the Localism Act 2011. Members and co-opted members must behave according to the highest standards for personal conduct in everything they do as a Member. In particular they must observe the following 10 principles of conduct as set out in the Code of Conduct, some of which are set out in law:

Selflessness, Honesty & Integrity, Objectivity, Accountability, Openness, Personal Judgement, Respect of others, Duty to uphold the law, Stewardship and Leadership

The Code of Conduct makes it clear that “*Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability*” (Respect for others). This applies to all circumstances including working with other councillors.

All councillors have a responsibility to behave in a way that is not offensive to others and to acknowledge that views and opinions held by other councillors may not always coincide with their own. Such differences being expressed are unlikely to constitute harassment. The Code is therefore not intended to deter from robust political argument and debate, but it does expect that all councillors conduct themselves in accordance with these 10 principles at all times, certainly avoiding any behaviours which could be deemed as bullying, harassing or victimising, in any way.

In this context councillors are responsible for being aware of and understanding the following definitions*:

Bullying is a particular form of harassment and may be characterised as persistent, offensive, intimidating, malicious or insulting behaviour, possibly through an abuse or misuse of position or power where the intention or outcome is to undermine, humiliate, denigrate or injure the recipient. Examples of bullying include: shouting at others in public or in private; personal insults; ignoring or excluding individuals; persistent, excessive, unfair or unjustified criticism; setting impossible deadlines or targets/objectives or making inconsistent demands. This list is not exhaustive.

Harassment is, in general terms, unwanted, unreasonable and offensive conduct affecting the dignity of the individual. It includes verbal, non-verbal and physical conduct that may be related to age, gender, race, disability, sexual orientation, religion and belief, nationality or any personal characteristic of the individual, and may be persistent or an isolated incident. Examples of harassment include: unwanted physical contact, offensive jokes or banter, offensive emails, pictures or graffiti, unwelcome sexual advances, exclusion and victimisation. This list is not exhaustive.

Victimisation is treating someone less favourably than others because the individual has, in good faith, complained (whether formally or otherwise) that someone has been bullying or harassing them or someone else, or supported someone to make a complaint or given evidence in relation to a complaint. Examples include: Isolating someone because the individual has made a complaint or treating them differently.

Councillors can therefore expect of other Councillors:

- To represent their wards effectively and efficiently
- To strive to do their best for their Wards and constituents of the Borough
- To behave in a manner which accords with the Code of Conduct for Members
- To be respectful and courteous
- To respond to enquiries fairly and efficiently
- To act lawfully and to maintain confidentiality when appropriate to do so
- To maintain confidentiality where it is appropriate to do so
- To have regards to social hours regarding contact
- To consider information for the purpose of making informed judgements
- To treat all councillors in a reasonable manner
- Not to make any inappropriate comment towards another councillor, which could be interpreted as discriminatory, demeaning, abusive or bullying.
- Not to ask Councillor's to breach council policy or procedures, or to act unlawfully
- Not to exert undue influence or pressure, or request special treatment for councillor's friends or family members.
- Not to request unauthorised access to resources or information held by the council
- Not to breach confidentiality and disclose any personal/private information about another councillor

Failure to follow the Protocol

Any complaint alleging failure to follow this Protocol would be considered under the '*Arrangements for dealing with complaints about the Code of Conduct for Members*'.

Training*

Mandatory training for all Councillors will be provided annually to help support elected Members in understanding equalities, inclusivity and what behaviours may amount to discriminatory behaviour.

BLACKBURN WITH DARWEN BOROUGH COUNCIL

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.
- 1.5 There are no powers in legislation and therefore under this complaints process for the suspension or dismissal of an elected councillor. In the event of a councillor being found in breach of the Code of Conduct only the sanctions as set out in Paragraph 13 below apply.

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; For the attention of The Monitoring Officer, HR & Legal, D Floor, Tower Block, Town Hall, Blackburn BB1 7DY. email: MonitoringOfficer@blackburn.gov.uk
- 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 **Formal standards complaints about the conduct of a parish councillor towards a clerk should be made by the chair or by the parish council as a whole, rather than the clerk in all but exceptional circumstances.**

- 2.4 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).
- 2.5 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, **trivial**, politically motivated or tit for tat;
 - 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.
 - **Whether the allegation discloses a potential breach of the Code of Conduct, but the complaint is not serious enough to merit any action**

And taking all or any of the above into account:

- 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.**

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. **Considering potential conflicts of interest** 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. **The subject member is required to comply with any formal standards investigation, failure to do so would be considered a breach of the Code of Conduct in itself.**
- 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.
- 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.

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;
- 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 Decision Notice

Where a decision on an allegation of misconduct is made following a formal investigation, a decision notice will be published as soon as possible on the council’s website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.

15 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.

16 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 treatment and fair consideration of any matters.

17. 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.