

Appendix 1 to the Report

**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 attached as **Appendix 1**, 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 at **Appendix 2**. Please send your complaint to:

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

Or email:

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 set out in **Appendix 3** 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. 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 procedure for a Hearing Sub-committee is attached as **Appendix 6** to these arrangements.

In summary, 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;
- 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.

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.

An overview of the procedure is attached at **Appendix 4** together with a flowchart at **Appendix 5**.

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.

List of Appendices

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Arrangements proposed to be adopted by Council on 17 July 2014

Cheshire East Borough Council

CODE OF CONDUCT FOR MEMBERS –2012

Cheshire East Borough 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— (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the relevant authority.

⁽¹⁾ 1992 c. 52.

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 Council's Standing Orders any Member of Cheshire East Borough Council who declares a Disclosable Pecuniary Interest in an item of Business should withdraw from the room at the appropriate juncture.

Appendix 1a

General Dispensations granted by Audit and Governance Committee on 27th September 2012.

At its meeting on 27 September 2012 the Audit and Governance Committee approved the following general dispensations:

Granted dispensations for all Members of the Council and co-opted members to speak and vote on a number of matters for a period of four years as follows:

- any allowance, payment or indemnity given to Members;
- any Ceremonial Honours given to Members;
- statutory sick pay under Part X1 of the Social Security Contributions and Benefits Act 1992 where they were in receipt of or entitled to receive such pay;
- setting the Council Tax or a precept under the Local Government and Finance Act 1992 (or any subsequent legislation);
- setting a Local Council Tax Reduction Scheme or Local scheme for the payment of business rates (Including eligibility for rebates and reductions) for the purposes of the Local Government Finance Act 2012 (or any subsequent legislation); and
- school meals or school transport or travelling expenses where the Member is a parent or guardian of a child in full time education or a parent governor (unless the matter relates specifically to the school the child attends).

COMPLAINT FORM

Code of Conduct – Council Town & Parish Councillors and Co-opted Member(s).

Your details-

1. Please provide us with your name and contact details.

Title:	
First name:	
Last name:	
Address:	
Daytime telephone:	
Evening telephone:	
Mobile telephone:	
Email address:	

2. Please tell us which complainant type best describes you:

- ☐ Member of the public
- ☐ An elected or co-opted Member(s) of an Authority or a Town and Parish Council
- ☐ Local Authority Monitoring Officer
- ☐ Other Council Officer or employee of the Council
- ☐ Other - please specify

3. Please provide us with the name of the Member(s) you believe have breached the Code of Conduct and the name of their Authority:

Title	First name	Last name	Council or Authority name

4. Please explain in this section (or on separate sheets) what the Member(s) has/have done that you believe breaches the Code of Conduct. If you are complaining about more than one Member you should explain clearly what each individual person has done which you believe breaches the Code of Conduct.

Please provide us with details of your complaint. Continue on a separate sheet if there is not enough space on this form.

5. Only complete this section if you are requesting that your identity is kept confidential

In the interests of fairness and natural justice, the Council believes that Member(s) who are complained about have a right to know who has made the complaint. The Council also believes they have a right to be provided with a copy of the complaint. We are unlikely to withhold your identity or the details of your complaint unless you have good reason.

Please provide us with details of why you believe we should withhold your name and/or the details of your complaint:

6. Signature:

I understand that by signing this form I am giving Cheshire East Borough Council permission to pass a copy of this complaint and any evidence supplied in support, to the individual ('the Subject Member') against whom the complaint has been made.

Signed: _____

Date: _____

7. Additional Help

Complaints must be submitted in writing. You may post, fax or email your signed, completed form to the Monitoring Officer. However, in line with the requirements of the Equality Act 2010, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing.

We can also help if English is not your first language.

If you need any support in completing this form, please contact Diane Moulson (Tel: 01270 686476).

Appendix 3

ASSESSMENT CRITERIA

Initial Tests

Before any assessment of a complaint begins, the Monitoring Officer must be satisfied that the complaint meets the following 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;
- 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 cannot be investigated as a breach of the Code and the complainant will be informed that no further action will be taken in respect of the complaint.

If the above tests are met the Monitoring Officer will have regard to the following criteria:

1. **Adequate information** – The Monitoring Officer will want to be satisfied that it has sufficient information to decide whether the complaint should be referred for investigation or other action;
2. **Official Capacity** - The member was acting in an official capacity.
3. **Timescale** – The Monitoring Officer 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 prior to the complaint being submitted (except if it decides there are exceptional circumstances);
4. **Seriousness of the complaint** – The Monitoring Officer 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 Authority the Monitoring Officer may refer the matter to that Authority for consideration.

If the Member has resigned, is seriously ill or has died the Monitoring Officer will only refer the matter for investigation or other action if it considers that the public interest will be served by so doing. 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 to be referred for investigation or other action unless it is evident that public interest will be served by further action being taken.

The Monitoring Officer has the option to make the following decisions on any complaint;

- **That No Further Action be Taken in respect of the matter**
- **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.
- **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.
- **That the Matter is Referred for Formal Investigation by an External Investigator-** this enables the most serious allegations to be thoroughly investigated. In most cases the Investigator will be expected to complete his investigation and produce a written report within 8 weeks of the referral.
- **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 Disclosable Pecuniary Interest under s 30 -31 of the Localism Act 2011.

**Cheshire East Borough Council
July 2014**

Appendix 4

OVERVIEW FOR CONSIDERING COMPLAINTS THAT MEMBERS HAVE BREACHED THE CODE OF CONDUCT

1. Complaints must be submitted to Cheshire East Borough Council's Monitoring Officer (MO) using the Council's Standard Complaint Form (**Appendix 2**) setting out in sufficient detail why the complainant considers there has been a failure to comply with the relevant Code of Conduct.

MO acknowledges receipt of the complaint within 5 working days

2. MO informs the Subject Member of:
 - (a) the complaint, and provides the Subject Member with a copy of the Complaint Form and the name of the Complainant, unless in exceptional circumstances where the Monitoring Officer, in consultation with the Independent Person has granted the Complainant's request for confidentiality. Under no circumstances must the Subject Member contact the Complainant direct regarding any of the issues raised.
 - (b) his/her right to consult the Independent Person (IP) appointed by the Council, through the MO.
 - (c) his/her right to provide the MO with his/her written response to the complaint. Any such response to be received by the MO within 5 working days after receipt of the complaint by the subject member.

3. Initial Assessment

MO, in consultation with IP, will make his/her initial assessment based on the criteria set out in **Appendix 3** capacity, within 20 working days of receipt of the complaint or, if applicable, within 20 working days of receipt of the written response by the subject member. That initial assessment will determine one or more of the following outcomes:

- (a) The complaint does not come within the remit of the Code of Conduct.
- (b) The complaint is not sufficiently serious to warrant an investigation.
- (c) That it is not in the public interest to investigate the complaint.
- (d) He/she should seek to resolve the complaint without the need for an investigation by informal resolution (e.g. by an apology, mediation, or training by the subject member).
- (e) The complaint should be referred to the Group Leader for informal action (NB for complaints against Cheshire East Borough Councillors only and not generally an appropriate action if the complaint is from a member of the public).
- (f) The Complaint should not be investigated because it is obsessive, vexatious, malicious or frivolous.
- (g) The Complaint should not be investigated because it is broadly similar to a complaint against the same Member about the same alleged incident.
- (h) 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.
- (i) An investigation should take place.
- (j) Refer the matter to the Police or other Regulatory Agency.

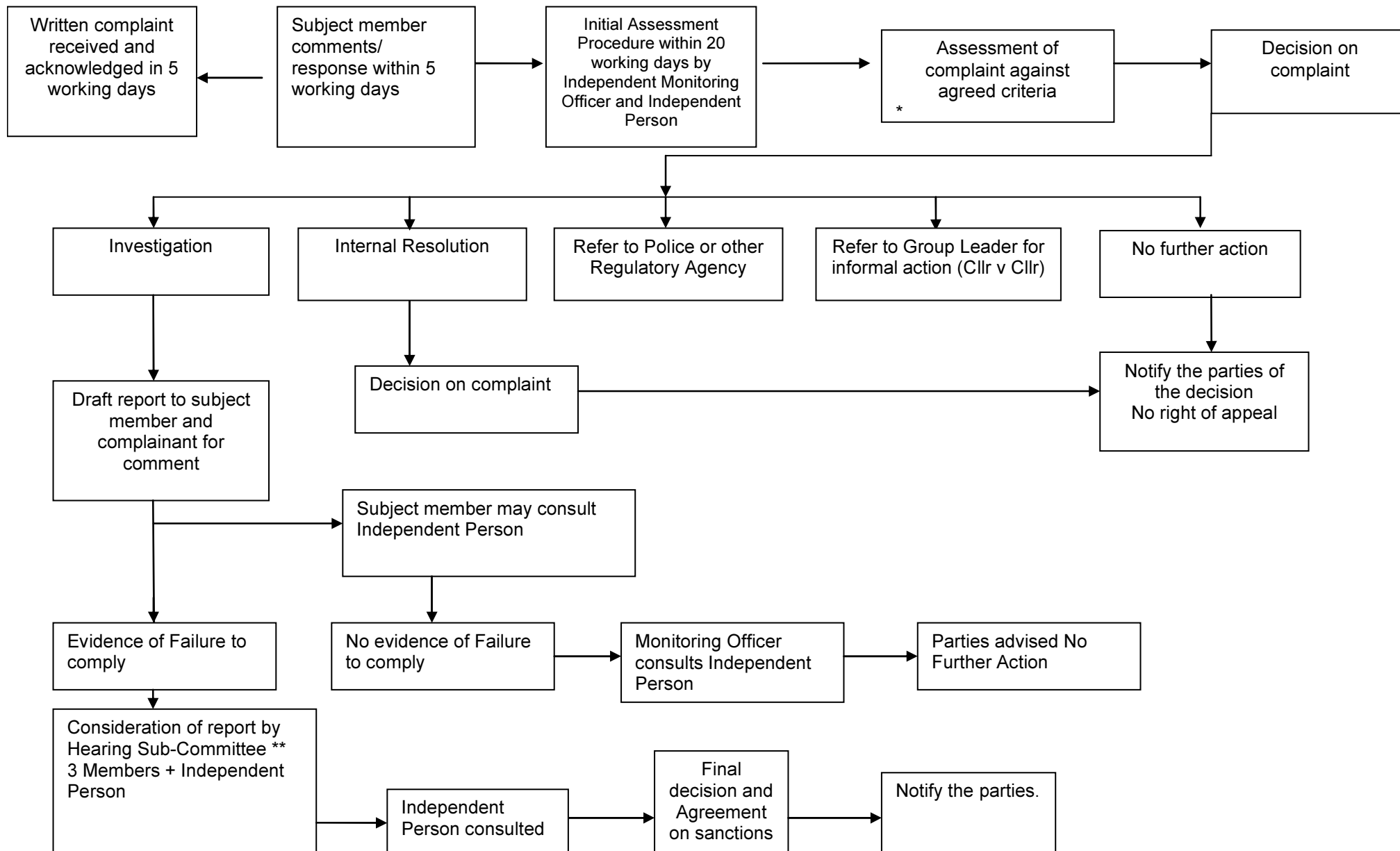
4. Before coming to his/her decision under para 3 the MO may request further information and/or clarification from the complainant and/or the subject member. Where this is the case time period may be extended up to a maximum of a further 15 working days.
5. If the MO decides that the complaint should be investigated, or his/her attempts to resolve the complaint without an investigation do not succeed, then he/she will carry out an investigation or appoint an investigator to carry out an investigation on his/her behalf.
6. Investigation:
The Investigator appointed under para 5 by the MO may be;
 - (a) A senior officer of the Town or Parish Council.
 - (b) A senior officer of Cheshire East Borough Council.
 - (c) An external investigator with relevant experience and appropriately trained.
7. Before finalising his/her report the investigator shall send a copy of it to both the complainant and subject member and give them at least 5 working days to comment on it.
8. A report into an investigation shall include the investigator's findings on whether the Code has been breached. If the investigator's final report finds there has not been a breach of the Code the MO can, in consultation with IP, decide to
 - (a) Take no action.
 - (b) Refer the report to the Audit and Governance Hearing Sub-Committee (Hearing Sub-Committee).
9. If the investigator's report finds there has been a breach of the Code then the MO must refer the matter to the Hearing Sub-Committee. That committee will meet in public.
10. Hearing Sub Committee:
When the matter has been referred to the Hearing Sub Committee by the MO, it will:
 - (a) Allow the investigator to present his/her report and call witnesses, including the complainant.
 - (b) Allow the subject member to make representations and call witnesses.
 - (c) Decide if the subject member has or has not breached the Code of Conduct.
 - (d) Decide what sanction should be imposed if they decide the Code has been breached.
11. The sanctions the Hearing Sub Committee can impose, if they find a breach of the Code are;
 - (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 Leaders (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 Executive, 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) Remove or recommend to Authority Town or Parish Council that the member be removed from all outside appointments to which he/she has been appointed or nominated by the Authority 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; 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.
12. In reaching a decision as to whether there has been a breach of the Code and if so what sanction should be imposed the Hearing Sub Committee will consult and consider the views of IP.
 13. Following any final decision by the MO or the Hearings Sub Committee (at whatever stage) the MO shall inform the complainant and the subject member of the decision and the reasons for it within 10 working days.
 14. Wherever there has been a decision that the subject member has breached the Code of Conduct that decision and the reasons for it shall be put on the Council's website in a prominent position. Wherever there is a decision that the subject member has not breached the Code of Conduct that decision shall be put on the Council's website, in a prominent position if the subject member wishes to be.
 15. Any decision of the MO or Hearing Sub-committee shall be final and binding.
 16. The MO will present a report to the Audit and Governance Committee twice a year giving;
 - (a) the number of complaints received and brief details.
 - (b) how they are progressing.
 - (c) what decisions have been made.
 - (d) what action has, where appropriate, been taken.
 17. The MO has delegated power, in consultation with the IP and the Chair of the Audit and Governance Committee or, in his/her absence, the Vice Chair of Audit and Governance Committee, 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.
 18. In all cases where the MO is unable to perform his/her role his/her deputy will do so.

Procedure for Complaints

* meeting is held in private

** meeting is held in public



Appendix 6

MEMBERS' CODE OF CONDUCT – COMPLAINT HANDLING HEARING SUB COMMITTEE – HEARING PROCEDURE

1. Date of Hearing

- 1.1 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 take place within three months of receipt of the investigation report by the Monitoring Officer.
- 1.2 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.
- 1.3 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.
- 1.4 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.
- 1.5 The date of the meeting and the outline agenda is published on the Council's website.

2. Representation

- 2.1 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.
- 2.2 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 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.

3. Legal Advice

- 3.1 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.

4. Introductions at the Hearing

- 4.1 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.

5. Procedural Issues

5.1 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 the Council's Code of Conduct.

- 5.2 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.

5.3 Quorum

At least three members of the Sub Committee 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 members of the Audit and Governance Committee).

- 5.4 The Chairman will satisfy him/herself that the Sub Committee is quorate before proceeding.

5.5 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.

- 5.6 Should the Member's representative not be present, then the Sub Committee may proceed or adjourn as it considers appropriate in the particular circumstances.

- 5.7 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.

5.8 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 and 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.

6. Hearing the Matter

- 6.1 The Sub Committee will then 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.

7. Presenting the Investigator's Report

- 7.1 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 considered that the Member had failed to comply with the Code of Conduct.
- 7.2 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.
- 7.3 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.

8. The Subject Member's Reply

- 8.1 The Subject Member (or his or her representative) will then be invited to make representations on the matter. The Member may, with the consent of the Chairman, call such witnesses as he/she considers necessary.
- 8.2 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.

9. Evidence

- 9.1 The Sub Committee may decide not to hear any evidence if it is not satisfied that the evidence will assist its decision making.
- 9.2 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.
- 9.3 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.

10. Determination of the Matter

- 10.1 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.
- 10.2 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 Committee shall retire 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

11. Decision

- 11.1 Having made its determination, the Sub Committee shall return and the Chairman will state the Committee's principal findings on matters in dispute and its decision on whether there has been a failure to comply with the Code.
- 11.2 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 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.

11.3 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:

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

11.3.2 A sanction be imposed

11.4 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:

11.4.1 Whether or not the Sub Committee should impose any sanction; and

11.4.2 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 Leaders (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 Executive, 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) Remove or recommend to Authority Town or Parish Council that the member be removed from all outside appointments to which he/she has been appointed or nominated by the Authority 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; 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.

11.5 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.

- 11.6 The Sub Committee shall then retire 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.
- 11.7 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.