

# Audit and Governance Standards Hearing Sub-Committee Agenda

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**Date:** Tuesday 24th November 2015  
**Time:** 10.30 am  
**Venue:** Council Chamber, Municipal Buildings, Earle Street, Crewe  
CW1 2BJ

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The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and at the foot of each report.

## **PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT**

### **1. Appointment of Chairman**

To appoint a Chairman from amongst the elected members on the Sub-Committee

### **2. Declarations of Interest**

To provide an opportunity for Members and Officers to declare any disclosable pecuniary and non-pecuniary interests in any item on the agenda.

### **3. Report of the Monitoring Officer**

The report of the Monitoring Officer provides a summary of the business to be transacted in consideration of complaint number CEC/14-15/MO11.

The Hearing Sub-Committee will normally meet in public. However, the Sub-Committee will be invited to determine whether it is appropriate and in the public interest for the hearing to take place in public as the Subject Member has requested that the hearing be held in private.

In the event the Subject Member's request is granted, the Sub-Committee will be invited to pass a resolution that the press and public be excluded from the meeting, as set out at Item 4 on the agenda.

If the Sub-Committee declines the Subject Member's request, the papers listed under agenda Item 5 will be made available to the public at the meeting and will be posted on the Council's website at the conclusion of the meeting.

**4. Exclusion of the Press and Public**

The reports relating to the remaining items on the agenda have been withheld from public circulation and deposit pursuant to Section 100(B)(2) of the Local Government Act 1972 on the grounds that the matters may be determined with the press and public excluded.

The Committee may decide that the press and public be excluded from the meeting during consideration of the following items pursuant to Section 100(A)4 of the Local Government Act 1972 on the grounds that they involve the likely disclosure of exempt information as defined in Paragraphs 1 and 2 of Part 1 of Schedule 12A to the Local Government Act 1972 and public interest would not be served in publishing the information.

**PART 2 - MATTERS TO BE CONSIDERED WITHOUT THE PUBLIC AND PRESS PRESENT**

**5. Consideration of Complaint CEC/14-15/MO11 (Pages 1 - 58)**

The Sub-Committee is invited to consider the report of the investigating officer and determine what action, if any, to take in respect of the above complaint.

## CHESHIRE EAST COUNCIL

### AUDIT AND GOVERNANCE STANDARDS HEARING SUB-COMMITTEE

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Date of meeting: 24 November 2015  
Report of: Head of Legal Services and Monitoring Officer  
Title: Allegation of a breach of the Cheshire East  
Council Code of Conduct  
Complaint Number: CEC/14-15/MO11

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#### **1. Purpose of the Report**

- 1.1 To consider the investigation report prepared about the above complaint and to determine what action, if any should be taken.

#### **2. Decision Required**

- 2.1 The Hearing Sub-Committee is invited to consider the Investigating Officer's report which concludes that the subject member has breached Cheshire East Council's code of conduct, and the evidence produced by the subject member and determine (i) whether it agrees that a breach of the code has taken place and, if so, (ii) what sanction, if any, to impose.

#### **3. Introduction**

- 3.1 This case arises out of allegations made by the complainant about comments made by the subject member in the press and on local radio allegedly calling for the sacking of a Cheshire East officer.
- 3.2 The Hearing Sub-Committee has full powers delegated to it under the council's constitution to deal with hearings and determine what sanction, if any, to impose if a breach of the code of conduct is found to have occurred. The sub-committee's decision is final and there is no right of appeal.

#### **4. Procedure for the Meeting**

- 4.1 The procedure to be followed at the meeting is appended to the report **(1)**.
- 4.2 A copy of Cheshire East Council's Code of Conduct Complaints Procedure is also appended to the report **(2)**.

### **5. The Complaint**

- 5.1 The Monitoring Officer received a complaint about comments made by the subject member in the press and on local radio allegedly calling for the sacking of an officer of the Council. .
- 5.2 The substance of the complaint is set out in the complaint form and associated letter provided by the Complainant **(3)**, copies of which were sent to the subject member for information in accordance with the complaints procedure.
- 5.3 The paragraph of the code of conduct which applies is: paragraph 7 (respect for others).
- 5.4 A copy of the council's code of conduct is attached **(4)** for reference purposes.

### **6. Initial Assessment**

- 6.1 The Monitoring Officer in consultation with the Independent Person completed her initial assessment of the complaint on 20 January 2015 and decided that it should be investigated.
- 6.2 The Investigating Officer carried out an investigation and produced a report **(5)** which concluded that a breach of the code of conduct had occurred. The Monitoring Officer, in consultation with the Independent Person, concluded that the case should go before the Hearing Sub-Committee in accordance with the requirements of the complaints procedure. The process at the hearing enables the investigator and subject member to fully explain their respective cases.

### **7. Parties attending the Hearing**

- 7.1 The investigator has confirmed that he will be present at the meeting and will be accompanied by one witness.
- 7.2 The subject member has confirmed that he will be present at the meeting and will be accompanied by one witness.

### **8. Matters for Determination**

- 8.1 The sub-committee needs to decide whether or not it is satisfied that a breach of the council's code of conduct for members has occurred and if so, which paragraphs of the code have been breached.
- 8.2 If satisfied that a breach of the code has occurred the sub-committee will need to decide what sanction, if any, should be imposed as a result. The list of available sanctions is set out in the complaints procedure **(1)**

**9. Decision**

- 9.1 If, having considered the matter, the sub-committee finds that the subject member has not breached the council's code of conduct, no further action will be taken and the decision will be published on the council's website if the subject member wishes.
- 9.2 If a breach is found to have occurred, that fact and the sanction imposed will be published on the council's website as part of the minutes of the meeting.
- 9.3 In either case the decision will be announced at the meeting and confirmed in writing as soon as possible but in any event within 10 working days. The Monitoring Officer will prepare a formal decision notice in consultation with the Chairperson and send a copy to the complainant and subject member.

Officer: Anita Bradley  
Designation: Head of Legal Services and Monitoring Officer  
Tel No. 01270 686 003  
Email: [MonitoringOfficerCEC@cheshireeast.co.uk](mailto:MonitoringOfficerCEC@cheshireeast.co.uk)

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## **CHESHIRE EAST COUNCIL MEMBERS' CODE OF CONDUCT HEARING SUB-COMMITTEE: HEARING PROCEDURE**

### **1. Pre-hearing procedure**

- 1.1 Any pre-hearing process must aim to begin within 3 months of the date of the Investigator's report. The purpose of the process is to:
  - a. Identify the agreed facts and any factual disputes the subject member has with the findings in the report.
  - b. Identify the witnesses and documents relevant to the hearing.
  - c. Give directions about the way in which the hearing will be conducted.
- 1.2 The subject member will be asked by the Monitoring Officer to identify, within 21 days of the request, any factual disputes that member has with the content of the Investigator's report using the form appended to this document – form A. The subject member will also be asked by the Monitoring Officer within the same timescale to identify any witnesses he/she proposes to call at the hearing and give a brief summary of the evidence each witness would give.
- 1.3 The Investigator will be invited to comment on that information within 14 days of receiving it from the Monitoring Officer.
- 1.4 The Chairman of the Hearing Sub-Committee will issue such directions as appear necessary or expedient about the way in which the hearing will be conducted. Such directions may relate to any aspect of the hearing including the documentation to be produced in evidence, the witnesses the sub-committee would wish to hear from and the timescale within which specified actions are to be taken.

### **2. Date of Hearing**

- 2.1 The Monitoring Officer will arrange a convenient time and date for the sub-committee to meet and determine the matter. It is anticipated that a hearing will be dealt with on a single day. In any event, the hearing must aim to take place within three months of receipt of the Investigating Officer's report by the Monitoring Officer.
- 2.2 At least five clear working days before the hearing, the subject member and Investigator shall be notified of the date, time and place of meeting.
- 2.3 At least five clear working days before the hearing, the Monitoring Officer will send to each member of the sub-committee, the subject member and the Investigator:
  - The agenda for the meeting; and
  - A copy of the investigation report.

- 2.4 The documentation sent out must be treated by all recipients as confidential information until such time (if any) as the report is made available to the press and public or the sub-committee agrees that the press and public should not be excluded from the meeting at which the allegations are heard.
- 2.5 The date of the meeting and the outline agenda will be published on the Council's website.

### **3. Representation**

- 3.1 The subject member may be represented or accompanied during the hearing by another person as long as the sub-committee or its intended Chairman has given prior consent.
- 3.2 The subject member may make representations (orally or in writing) or present evidence in accordance with this procedure either personally or through his or her representative. The sub-committee will not normally permit the subject member and his or her representative to both make representations, although the subject member may present evidence him or herself whether or not represented.

### **4. Legal Advice**

- 4.1 The sub-committee may take legal or procedural advice at any time during the hearing or its deliberations. The substance of any such advice should generally be shared with the subject member and/or his representative and the Investigator if they are present.

### **5. Introductions at the Hearing**

- 5.1 The Chairman will introduce each of the members of the sub-committee, and shall also introduce any of the officers present. The subject member, his or her representative, the Independent Person, and the Investigator shall introduce themselves.

### **6. Procedural Issues**

#### **6.1 Disclosure of Interests**

The Chairman shall ask members of the sub-committee to disclose the existence and nature of any interests which they have in relation to any items on the agenda. Members are required to disclose any such items under the terms of Cheshire East Council's Code of Conduct.

- 6.2 The Chairman will then explain the procedure which the sub-committee intends to follow and resolve any issues or disagreements over how the hearing will be run, calling upon the Monitoring Officer to assist if appropriate.

## 6.3 Quorum

At least three members of the sub-committee together with an Independent Person must be present for the duration of the hearing.

The members of the sub-committee are all elected members of Cheshire East Borough Council, (drawn from a pool of 15 members constituted on a politically proportionate basis, which includes the 10 members of the Audit and Governance Committee).

6.4 The Chairman will satisfy him/herself that the sub-committee is quorate before proceeding.

## 6.5 Absences

If the subject member is not present, then the sub-committee shall consider whether or not to proceed. If the sub-committee is not satisfied that there is sufficient reason for the subject member's absence, it may either proceed to consider the matter and make a determination in the absence of the subject member, or adjourn the hearing to another time or date. If the sub-committee is satisfied there is sufficient reason, it shall adjourn the hearing to another date unless the subject member has indicated that the hearing should proceed in his or her absence.

6.6 Should the subject member's representative not be present, then the sub-committee may proceed or adjourn as it considers appropriate in the particular circumstances.

6.7 The sub-committee and the Monitoring Officer must in any event ensure that the hearing is held within three months from the date when the Monitoring Officer received the investigation report from the Investigator.

## 6.8 Exclusion of Press and Public

Hearings should normally be held in public unless there are proper reasons to exclude the press and public from all or any part of the hearing in accordance with the Council's Access to Information Rules. The Chairman will ask the parties present for their views and take any appropriate advice from the Monitoring Officer and/or Independent Person. The sub-committee will then decide whether to exclude the press and public from all or any part of the hearing. The sub-committee may reconsider this issue at any point in the hearing.

## **7. Hearing the Matter**

7.1 The sub-committee will consider whether the member failed to comply with the code of conduct as set out in the Investigator's report. The sub-committee will adopt as far as reasonably practicable an inquisitorial approach to the hearing rather than permit an adversarial or hostile approach to develop.

## **8. Presenting the Investigator's Report**

8.1 The Investigator, if present, will be asked to present his or her investigation report, paying particular regard to any points in dispute identified by the subject member and why the Investigator considers that the subject member had failed to comply with the code of conduct.

- 8.2 Should the Investigator not be present, the sub-committee will consider whether it is appropriate in all circumstances to proceed with the hearing. The Investigator may, with the consent of the Chairman, call such witnesses as he/she considers necessary.
- 8.3 No cross-examination of the Investigator or any witness shall be permitted, but at the conclusion of the Investigator's presentation of his or her report and at the conclusion of the evidence of any witness, the Chairman may permit the Independent Person, subject member or his or her representative to ask appropriate questions through the Chairman in order to clarify evidence or conclusions.

### **9. The Subject Member's Reply**

- 9.1 The subject member (or his or her representative) will then be invited to make representations on the matter. The subject member may, with the consent of the Chairman, call such witnesses as he/she considers necessary.
- 9.2 No cross-examination of the subject member or witness shall be permitted, but at the conclusion of the subject member's presentation of his or her representations and at the conclusion of the evidence of any witness, the Chairman may permit the Investigator and Independent Person to ask appropriate questions through the Chairman in order to clarify evidence or conclusions.

### **10. Evidence**

- 10.1 The sub-committee may decide not to hear any evidence if it is not satisfied that the evidence will assist its decision making.
- 10.2 The sub-committee may at any time seek or accept additional evidence or comment from the Investigator, the subject member, or any other person. The sub-committee may at any time arrange for the attendance of such witnesses as it considers appropriate and if necessary may adjourn the hearing to allow this to happen.
- 10.3 Members of the sub-committee may ask questions of any persons present at any point in the proceedings. The sub-committee is entitled to rely upon hearsay evidence but will give such weight to it as it deems appropriate.

### **11. Determination of the Matter**

- 11.1 At the conclusion of the subject member's reply and any questions, the Chairman may ask the Investigator and/or subject member if they wish to make any brief concluding remarks. The Chairman will check that Members of the sub-committee are satisfied that they have sufficient information to enable them to determine whether or not there has been a failure to comply with the Code of Conduct as set out in the Investigator's report. If not, then each member of the sub-committee may ask further questions to gather sufficient information.
- 11.2 Unless the subject member has accepted there was a failure to comply with the code of conduct as set out in the Investigator's report, the sub-committee shall retire with the Monitoring Officer to determine in private whether or not there was such a failure on the balance of probabilities. The sub-committee will seek the views of the Independent Person before making its determination.

## 12. Decision

12.1 Having made its determination, the sub-committee shall return and the Chairman will state the sub-committee's principal findings on matters in dispute and its decision on whether there has been a failure to comply with the code of conduct.

### 12.2 No failure to comply with the code of conduct

If the sub-committee decides that the subject member has not failed to comply with the code of conduct as set out in the investigation report, the hearing is concluded - on the basis of no breach of the code of conduct and no case to answer. However if the sub-committee considers that there has been no breach of the code of conduct but still has some concerns it will issue a finding of no breach of the code of conduct, but may then proceed to consider whether it should make any general recommendations. This would include bringing to the attention of the Council, town or parish council or its members any learning points and recommendations for training to the Council, town or parish council, or its members, with a view to promoting high standards of conduct in the light of concerns raised.

### 12.3 Failure to comply with the code of conduct

If the sub-committee decides that the member has failed to comply with the code of conduct, the sub-committee has to decide either that:

12.3.1 No action needs to be taken in respect of the matter; or

12.3.2 A sanction be imposed

12.4 Before deciding whether to impose a sanction, the sub-committee will consider any representations from firstly the Investigator and then the subject member. They will also consider any officer advice and the views of the Independent Person as to:

12.4.1 Whether or not the sub-committee should impose any sanction; and

12.4.2 What form any sanction should take from those available;

- (a) Censure or reprimand the member;
- (b) Publish its findings in respect of the member's conduct.
- (c) Report its findings to Council or the town or parish council for information and make any recommendations ;
- (d) Recommending to the member's Group Leader (or in the case of ungrouped members, recommending to Council or to committees) that he/she be removed from any or all committees or sub-committees of the Council;
- (e) Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular portfolio responsibilities.
- (f) Instruct the Monitoring Officer to, or recommend that the town or parish Council arrange training for the member;
- (g) Recommend to Council, or the town or parish council that the member be removed from all outside appointments to which he/she has been appointed or nominated by the Council or by the town or parish council;
- (h) Withdraw, or recommend to the Council or town or parish council that it withdraws facilities provided to the member by the Council, such as a computer, website and/or email and Internet access if relevant to the subject matter of the complaint; or

- (i) Exclude the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, committee and sub-committee meetings if relevant to the subject matter of the complaint.
- 12.5 Members of the sub-committee may ask questions of the Investigator and subject member or any other relevant person and take any necessary advice to make sure they have sufficient information in order to make an informed decision.
- 12.6 The sub-committee shall then retire with the Monitoring Officer to determine in private whether to impose one or more sanctions and, if so, what and when it will take effect. It may also consider whether it should make any recommendations to the Council or members with a view to promoting high standards of conduct and highlight any learning points for the future.
- 12.7 The sub-committee will then return, and as far as is practicable, the Chairman will announce the sub-committee's decision to the parties on the day and provide a short written confirmation. The sub-committee will issue a formal written decision together with supporting reasons as soon as practicable after the end of the hearing and in any event within ten working days.

### **13. Public interest test**

- 13.1 If at any point during the hearing process, the subject member resigns, loses their seat, is seriously ill or has died, the sub-committee will only refer the matter for a hearing, or continue with a hearing which is already underway, if it considers it is in the public interest to do so.

## Paragraphs of the report where the subject member has identified a factual dispute

Please identify which paragraphs of the report contain **facts** (not opinions) you disagree with and your reasons for disagreeing with those facts.

| Paragraph number of the report | Reason for disagreeing with the content of that paragraph |
|--------------------------------|---|
|                                |   |
|                                |   |

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## **CESHIRE EAST COUNCIL: ARRANGEMENTS FOR DEALING WITH STANDARDS ALLEGATIONS ABOUT COUNCILLORS AND CO-OPTED MEMBERS**

### **1 How to make a complaint**

These arrangements set out:

- (1) how you can make a complaint that an elected or co-opted member of this council or of a town or parish council within its area has failed to comply with his or her council's code of conduct; and
- (2) how the Council will deal with allegations.

In this document the term "member" means an elected or co-opted member of Cheshire East Council or of a town or parish council within its area.

Cheshire East Council must have arrangements for dealing with allegations that a member or co-opted member of the council or of a town or parish council within the council's area, or of a committee or sub-committee of the council, has failed to comply with that council's code of conduct. The arrangements must include how those allegations will be investigated and how decisions about them will be made.

The Council must appoint at least one Independent Person and seek their views before it takes a decision on an allegation which it has decided to investigate. The Independent Person's views can also be sought by the council on any other issue, or by a member or a member against whom an allegation has been made.

### **2 The Code of Conduct**

The Council has adopted its code of conduct for members, which is available for inspection on the council's website and on request from the Monitoring Officer at Cheshire East Borough Council.

Each town or parish council must also adopt a code of conduct. If you wish to inspect a town or parish council's code of conduct, you should look on their website in the first instance. You may also ask the town or parish clerk to allow you to inspect it.

### **3 Making a complaint**

Complaints must be submitted to Cheshire East Borough Council's Monitoring Officer using the standard complaint form.

When completed, please send your complaint form to:

The Monitoring Officer  
Cheshire East Borough Council  
Westfields  
Middlewich Road  
Sandbach, CW11 1HZ

Or email: [MonitoringOfficerCEC@cheshireeast.gov.uk](mailto:MonitoringOfficerCEC@cheshireeast.gov.uk)

The Monitoring Officer will not consider a complaint unless a complaint form has been received. If you have a disability which prevents you from filling in the form please contact the Monitoring Officer's PA on 01270 686003 and you will be given help to fill it in.

In order to ensure that we have all the information which we need to be able to process your complaint you need to provide us with:

- the name of the member(s) you believe have breached the code of conduct
- the name of their council
- what the member has done that you believe breaches the code of conduct. If you are complaining about more than one member you should clearly explain what each individual person has done that you believe breaches the code
- which paragraphs of the code you believe they have breached

It is important that you provide all the information you want taken into account about your complaint. For example:

- Wherever possible, you should be specific about exactly what you are alleging the member said or did. For instance, instead of writing that the member insulted you, you should state what it was that they said.
- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give as accurate a timeframe as you can.
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide any relevant background information.

It would help in dealing with your complaint to know what your desired outcome might be. If you feel able to provide this information please do so. See paragraph 8 which sets out all the sanctions available to the council.

There is no power to suspend or disqualify a member, withdraw a member's allowance or change a decision that a member has made or has been involved in making, as part of this process.

Please provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. If you are making a complaint on behalf of a number of individuals, please nominate one person as the single point of contact to whom all correspondence will be addressed.

If you want to keep your name and address confidential, please ensure that you complete section 5 of the complaint form. You must have good reasons for asking us to withhold your details. It is only in exceptional circumstances that we will withhold your details from the member complaint about (who we refer to as the subject member), as this may prejudice the right of that member to respond to the complaint.

Please note that requests for confidentiality will not automatically be granted. The Monitoring Officer in consultation with an Independent Person will consider the request alongside the substance of your complaint. We will then contact you with the decision. If your request for confidentiality is not granted, we will usually allow you the option of withdrawing your complaint.

However, it is important to understand that in certain exceptional circumstances where the complaint is about a very serious matter, we will proceed with an investigation or other action and may have to disclose your name even if you have expressly asked us not to.

Each request for confidentiality will be considered on its merits and we will normally use the following criteria -

- You have reasonable grounds for believing that you will be at risk of physical harm if your identity is disclosed;
- You are is an officer who works closely with the subject member(s) and you are afraid of the consequences to your employment or of losing your job if your identity is disclosed;
- You suffer from a serious health condition and there are medical risks associated with your identity being disclosed. Medical evidence may be requested in support of this criterion;
- Whether the complaint can be investigated without revealing your identity.

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

The Monitoring Officer has the power, in consultation with the Independent Person and the Chairperson of the Audit and Governance Committee or in his/her absence the Vice Chairperson, to approve a departure from the following arrangements when he/she thinks it is sensible to do so to make sure the case is dealt with fairly and effectively. If a hearing is likely to be held, the Monitoring Officer will consult the Independent Person and the Chairperson of the Hearing Sub-Committee.

The Monitoring Officer will acknowledge receipt of your complaint within 5 working days of receiving it, and will keep you informed of progress. A copy of your complaint will then be sent to the member concerned inviting their written comments within 5 working days from the date of the letter unless we have agreed to your request for anonymity in which case your identity will be withheld. Where your identity is disclosed, the subject member will be asked not to talk to you about the complaint.

If your complaint also concerns a council service, it may first need to be dealt with under the corporate complaints procedure before it is considered as a code of conduct case. This is so that the outcome and any proposed action can be considered by the Monitoring Officer, in consultation with the Independent Person, when assessing the code of conduct complaint.

##### **4.1 Initial assessment**

The Monitoring Officer will review every complaint received against the assessment criteria. These are:

- It is a complaint against one or more named members of Cheshire East Borough Council or a town or parish council within Cheshire East borough;
- The named member was in office at the time of the alleged conduct and the code of conduct was in force at the time;
- The complaint, if proven, would be a breach of the code under which the member was operating at the time of the alleged misconduct.

If the complaint fails one or more of these tests it will not be investigated.

If the above tests are met the Monitoring Officer will consider the following criteria when deciding whether or not to investigate:

1. Adequate information – The Monitoring Officer will want to be satisfied that he/she has sufficient information to decide whether the complaint should be referred for investigation or other action;
2. Official capacity – was the member acting in an official capacity
3. Timescale – The Monitoring Officer will take into account when the events took place and will not normally investigate if the events occurred more than 6 months prior to the complaint being submitted;
4. Seriousness of the complaint – The Monitoring Officer will not normally refer a complaint for investigation or other action if it is considered trivial, malicious, politically motivated or tit for tat;
5. Public interest – if the complaint relates to an ex-member of Cheshire East Council or one of its town or parish councils, who is now a member of another council the Monitoring Officer may ask that council to consider it.

If the member has resigned, is seriously ill or has died the Monitoring Officer will only refer the case for investigation or other action if he/she considers that it is in the public interest to do so.

After consultation with the Independent Person, the Monitoring Officer will take a decision about whether your complaint merits formal investigation. This decision will normally be taken within 20 working days from the date you are sent your notification letter, or 5 working days later if the subject member has responded to the complaint. Where the Monitoring Officer has taken a decision, he/she will inform you of that decision and the reasons for it.

Where the Monitoring Officer needs more information in order to come to a decision, he/she may come back to you or the subject member for that information; which may extend the assessment period by up to 15 working days. We will write to you if this occurs. Where your complaint relates to a town or parish councillor, the Monitoring Officer may also inform the clerk of that town or parish council of your complaint and may seek the views of the town or parish council before deciding what action to take.

The decisions that can be made are:

- (a) That no further action be taken – This might be because the complaint does not come within the remit of the code of conduct, it is not sufficiently serious to warrant an investigation, it is obsessive/vexatious/malicious or frivolous, it is broadly similar to a complaint against the same member about the same alleged incident, the complaint should not be investigated because there is a clear ulterior/political motive for it or it is just a tit for tat complaint, or it is not in the public interest to investigate the complaint.
- (b) That the Monitoring Officer will seek to resolve the complaint informally without the need for an investigation (e.g. by an apology, mediation or training of the subject member).
- (c) That the complaint is referred to the leader of the political party the member belongs to for informal action (N.B. this is for complaints against Cheshire East Borough Councillors only and is not generally an appropriate opinion if the complaint is from a member of the public).
- (d) An investigation should take place.
- (e) Refer the matter to the Police or other regulatory agency.

In appropriate cases, the Monitoring Officer may try to resolve the complaint informally, without the need for a formal investigation for example, through mediation. Informal resolution may involve the subject member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action suggested by the Monitoring Officer. Where the member or the Monitoring Officer makes a reasonable offer of local resolution, but you are not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

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

If the Monitoring Officer decides that his or her attempts to resolve your complaint informally have failed or that it merits formal investigation, he/she will appoint an Investigating Officer. This may be another senior officer of the council, an officer of another council or an external investigator. The Investigating Officer will decide whether he/she needs to meet or speak to you to understand the nature of your complaint and so that you can:

- explain your understanding of events
- suggest what additional documents the Investigating Officer needs to see
- suggest who the Investigating Officer needs to interview

The Investigating Officer will normally write to the member against whom you have complained and provide him/her with a copy of your complaint. He/she will also ask the member to provide his/her explanation of events, and to identify what documents the member thinks he/she needs to see and who the member thinks he/she needs to interview. In exceptional cases, where it is appropriate the Monitoring Officer will keep your identity confidential and may decide not to disclose details of the complaint to the member if this might prejudice the investigation. In exceptional circumstances only, the Monitoring Officer, may decide to delay notifying the member initially.

At the end of his/her investigation, usually within 8 weeks of being asked, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to you and to the member concerned. This provides you both with the opportunity within 5 working days of the report being sent to you, to identify any matter in that draft report, which you disagree with or that you consider requires more consideration.

Having received and taken account of any comments which you or the member concerned may have made on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer. The report will include the Investigator's findings about whether or not the code of conduct has been breached.

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

The Monitoring Officer will review the Investigating Officer's report in consultation with the Independent Person and, if he/she is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the member concerned within 15 working days of receiving the report notifying you that he/she is satisfied that no further action is required. He/she will also give you both a copy of the Investigating Officer's final report. Where your complaint relates to a town or parish councillor and the clerk has been informed about the complaint by Cheshire East council, the Monitoring Officer will also write to the clerk of that council.

If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider his/her report. This may involve the Investigating Officer carrying out further investigations and producing an amended report.

In any event the Monitoring Officer, in consultation with the Independent Person, may decide to refer the report to the Audit and Governance Hearing Sub-Committee.

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

The Monitoring Officer will review the Investigating Officer's report and after consulting the Independent Person, either try and informally resolve the case or seek a local hearing before the Hearing Sub-Committee.

### 7.1 Informal Resolution

The Monitoring Officer might think that the case can reasonably be resolved without the need for a hearing. In that case, he/she will consult with the Independent Person and with you to seek to agree what you consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Any resolution may include the member accepting that his/her conduct was unacceptable and offering an apology, and/or agreeing to other remedial action. If the member complies with the suggested resolution, the Monitoring Officer will report the matter to the Audit and Governance Committee and the town or parish council (where relevant) for information, but will take no further action. However, if you tell the Monitoring Officer that any suggested resolution would not be adequate, the Monitoring Officer may (but is not required to) refer the matter for a local hearing.

The Monitoring Officer will aim to deal with complaints quickly. Where they do not raise serious issues the Monitoring Officer will try and resolve them informally rather than refer them for investigation.

Consistent with his/her duty to uphold standards of conduct, the Monitoring Officer will seek the simplest and most cost-effective way of resolving the case. This informal resolution process will not include a public hearing.

### 7.2 Local Hearing

The Monitoring Officer will arrange for the investigation report to be considered by the Hearing Sub-Committee. That sub-committee will then conduct a hearing before deciding whether the member has failed to comply with the code of conduct.

The Monitoring Officer will normally conduct a pre-hearing process within 3 months of receiving the Investigating Officer's report, requiring the member concerned to give his/her response to the report. This is done to establish what is likely to be agreed and what is likely to be in dispute at the hearing. The Chairperson of the Hearing Sub-Committee may also issue directions about the way in which the hearing will be conducted, for example agreeing the number of witnesses. Directions may be given either before or at the hearing taking account of the advice of the Monitoring Officer. Any meeting to deal with pre-hearing process issues will be held in private without you or the subject member present.

If at any point during the investigation or hearing process, the subject member has resigned or lost their seat, is seriously ill or has died, the Monitoring Officer may terminate the investigation and the Hearing Sub-Committee will only refer the matter for a hearing if it considers it is in the public interest to do so.

Prior to a hearing, any documentation sent out during the process must be treated by all recipients as confidential information until the Investigator's report is made available to the press and public or the sub-committee agrees that the press and public should not be excluded from the meeting at which the allegations are going to be heard. This is because meetings of the Hearing Sub-Committee are subject to the normal rules for publication of council agendas and access to information.

At the hearing, the Investigating Officer will present his/her report, call witnesses and make representations to substantiate his/her conclusion that the member has failed to comply with the code of conduct. For this purpose, the Investigating Officer may ask you, as the complainant, to attend and give evidence to the Hearing Sub-Committee. The subject member will then have an opportunity to give his/her evidence, to call witnesses and to make representations about why he/she considers that he/she did not fail to comply with the code of conduct.

If the subject member is not present, then the sub-committee will consider whether or not to proceed and make a decision about the case anyway, or whether to adjourn the hearing to another time or date. If the subject member has indicated that the hearing should carry on without him/her this will normally happen.

If the subject member has a representative but they do not turn up, then the sub-committee can decide to go ahead or adjourn the hearing.

The Hearing Sub-Committee will decide, with the benefit of any advice from the Independent Person, whether it agrees with the Investigating Officer that there has been a breach of the code of conduct. If it concludes that the subject member did not breach the code of conduct it will dismiss the complaint. However if the sub-committee still has some concerns it will issue a finding of no breach but might then make general recommendations to this council, or any town or parish council or its members.

Where the Hearing Sub-Committee concludes that the member did fail to comply with the code of conduct, the Chairperson will inform the member of this finding. The Hearing Sub-Committee will explain the reasons why any advice from the Independent Person has or has not been followed in giving its decision. The Hearing Sub-Committee will then consider what action, if any, it should take as a result. The Hearing Sub-Committee will give the member an opportunity to make representations about that and will consult the Independent Person, but will then decide what action, if any, to take.

### **8. What action can the Hearing Sub-Committee take where a member has failed to comply with the Code of Conduct?**

The Council has delegated to the Hearing Sub-Committee powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly the Hearing Sub-Committee may –

- Censure or reprimand the member;
- Publish its findings in respect of the member's conduct;
- Report its findings to Cheshire East Borough Council or to the town or parish council for information and make any recommendations;
- Recommend to the member's Group Leader (or in the case of ungrouped members, recommend to Council or to committees) 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 member be removed from the Cabinet, or removed from particular portfolio responsibilities;

- Instruct the Monitoring Officer to, or recommend that the town or parish council, arrange training for the member;
- Recommend to the Council or town or parish council to remove the member from all outside appointments to which he/she has been appointed or nominated by the Council or by the town or parish council;
- Withdraw or recommend to the Council, or town or parish council that it withdraws facilities provided to the member by the Council, such as a computer, website and/or email and Internet access if relevant to the subject matter of the complaint;
- Exclude, or recommend that the Council, or town or parish council exclude the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Cabinet, committee and sub-committee meetings if relevant to the subject matter of the complaint.

The Hearing Sub-Committee has no power to suspend or disqualify the member or to withdraw a member's allowances.

The Chairperson of the Hearing Sub-Committee has the right to depart from the Hearing Sub-Committee procedure, in consultation with the Monitoring Officer, at any hearing where he/she considers that it is sensible to do so to deal with the case fairly and effectively.

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

At the end of the hearing, having consulted with and considered the views of the Independent Person, the Chairperson of the Hearing Sub-Committee will announce the decision of the sub-committee on the day.

As soon as possible but in any event within 10 working days the Monitoring Officer will prepare a formal decision notice in consultation with the Chairperson and will send a copy to you, to the member concerned, and to the town or parish council, if relevant. He/she will also make that decision notice available for public inspection by publishing the minutes of the meeting and will report the outcome to the Audit and Governance Committee.

#### **Informative Notes:**

##### ***Who is the Monitoring Officer?***

*The Monitoring Officer is a senior officer of the council who is responsible for keeping the register of members' interests and dealing with complaints about member misconduct.*

##### ***What is a Hearing Sub-Committee?***

*The Hearing Sub-Committee is a sub-committee drawn from the Council's Audit and Governance Committee. The Council has decided that it will be made up of 3 elected members and be drawn from a panel of 15 members of the Council; ten members of Audit and Governance Committee plus 5 Councillors.*

*The Chairperson of the Hearing Sub-Committee is appointed by and from the three members who will sit at the particular hearing.*

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

*The Independent Person is a person who has applied for the post following advertisement. He/she is appointed by Council.*

*A person cannot be “independent” if he/she –*

- 11.1 Is, or has been within the past 5 years, a member, co-opted member or officer of the Council;*
- 11.2 Is, or has been within the past 5 years, a member, co-opted member or officer of a town or parish council within the council’s area, or*
- 11.3 Is a relative or close friend, of a person within paragraph 11.1 or 11.2 above. For this purpose, “relative” means –*
  - 11.3.1 Spouse or civil partner;*
  - 11.3.2 Living with the other person as husband and wife or as if they were civil partners;*
  - 11.3.3 Grandparent of the other person;*
  - 11.3.4 A lineal descendent of a grandparent of the other person;*
  - 11.3.5 A parent, sibling or child of a person within paragraphs 11.3.1 or 11.3.2;*
  - 11.3.6 A spouse or civil partner of a person within paragraphs 11.3.3, 11.3.4 or 11.3.5; or*
  - 11.3.7 Living with a person within paragraphs 11.3.3, 11.3.4 or 11.3.5 as husband and wife or as if they were civil partners.*

The Independent Person is invited to attend all hearings of the Hearing Sub-Committee and his/her views are sought and taken into consideration before the Hearing-Sub-Committee takes any decision about whether the member’s conduct has failed to comply with the code of conduct and about any action to be taken following a finding of failure to comply with that code.

## **Is there an Appeals process?**

*There is no right of appeal for you or for the member concerned against a decision of the Monitoring Officer or of the Hearing Sub-Committee. If you feel that the Council has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.*

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Section 4.

I am lodging this complaint against Cllr Brian Silvester whom I believe has contravened the Members Code of Conduct for Cheshire East Council.

The reasons for this complaint are outlined below.

On the 16<sup>th</sup> December Cllr Silvester participated in a radio interview with Alan Beswick on BBC Radio Manchester.

During that interview Cllr Silvester made comments about Council Officer, Caroline Simpson, and made the following statement in respect of her work on the Local Plan:

“we’re talking about somebody who has failed, failed and failed again in her post.....Caroline Simpson should be sacked, she shouldn’t be promoted”.

Furthermore, Cllr Silvester included similar comments in promotional UKIP press releases:

“the officer in charge is set to be promoted and given a performance bonus !! Far from being promoted she should be sacked”.

Following the making of these statements the Chief Executive, Mike Suarez issued a letter to Councillor Silvester via solicitors acting on behalf of the Council, dated 19<sup>th</sup> December (attached). In that letter Councillor Silvester was warned that his comments regarding Mrs Simpson contravened good governance and the duty upon employers to protect employees from unfair criticism particularly when they are personally named.

It is unfortunate that Cllr Silvester chose not to desist from making further comments or statements regarding this matter as requested and indeed chose to publish the correspondence sent by solicitors acting on behalf of the Council on this matter. As a consequence Cllr Silvester has chosen to perpetuate the action and defamation against the individual officer.

Acting as Head of the Paid Service in the absence of the Chief Executive during this holiday period I feel that Cllr Silvester has contravened the Code of Conduct for Members. The relevant extracts of the Code are repeated below.

Section 7 of the Member Code of Conduct for Cheshire East Council states:

- (a) You must treat others with courtesy. You should engage with colleagues and staff in a manner that underpins mutual respect and courtesy, essential to good local government.

And

- (d) You must not bully any person, including other councillors, officers of the authority or members of the public. (see footnote extract)

Footnote extract

“Bullying may be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour and includes “cyber bullying”. It may happen once or be part of a pattern of

behaviour. It can be contrasted with the legitimate challenges as a member may make in challenging policy or scrutinising performance. You may challenge others as to why they hold their views but must take care to raise issues in the appropriate forum. Ideas and policies may be robustly criticised but individuals should not be subject to unreasonable or excessive personal attack.

Additionally, I do have some concerns that Cllr Silvester's comments may have a further malicious intent relating to previous action taken by the Council against him regarding his role as a landlord in the Borough. The legal action resulted in a conviction which is now spent. However, it is important to note that Mrs Simpson was the officer who signed the notice on behalf of the Council for his prosecution

Lorraine Butcher

Executive Director, Strategic Commissioning

## Cheshire East Council

### CODE OF CONDUCT FOR MEMBERS –2012

Cheshire East Council has adopted this Code of Conduct to promote and maintain high standards of conduct and underpin public confidence in the authority and its members and co-opted members.

The Code has been adopted under section 27 of the Localism Act 2011 and is based on the following core principles of public life - selflessness, integrity, objectivity, accountability, openness, honesty and leadership. It sets out general obligations about the standards of conduct expected of members and co-opted members of the authority, together with provisions about registering and declaring interests.

#### **A General obligations**

Whenever you are acting as a member or co-opted member of this authority you must act in accordance with the following obligations:

##### *Selflessness*

- 1 You must act solely in the public interest and must never use or attempt to use your position improperly to confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, friends or close associates.

##### *Integrity*

- 2 You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.

You should exercise independent judgement. Although you may take account of the views of others (including a political group), you should reach your own conclusions on the issues before you and act in accordance with those conclusions.

##### *Objectivity*

- 3 When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on merit.

You should remain objective, listen to the interests of all parties appropriately and impartially and take all relevant information, including advice from the authority's officers, into consideration.

##### *Accountability*

- 4 You are accountable to the public for your decisions and you must co-operate fully with whatever scrutiny is appropriate to your office, including by local residents.

*Openness*

5 (a) You must be open and transparent where possible about your decisions and actions and the decisions and actions of your authority. You should be prepared to give reasons for those decisions and actions. You must not prevent anyone getting information that they are entitled to by law.

(b) Where the law or the wider public interest requires it, you must not disclose confidential information or information to which public access is restricted. ( see footnote)

*Honesty*

6 (a) You must declare any private interests, both pecuniary and non-pecuniary, that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interests as set out in Section B below.

(b) You must only use or authorise the use of the authority's resources in accordance with the authority's requirements. You must, when using or authorising the use by others of such resources, ensure that they are used for proper purposes only. Resources must not be used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986

*Respect for others*

7 (a) You must treat others with courtesy. You should engage with colleagues and staff in a manner that underpins mutual respect and courtesy , essential to good local government.

(b) You must not do anything which may cause your authority to breach any equality laws.

(c) You must not compromise or attempt to compromise the impartiality of anyone who works for, or on behalf of, the authority.

(d) You must not bully any person, including other councillors, officers of the authority or members of the public. (see footnote)

*Leadership*

8 You must promote and support high standards of conduct when serving as member or co-opted member of the authority, by leadership and example, championing the interests of the community.

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

*Gifts and Hospitality*

9 You must within 28 days of receipt, notify the Monitoring Officer in writing of any gift, benefit or hospitality with a value in excess of £100 which you have accepted as a member from any person or body other than the authority. The Monitoring Officer will place your notification on a public register of gifts and hospitality.

## Notes

“ Confidential Information” should not be disclosed except in limited circumstances, for example :

- You have the consent of the person authorised to give it
- You are required by law to do so
- The disclosure is made on a confidential basis to a third party in order to obtain professional advice
- You have satisfied yourself that the disclosure is in the public interest

“Bullying” may be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour and includes “cyber bullying”. It may happen once or be part of a pattern of behaviour. It can be contrasted with the legitimate challenges a member may make in challenging policy or scrutinising performance. You may challenge others as to why they hold their views but must take care to raise issues in the appropriate forum. Ideas and policies may be robustly criticised but individuals should not be subject to unreasonable or excessive personal attack.

## **B Registering and declaring pecuniary and non-pecuniary interests**

- 1 You must, within 28 days of taking office as a member or co-opted member, notify your authority’s monitoring officer of any disclosable pecuniary interest as defined by regulations made by the Secretary of State, where the pecuniary interest is yours, your spouse’s or civil partner’s, or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners.
- 2 In addition, you must, within 28 days of taking office as a member or co-opted member, notify your authority’s monitoring officer of any disclosable pecuniary or non-pecuniary interest which your authority has decided should be included in the register.
- 3 If an interest has not been entered onto the authority’s register, then you must disclose the interest to any meeting of the authority at which you are present, where you have a disclosable interest in any matter being considered and where the matter is not a ‘sensitive interest’\*.
- 4 Following any disclosure of an interest not on the authority’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.
- 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 pecuniary interest as defined by regulations made by the Secretary of State. Additionally, you must observe the restrictions your authority places on your involvement in matters where you have a pecuniary or non pecuniary interest as defined by your authority.

\*A ‘sensitive interest’ is described in the Localism Act 2011 as a member or co-opted member of an authority having an interest, and the nature of the interest being such that the member or co-opted

member, and the authority's monitoring officer, consider that disclosure of the details of the interest could lead to the member or co-opted member, or a person connected with the member or co-opted member, being subject to violence or intimidation.

Extract from the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012

- The following categories are Disclosable Pecuniary Interests
- “M” denotes the relevant Elected Member

| <i>Subject</i>                                    | <i>Prescribed description</i>  |
|---|--|
| Employment, office, trade, profession or vocation | Any employment, office, trade, profession or vocation carried on for profit or gain.   |
| Sponsorship                                       | Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992(1). |
| Contracts   | Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority—<br>(a) under which goods or services are to be provided or works are to be executed; and<br>(b) which has not been fully discharged.   |
| Land  | Any beneficial interest in land which is   |

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(1) 1992 c. 52.

within the area of the relevant authority.

Licences

Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.

Corporate tenancies

Any tenancy where (to M's knowledge)—  
(a) the landlord is the relevant authority; and  
(b) the tenant is a body in which the relevant person has a beneficial interest.

Securities

Any beneficial interest in securities of a body where—

(a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and  
(b) either—

(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or

(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

**NB: Under the Councils Standing Orders any Member of Cheshire East Council who declares a Disclosable Pecuniary Interest in an item of Business should withdraw from the room at the appropriate juncture.**

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Cheshire East Council

Weightmans reference: SG/423558/54

Report of an investigation into an allegation concerning the conduct of  
Councillor Brian Silvester

SG 1

## Cheshire East Council

### CODE OF CONDUCT FOR MEMBERS –2012

Cheshire East Council has adopted this Code of Conduct to promote and maintain high standards of conduct and underpin public confidence in the authority and its members and co-opted members.

The Code has been adopted under section 27 of the Localism Act 2011 and is based on the following core principles of public life - selflessness, integrity, objectivity, accountability, openness, honesty and leadership. It sets out general obligations about the standards of conduct expected of members and co-opted members of the authority, together with provisions about registering and declaring interests.

#### A General obligations

Whenever you are acting as a member or co-opted member of this authority you must act in accordance with the following obligations:

##### *Selflessness*

- 1 You must act solely in the public interest and must never use or attempt to use your position improperly to confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, friends or close associates.

##### *Integrity*

- 2 You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.

You should exercise independent judgement. Although you may take account of the views of others (including a political group), you should reach your own conclusions on the issues before you and act in accordance with those conclusions.

##### *Objectivity*

- 3 When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits, on merit.

You should remain objective, listen to the interests of all parties appropriately and impartially and take all relevant information, including advice from the authority's officers, into consideration.

##### *Accountability*

- 4 You are accountable to the public for your decisions and you must co-operate fully with whatever scrutiny is appropriate to your office, including by local residents.

*Openness*

- 5 (a) You must be open and transparent where possible about your decisions and actions and the decisions and actions of your authority. You should be prepared to give reasons for those decisions and actions. You must not prevent anyone getting information that they are entitled to by law.

(b) Where the law or the wider public interest requires it, you must not disclose confidential information or information to which public access is restricted. ( see footnote)

*Honesty*

- 6 (a) You must declare any private interests, both pecuniary and non-pecuniary, that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interests as set out in Section B below.

(b) You must only use or authorise the use of the authority's resources in accordance with the authority's requirements. You must, when using or authorising the use by others of such resources, ensure that they are used for proper purposes only. Resources must not be used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986

*Respect for others*

- 7 (a) You must treat others with courtesy. You should engage with colleagues and staff in a manner that underpins mutual respect and courtesy , essential to good local government.

(b) You must not do anything which may cause your authority to breach any equality laws.

(c) You must not compromise or attempt to compromise the impartiality of anyone who works for, or on behalf of, the authority.

(d) You must not bully any person, including other councillors, officers of the authority or members of the public. ( see footnote)

*Leadership*

- 8 You must promote and support high standards of conduct when serving as member or co-opted member of the authority, by leadership and example, championing the interests of the community.

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

*Gifts and Hospitality*

- 9 You must within 28 days of receipt, notify the Monitoring Officer in writing of any gift, benefit or hospitality with a value in excess of £100 which you have accepted as a member from any person or body other than the authority. The Monitoring Officer will place your notification on a public register of gifts and hospitality.

**Notes**

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- The disclosure is made on a confidential basis to a third party in order to obtain professional advice
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- 2 In addition, you must, within 28 days of taking office as a member or co-opted member, notify your authority's monitoring officer of any disclosable pecuniary or non-pecuniary interest which your authority has decided should be included in the register.
- 3 If an interest has not been entered onto the authority's register, then you must disclose the interest to any meeting of the authority at which you are present, where you have a disclosable interest in any matter being considered and where the matter is not a 'sensitive interest'\*.
- 4 Following any disclosure of an interest not on the authority'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.
- 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 pecuniary interest as defined by regulations made by the Secretary of State. Additionally, you must observe the restrictions your authority places on your involvement in matters where you have a pecuniary or non pecuniary interest as defined by your authority.

\*A 'sensitive interest' is described in the Localism Act 2011 as a member or co-opted member of an authority having an interest, and the nature of the interest being such that the member or co-opted member, and the authority's monitoring officer, consider that disclosure of the details of the interest could lead to the member or co-opted member, or a person connected with the member or co-opted member, being subject to violence or intimidation.

Extract from the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012

- The following categories are Disclosable Pecuniary Interests
- "M" denotes the relevant Elected Member

| <i>Subject</i>                                    | <i>Prescribed description</i>  |
|---|--|
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| Sponsorship                                       | Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992(1). |
| Contracts   | Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority—<br>(a) under which goods or services are to be provided or works are to be executed; and<br>(b) which has not been fully discharged.   |

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(1) 1992 c. 52.

|                     |   |
|---------------------|---|
| Land                | Any beneficial interest in land which is within the area of the relevant authority.   |
| Licences            | Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.  |
| Corporate tenancies | Any tenancy where (to M's knowledge)—<br>(a) the landlord is the relevant authority; and<br>(b) the tenant is a body in which the relevant person has a beneficial interest.  |
| Securities          | Any beneficial interest in securities of a body where—<br>(a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and<br>(b) either—<br><br>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or<br><br>(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. |

**NB: Under the Councils Standing Orders any Member of Cheshire East Council who declares a Disclosable Pecuniary Interest in an item of Business should withdraw from the room at the appropriate juncture.**

Cheshire East Council

Weightmans reference: SG/423558/54

Report of an investigation into an allegation concerning the conduct of  
Councillor Brian Silvester

SG 2



## **CHESHIRE EAST COUNCIL: ARRANGEMENTS FOR DEALING WITH STANDARDS ALLEGATIONS UNDER THE LOCALISM ACT 2011**

### **1 Context**

These "Arrangements" set out how you may make a complaint that an elected or co-opted member of this Authority or of a Town or Parish Council within its area has failed to comply with the Authority's Code of Conduct. They also set out how the Authority will deal with allegations of a failure to comply with the Authority's Code of Conduct.

Under Section 28(6) and (7) of the Localism Act 2011 the Council must have in place "arrangements" under which allegations that a member or co-opted member of the Authority or of a Town or Parish Council within the Authority's area, or of a Committee or Sub-Committee of the Authority, has failed to comply with that Authority's Code of Conduct can be investigated and decisions made on such allegations.

Such arrangements must provide for the Authority to appoint at least one Independent Person, whose views must be sought by the Authority before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the Authority at any other stage, or by a member or a member or co-opted member of a Town or Parish Council against whom an allegation has been made.

### **2 The Code of Conduct**

The Council has adopted a Code of Conduct for members, which is available for inspection on the Authority's website and on request from the Monitoring Officer at Cheshire East Borough Council.

Each Town or Parish Council is also required to adopt a Code of Conduct. If you wish to inspect a Town or Parish Council's Code of Conduct, you should look on their website in the first instance. You may also ask the Town or Parish clerk to allow you to inspect the Code of Conduct.

### **3 Making a complaint**

Complaints must be submitted in writing. If you wish to make a complaint, please complete the Standard Complaint Form. Please send your complaint to:

The Monitoring Officer  
Cheshire East Borough Council  
Westfields  
Middlewich Road  
Sandbach, CW11 1HZ

Or email: [MonitoringOfficerCEC@cheshireeast.gov.uk](mailto:MonitoringOfficerCEC@cheshireeast.gov.uk)

The Monitoring Officer is a senior officer of the Authority with statutory responsibility for maintaining the register of members' interests and who is responsible for administering the system in respect of complaints of member misconduct and is the Council's Proper Officer for all such matters.

In order to ensure that we have all the information which we need to be able to process your complaint you need to provide us with:

- the name of the member(s) you believe have breached the Code of Conduct
- the name of their Authority.
- Please explain what the member has done that you believe breaches the Code of Conduct.
- if you are complaining about more than one member you should clearly explain what each individual person has done that you believe breaches the Code of Conduct.

It is important that you provide all the information you wish to have taken into account regarding your complaint. For example:

- You should be specific, wherever possible about exactly what you are alleging the member said or did. For instance, instead of writing that the member insulted you, you should state what it was that they said.
- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide any relevant background information.

Whilst not acknowledging that your complaint is justified and without prejudice, it would help in dealing with your complaint to know what your desired outcome of this complaint might be. If you feel able to provide this information please do so.

Please do provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress.

If you want to keep your name and address confidential, please ensure that you complete section 5. You must also provide good reasons why you believe we should withhold your details. It is expected that it is only in exceptional circumstances that the right for confidentiality will be granted, as this may prejudice the right of the subject member to respond to the complaint.

Please note that requests for confidentiality will not automatically be granted. The Monitoring Officer in consultation with an Independent Person will consider the request alongside the substance of your complaint. We will then contact you with the decision. If your request for confidentiality is not granted, we will usually allow you the option of withdrawing your complaint.

However, it is important to understand that in certain exceptional circumstances where the complaint is about a very serious matter, we can proceed with an investigation or other action and disclose your name even if you have expressly asked us not to.

Requests for confidentiality will be considered using the following criteria -

- The complainant has reasonable grounds for believing that they will be at risk of physical harm if their identity is disclosed;
- The complainant is an officer who works closely with the Subject Member(s) and they are afraid of the consequences to their employment or of losing their job if their identity is disclosed;

- The complainant suffers from a serious health condition and there are medical risks associated with their identity being disclosed. Medical evidence may be requested in support of this criterion;
- Whether the complaint can be investigated without revealing the complainant's identity.

The Monitoring Officer will acknowledge receipt of your complaint within 5 working days of receiving it, and will keep you informed of progress.

A full copy of your complaint will, subject to any ruling on disclosure, ordinarily be sent to the Member concerned inviting their written comments within 5 working days of receipt.

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

The Monitoring Officer will review every complaint received against the Assessment Criteria and, after consultation with the Independent Person, take a decision as to whether it merits formal investigation. This decision will normally be taken within 20 working days of receipt of your complaint. Where the Monitoring Officer has taken a decision, he/she will inform you of his/her decision and the reasons for that decision.

Where he/she requires additional information in order to come to a decision, he/she may come back to you for such information. He/she may also request information from the member against whom your complaint is directed. Where your complaint relates to a Town or Parish Councillor, the Monitoring Officer may also inform the Clerk of the Town or Parish Council of your complaint and may seek the views of the Town or Parish Council before deciding whether the complaint merits formal investigation.

In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation for example, through mediation. Such informal resolution may involve the member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action suggested by the Authority. Where the member or the Authority make a reasonable offer of local resolution, but you are not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police and other regulatory agencies.

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

If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer. This may be another senior officer of the Authority, an officer of another Authority or an external investigator. The Investigating Officer will decide whether he/she needs to meet or speak to you to understand the nature of your complaint and so that you can:

- explain your understanding of events
- suggest what documents the Investigating Officer needs to see
- suggest who the Investigating Officer needs to interview.

The Investigating Officer will normally write to the member against whom you have complained and provide him/her with a copy of your complaint. He/she will also ask the member to provide his/her explanation of events, and to identify what documents he/she needs to see and who he/she needs to interview. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the

member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the member or. In exceptional circumstances only, the Monitoring officer, may decide to delay notifying the member initially.

At the end of his/her investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to you and to the member concerned. This provides you both with the opportunity to identify any matter, in that draft report, that you disagree with or that you consider requires more consideration.

Having received and taken account of any comments which you may make on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer.

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

The Monitoring Officer will review the Investigating Officer's report and, if he/she is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the member concerned notifying you that he/she is satisfied that no further action is required. He/she will also give you both a copy of the Investigating Officer's final report. Where your complaint relates to a Town or Parish Councillor the Monitoring Officer will also write to the Clerk of that Authority.

If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider his/her report.

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

The Monitoring Officer will review the Investigating Officer's report and will then send the matter for informal resolution or, after consulting the Independent Person seek a local hearing before the Hearing Sub-committee.

**7.1 Informal Resolution**

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with the Independent Person and with you as complainant to seek to agree what you consider to be a fair resolution and which also helps to ensure higher standards of conduct for the future. Such resolution may include the member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action agreed by the Authority. If the member complies with the suggested resolution, the Monitoring Officer will report the matter to the Audit and Governance Committee and the Town or Parish Council (where relevant) for information, but will take no further action. However, if you tell the Monitoring Officer that any suggested resolution would not be adequate, the Monitoring Officer may (but is not required to) refer the matter for a local hearing.

The emphasis, wherever possible, will be placed on the Monitoring Officer dealing with complaints in a timely manner. Where complaints do not raise serious issues the Monitoring Officer will seek informal resolution rather than refer them for investigation.

Consistent with his/her duty to uphold standards of conduct, the Monitoring Officer will seek the simplest and most cost-effective way of resolving the issue. This informal resolution process will not include a public hearing.

7.2 Local Hearing

If the Monitoring Officer considers that local resolution is not appropriate, or the member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will report the Investigating Officer's report to the Hearing Sub-committee. That committee will then conduct a local hearing before deciding whether the member has failed to comply with the Code of Conduct.

The Monitoring Officer will conduct a "pre-hearing process", requiring the member to give his/her response to the Investigating Officer's report. This is done to establish what is likely to be agreed and what is likely to be in contention at the hearing. The Chair of the Hearing Sub-committee may also issue directions as to the manner in which the hearing will be conducted, for example agreeing the number of witnesses. Directions may be given either before or at the hearing taking account of the advice of the Monitoring Officer.

At the hearing, the Investigating Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask you, as the complainant, to attend and give evidence to the Hearing Sub-committee. The member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Hearing Sub-committee as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

The Hearing Sub-committee will decide, with the benefit of any advice from the Independent Person, and may conclude that the member did not fail to comply with the Code of Conduct, and so dismiss the complaint. Where the Hearing Sub-committee concludes that the member did fail to comply with the Code of Conduct, the Chair will inform the member of this finding. The Hearing Sub-committee will explain the reasons why any advice from the Independent Person has or has not been followed in giving its decision. The Hearing Sub-committee will then consider what action, if any, it should take as a result. The Hearing Sub-committee will give the member an opportunity to make his/her representations and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

**8. What action can the Hearing Sub-committee take where a member has failed to comply with the Code of Conduct?**

The Council has delegated to the Hearing Sub-committee such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly the Hearing Sub-committee may –

- Censure or reprimand the member.
- Publish its findings in respect of the member's conduct;
- Report its findings to Cheshire East Borough Council or to the Town or Parish Council for information and make any recommendations;

- Recommend to the member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) 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 member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- Instruct the Monitoring Officer to, or recommend that the Town or Parish Council, arrange training for the member;
- Remove, or recommend to the Authority, or Town or Parish Council to remove, the member from all outside appointments to which he/she has been appointed or nominated by the Authority or by the Town or Parish Council;
- Withdraw or recommend to the Authority, or Town or Parish Council that it withdraws facilities provided to the member by the Council, such as a computer, website and/or email and Internet access if relevant to the subject matter of the complaint;
- Exclude, or recommend that the Authority, or Town or Parish Council exclude, the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings if relevant to the subject matter of the complaint.

The Hearing Sub-committee has no power to suspend or disqualify the member or to withdraw members' special responsibility allowances.

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

At the end of the hearing, the Chair will state the decision of the Hearing Sub-committee and any actions which the committee resolves to take.

As soon as reasonably practicable thereafter, the Monitoring Officer will prepare a formal decision notice in consultation with the Chair of the Hearing Sub-committee and send a copy to you, to the member, and to the Town or Parish Council. He/she will also make that decision notice available for public inspection and report the decision to the next convenient meeting of the Audit and Governance Committee.

## **10 Who are the Hearing Sub-committee?**

The Hearing Sub-committee is a Sub-Committee of the Council's Audit and Governance Committee. The Council has decided that it will be made up of 3 members and be drawn from a panel of 15 members of the Council

The Independent Person is invited to attend all meetings of the Hearing Sub-committee and his/her views are sought and taken into consideration before the Hearing Sub-committee takes any decision on whether the 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.

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

The Independent Person is a person who has applied for the post following advertisement. He/she is appointed by Council.

A person cannot be "independent" if he/she –

- 11.1 Is, or has been within the past 5 years, a member, co-opted member or officer of the Authority;
- 11.2 Is or has been within the past 5 years, a member, co-opted member or officer of a Town or Parish Council within the Authority's area, or
- 11.3 Is a relative or close friend, of a person within paragraph 11.1 or 11.2 above. For this purpose, "relative" means –
  - 11.3.1 Spouse or civil partner;
  - 11.3.2 Living with the other person as husband and wife or as if they were civil partners;
  - 11.3.3 Grandparent of the other person;
  - 11.3.4 A lineal descendent of a grandparent of the other person;
  - 11.3.5 A parent, sibling or child of a person within paragraphs 11.3.1 or 11.3.2;
  - 11.3.6 A spouse or civil partner of a person within paragraphs 11.3.3, 11.3.4 or 11.3.5; or
  - 11.3.7 Living with a person within paragraphs 11.3.3, 11.3.4 or 11.3.5 as husband and wife or as if they were civil partners.

## 12 Revision of these arrangements

The Monitoring Officer has delegated power, in consultation with the Independent Person and the Chair of the Audit and Governance Committee or in his/her absence the Vice Chair of Audit and Governance, to approve a departure from these arrangements when he/she considers it is expedient to do so to secure the effective and fair consideration of any matter.

The Chair of the Hearing Sub-committee has the right to depart from the Hearing Sub-committee procedure, in consultation with the Monitoring Officer, at any hearing where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

The Chair of the Hearing Sub-committee is appointed by the three members who will sit at the particular hearing either in advance of the hearing or by vote at the start of the hearing.

## 13 Appeals

There is no right of appeal for you as complainant or for the member against a decision of the Monitoring Officer or of the Hearing Sub-committee. If you feel that the Authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.

Cheshire East Council

Weightmans reference: SG/423558/54

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Councillor Brian Silvester

SG 6

①

**Section 4.**

I am lodging this complaint against Cllr Brian Silvester whom I believe has contravened the Members Code of Conduct for Cheshire East Council.

The reasons for this complaint are outlined below.

On the 16<sup>th</sup> December Cllr Silvester participated in a radio interview with Alan Beswick on BBC Radio Manchester.

During that interview Cllr Silvester made comments about Council Officer, Caroline Simpson, and made the following statement in respect of her work on the Local Plan:

"we're talking about somebody who has failed, failed and failed again in her post.....Caroline Simpson should be sacked, she shouldn't be promoted".

Furthermore, Cllr Silvester included similar comments in promotional UKIP press releases:

"the officer in charge is set to be promoted and given a performance bonus !! Far from being promoted she should be sacked",

Following the making of these statements the Chief Executive, Mike Suarez issued a letter to Councillor Silvester via solicitors acting on behalf of the Council, dated 19<sup>th</sup> December (attached). In that letter Councillor Silvester was warned that his comments regarding Mrs Simpson contravened good governance and the duty upon employers to protect employees from unfair criticism particularly when they are personally named.

It is unfortunate that Cllr Silvester chose not to desist from making further comments or statements regarding this matter as requested and indeed chose to publish the correspondence sent by solicitors acting on behalf of the Council on this matter. As a consequence Cllr Silvester has chosen to perpetuate the action and defamation against the individual officer.

Acting as Head of the Paid Service in the absence of the Chief Executive during this holiday period I feel that Cllr Silvester has contravened the Code of Conduct for Members. The relevant extracts of the Code are repeated below:

Section 7 of the Member Code of Conduct for Cheshire East Council states:

- (a) You must treat others with courtesy. You should engage with colleagues and staff in a manner that underpins mutual respect and courtesy, essential to good local government.

And

- (d) You must not bully any person, including other councillors, officers of the authority or members of the public. (see footnote extract)

**Footnote extract**

"Bullying may be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour and includes "cyber-bullying". It may happen once or be part of a pattern of

behaviour. It can be contrasted with the legitimate challenges as a member may make in challenging policy or scrutinising performance. You may challenge others as to why they hold their views but must take care to raise issues in the appropriate forum. Ideas and policies may be robustly criticised but individuals should not be subject to unreasonable or excessive personal attack.

Additionally, I do have some concerns that Cllr Silvester's comments may have a further malicious intent relating to previous action taken by the Council against him regarding his role as a landlord in the Borough. The legal action resulted in a conviction which is now spent. However, it is important to note that Mrs Simpson was the officer who signed the notice on behalf of the Council for his conviction.

Lorraine Butcher

Executive Director, Strategic Commissioning



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Councillor Brian Silvester

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Legal Services  
Westfields, Middlewich Road  
Sandbach, Cheshire  
CW11 1HZ

Private and Confidential  
Councillor B Silvester

Tel: 01270 886003  
email:

MonitoringOfficerCEC@cheshireeast.gov.uk

Date: 6 January 2015

Dear Councillor Silvester

**COMPLAINT NUMBER: CEC/14-15/MD11**

I am writing to inform you that a complaint has been made against you by Mrs Lorraine Butcher, Executive Director Strategic Commissioning Cheshire East Council. This letter explains the steps which will be taken to deal with the complaint but in the interests of fairness and natural justice, under no circumstances should you approach or contact the Complainant in any way about the complaint whilst the matter is under consideration.

In accordance with Cheshire East Council's adopted Code of Conduct Complaints Procedure, a copy of the complaint is enclosed for your information.

Under this procedure, you have the right of response to the allegations made against you. If you intend to respond, I would be grateful if you could confirm only that fact immediately on receipt of this letter, by either emailing the Monitoring Officer mailbox above or by ringing my RA on the telephone number provided. Your written response must then be submitted to me no later than 5 working days from the date the letter is received.

If no response is submitted, the deadline for assessment will be 20 working days from the date the complaint was received. If however, you choose to submit a response, the complaint will be assessed by me together with the Independent Person within 20 working days of receipt of your response. The procedure I will follow is set out below.

**Pre-Initial assessment:**

Before carrying out the initial assessment, I must be satisfied that the complaint meets the following three tests:

- It is a complaint against one or more named Members of Cheshire East Borough Council or a Town or Parish Council within Cheshire East Borough;

- o The named Member was in office at the time of the alleged misconduct and the Code of Conduct was in force at the time;
- o The complaint, if proven, would be a breach of the Code under which the Member was operating at the time of the alleged misconduct.

If the complaint fails one or more of these tests it cannot be investigated as a breach of the Code and you will be informed that no further action will be taken about the complaint.

**Initial assessment:**

When assessing the complaint, I will have regard to the following criteria:

1. **Adequate information** – I will want to be satisfied that I have sufficient information to decide whether the complaint should be referred for investigation or other action;
2. **Official Capacity** – Was the member acting in an official capacity?
3. **Timescale** – I will take into account when the events subject to the complaint took place and will not normally investigate or pursue other action if the events occurred more than 6 months before the complaint was submitted (unless I decide that exceptional circumstances apply);
4. **Seriousness of the complaint** – I will not normally refer a matter for investigation or other action if it is considered trivial, malicious, politically motivated or tit-for-tat;
5. **Public Interest** - If the complaint relates to an ex-member of Cheshire East or one of its Town/Parish Councils who is now a member of another Council I may refer the matter to that Council for consideration.

If the Member has resigned, is seriously ill or has died I will only refer the matter for investigation or other action if the public interest will be served by doing so.

If the complaint has already been the subject of an investigation or other action relating to the Code of Conduct or has been investigated by other regulatory authorities it is unlikely I will refer it for investigation or other action unless it is evident that public interest will be served by further action being taken.

**Possible outcomes:**

I can make the following decisions on any complaint:

**That no further action be taken in respect of the matter**

This may be because -

- The complaint does not come within the remit of the Members' Code of Conduct; or
- The complaint is not sufficiently serious to warrant an investigation; or
- It is not in the public interest to investigate the complaint; or
- The complaint should not be investigated because it is obsessive, vexatious, malicious or frivolous; or
- The complaint should not be investigated because it is broadly similar to a complaint against the same member about the same alleged incident; or
- The complaint should not be investigated because there is a clear ulterior/political motive or it is a tit-for-tat complaint; or

Where further action is appropriate I can decide

- o That the matter be referred to the Group Leader for informal action – this will normally be only where the complaint relates to Cheshire East Borough Councillors and will not generally be appropriate if the complaint is from a member of the public.
- o That the matter is referred for informal resolution or other action – this enables less serious complaints to be resolved speedily and cost effectively. The matter may subsequently be referred for formal investigation should it become apparent that the issues are more serious than was originally anticipated.
- o That the matter is referred for formal investigation by an Investigator- this enables the most serious allegations to be thoroughly investigated. In most cases the Investigator will be expected to complete the investigation and produce a written report within 8 weeks of the referral.
- o That the matter is referred to the Police or other relevant Regulatory Agency – this would be appropriate where it appears a criminal offence or breach of regulations may have taken place and in particular any failure to declare a Pecuniary Interest under s 80-81 of the Localism Act 2011.

Should I or the Independent Person require further information and/or clarification from you or the Complainant in order to complete my assessment, the deadlines I have referred to above may be extended up to a maximum of 15 working days and you will be notified if this happens.

Please note that my decision is final and there is no right of review

During the process, you have the legal right to consult or seek advice from one of the Independent Persons appointed by the Council. As an Independent Person will be involved throughout the process, I would be grateful if you could contact my office in the first instance so that I can put you in touch with the relevant person.

I hope this information is helpful but if you require any more assistance, please let me know.

Yours sincerely

Anita Bradley  
Head of Legal Services & Monitoring Officer

Cheshire East Council

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Councillor Brian Silvester

SG 11



**Legal Services**  
Westfields, Middlewich Road  
Sandbach, Cheshire  
CW11 1HZ

Tel: 01270 686003

E-mail:

MonitoringOfficerCEC@cheshireeast.gov.uk

**Private**

Councillor B Silvester

Date: 21 January 2015

Dear Councillor Silvester

**CODE OF CONDUCT COMPLAINT: CEC/14-15/MO11**

I refer to the above allegation of a breach of the Cheshire East Council's Members' Code of Conduct made against you by Mrs Lorraine Butcher.

On 8 January 2015, I consulted with the Independent Person to assess the complaint and form an initial view, pending receipt of a response from you.

On 10 January 2015, you indicated that you would be sending a response to this complaint. I received your response to the complaint on 15 January 2015, and again consulted the Independent Person on 20 January 2015; the outcome was that this matter be referred for external investigation. The full decision is set out in the enclosed Decision Notice and there is no right of review of this decision.

In accordance with the Council's adopted complaints procedure, I have appointed an Investigating Officer to conduct the investigation who will contact you in due course.

Yours sincerely

**Anita Bradley**  
Head of Legal Services & Monitoring Officer



## INITIAL ASSESSMENT

## CONSIDERATION OF A CODE OF CONDUCT COMPLAINT

## DECISION NOTICE

|                                       |                                |                                     |
|---------------------------------------|--------------------------------|-------------------------------------|
| <b>Complaint No:</b>                  | <b>Complaint Received:</b>     | <b>Deadline for Assessment:</b>     |
| CEC/14-15/MO11                        | 23 December 2014               | 29 January 2015                     |
| <b>Monitoring Officer:</b>            | <b>Independent Person:</b>     | <b>Date of Meeting:</b>             |
| Anita Bradley, Head of Legal Services | Roger Pomlett                  | 8 January 2015<br>20 January 2015   |
| <b>Name of Complainant:</b>           | <b>Name of Subject Member:</b> | <b>Borough/Town/Parish Council:</b> |
| Mrs Lorraine Butcher                  | Councillor Brian Silvester     | Cheshire East Council               |

**1. Purpose of Meeting**

For the Monitoring Officer, in consultation with the Independent Person, to undertake an initial assessment of the complaint and to determine what action, if any, should be taken.

**2. Summary of Complaint**

The Complainant alleged that the Subject Member had breached paragraph 7 (respect for others) sub paragraph a) you must treat others with courtesy and sub paragraph d) you must not bully any person; of Cheshire East Council's Members' Code of Conduct by i) defaming a Council employee during a radio interview on 16<sup>th</sup> December 2014; ii) including similar comments in party political publications; and iii) perpetuating that defamation by publishing a letter sent to him by the Council's solicitors on 19 December 2014 concerning the defamatory comments.

**3. Stage 1: Application of Initial Tests**

The Monitoring Officer began by applying the initial assessment tests to the complaint submitted by the Complainant.

Having consulted with the Independent Person, the Monitoring Officer concluded that the first two initial tests were met, namely that the complaint was against a member of Cheshire East Council and that the named member was in office and the Code of Conduct was in force at the time of the alleged conduct.

Particular consideration was given to the third test i.e. that the complaint, if proven, would be a breach of the Code under which the Member was operating at the time of the alleged misconduct. It was determined that paragraph 7, sub paragraphs a) and d) were sufficiently met to satisfy the third test.

Whilst no conclusion was reached at this stage as to whether any part of the complaint had been proved, the third initial test was found to have been met for the purpose of proceeding to consider the complaint.

**4. Stage 2: Consideration of Assessment Criteria**

The Monitoring Officer, in consultation with the Independent Person then went on to consider the assessment criteria and concluded that -

Adequate Information: The Monitoring Officer had enough information before her to form a decision.

Official capacity: The member was acting in his official capacity at the time of the events complained of.

Timescale: The complaint was within the timescale of 6 months which would allow it to be considered.

Public Interest test: The Monitoring Officer was satisfied that it was in the public interest for the complaint and the options available for resolution to be considered.

Seriousness: The Monitoring Officer considered that the matter reached the threshold necessary for the complaint to be considered further.

**5. Interim view of the Monitoring Officer (pending any response from the Subject Member):**

That the matter be referred for external investigation.

**6. Response of Subject Member**

The Subject Member indicated to the Monitoring Officer on 10 January 2015 that he would be responding to the complaint.

The Subject Member subsequently submitted his response on 15 January 2015. The Monitoring Officer gave due consideration to the response and re-consulted the Independent Person on 20 January 2015. The Independent Person concluded that there was nothing in the submission which would alter his view and advice to the Monitoring Officer.

The Monitoring Officer decided, taking the Subject Member's response and the views of the Independent Person into consideration, to refer the matter for external investigation.

**7. Decision of the Monitoring Officer:**

That the matter be referred for external investigation.

**8. Reason for Decision:**

The allegations, if proven, would constitute a breach of the Code of Conduct.

The complaint had been submitted by a senior officer of Cheshire East Council and concerned another senior member of staff. In the interest of fairness, it was considered that this matter should be investigated externally, which accorded with the Independent Person's view.

**Signed:**

**Name:** Anita Bradley, Head of Legal Services and Monitoring Officer

**Date:** 21 January 2015

