

## Cheshire East Council – New Constitution

### Explanatory note to new Part 4 – Codes & Protocols

#### Structure of Part 4

Part	Title	Contents
A	<a href="#">Member Code of Conduct</a>	<p>This sets out the ways in which elected Members of the Council must conduct themselves. It covers such things as:</p> <ul style="list-style-type: none"> <li>• General obligations</li> <li>• Registering and declaring interests</li> <li>• Pre-determination and bias</li> </ul>
B	<a href="#">Officer Code of Conduct</a>	<p>This sets the ways in which all employees of the Council must conduct themselves. It covers such things as:</p> <ul style="list-style-type: none"> <li>• The Values of the Council</li> <li>• The Council's Core Principles</li> <li>• The Council's Core Standards</li> <li>• Additional standards relevant to particular groups of employees</li> <li>• Guidance on compliance with the Code</li> <li>• Associated forms and referral points</li> </ul>
C	<a href="#">Member / Officer Protocol</a>	<p>This Protocol is to guide Members and Officers of the Council in their relations with one another in such a way as to ensure the smooth running of the Council.</p>
D	<a href="#">Whistleblowing Policy</a>	<p>Although not a formal part of the Council's Constitution, it is considered useful to provide a link to the Whistleblowing Policy in this document.</p>

**Note:** The redrafting of Part 4 has been conducted by CEC officers, with advice from Bevan Brittan. The commentary on proposed changes has been prepared by those CEC officers.

## Substantive Changes

This Part largely follows the form of the current constitution and contains sets of various Procedure Rules dealing with the operation of the Council and its decision making.

We describe the changes that we have made in three categories:

- I. Substantive changes required by law for approval
- II. Substantive changes based on best practice recommended for approval
- III. Substantive changes for consideration by the Sub-Committee

### I. Substantive changes required by law for approval

There are no such substantive changes.

### II. Substantive changes based on best practice recommended for approval

Page	Section	Comment and/or area for consideration
Codes and Protocols		
N/A	Whistleblowing Policy	This does not have to be in the Constitution and is up-to-date and already accessible on the Council's internet and intranet sites. It was recommended by Sub-Committee on 3 <sup>rd</sup> November that it be referenced in the document and hyperlinked as a "Tier Two" hyperlink with ownership and responsibility for reviewing/updating passing to the Audit & Governance Committee.
N/A	Planning Protocol of Conduct in relation to the determination of planning matters	This does not have to be in the Constitution. It was recommended by Sub-Committee on 3 <sup>rd</sup> November that it be referenced in the document and hyperlinked as a "Tier Two" hyperlink within Section 2 of the Constitution with ownership and responsibility for reviewing/updating passing to the Strategic Planning Board.
N/A	Protocol on Public Speaking Rights at Strategic Planning Board and Planning Committee	This does not have to be in the Constitution. It was recommended by Sub-Committee on 3 <sup>rd</sup> November that it be referenced in the document and hyperlinked as a "Tier Two" hyperlink within Section 2 of the Constitution with ownership and responsibility for reviewing/updating passing to the Strategic Planning Board.
N/A	Councillor Call for Action Protocol	Our current Constitution contains a Protocol which seeks to "provide Members with a means of escalating matters of ward concern to a scrutiny committee...". The Protocol is 5 pages long. Our legal advisers, Bevan Brittan, query the

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Page	Section	Comment and/or area for consideration
		<p>necessity of the Protocol. They point out that “the basic right is for members to put something on the agenda of an overview and scrutiny committee, and have it discussed” (unless it is an excluded matter under legislation). They further advise that “The Protocol is very repetitive and seeks to curtail the statutory right of a member to put something on the agenda for scrutiny”.</p> <p>Bevan Brittan advise that the right of members to put items on scrutiny committee agendas could be mentioned in an appropriate procedure rule, and also that a link should be provided to the relevant Centre for Public Scrutiny guidance.</p> <p>It is therefore recommended that Bevan Brittan’s advice be followed; that the basic right of members to place something on scrutiny agendas be relied upon instead of a Protocol; that this is supported by appropriate information in procedure rules; and that an appropriate link should also be provided to the Centre for Public Scrutiny guidance.</p>
N/A	Petitions Scheme	<p>The existing Constitution includes a lengthy document, which contains complex provisions relating to petitions. Information is included as to how individuals can submit petitions, as well as identifying five different types of petitions and how they should be dealt with. Depending upon the number of signatories to a petition, a debate at Full Council can be forced. This has only happened once in the history of the Council.</p> <p>However, a good number of petitions are submitted from time to time and are appropriately administered by officers who ensure that the relevant elected member or decision-making body is informed.</p> <p>Bevan Brittan state that the guidance upon which local authority petitions schemes have been prepared has now been revoked.</p> <p>The Working Group concluded that the most important issues are that individuals submitting petitions should have clear information as to how they can do this, and what will happen to the petition they submit; and that officers have a clear understanding of how petitions should be dealt with, once submitted.</p> <p>The Sub-Committee is therefore recommended to agree that the existing Petitions Scheme, based on revoked guidance, is now dispensed with and is replaced by a link in an appropriate place in the</p>

Page	Section	Comment and/or area for consideration
		Constitution which guides members of the public and officers as to how petitions will be dealt with once submitted.

III. Substantive changes for consideration by the Sub-Committee

Page	Section	Comment and/or area for consideration
Member Code of Conduct		
N/A	Throughout	The Member Code (and associated documents) is being changed to address issues that have arisen with its operation since it was introduced, presumably in 2012. Most of these points have arisen dealing with complaints against town and parish councillors, who tend to adopt the council code, but will be of equal assistance to CEC councillors.
9	Appendix to the current Code. New sections as per the headings in the proposed new code.	<p>Our code currently only defines disclosable pecuniary interests as a class of declarable/registerable interests. The standards regime and legislation envisages council's defining other classes of interests and issuing guidance about declaring those interests and what action to take once those interests have been declared, but Cheshire East has never done that. That is problematic, because there are a whole range of interests that should be declared to ensure transparency and openness, but which don't amount to disclosable pecuniary interests. The lack of definition/guidance has caused confusion, led to inadvertent breaches of the code and so needless standards complaints. It has also caused needless friction between councillors and undermined public confidence in the democratic process.</p> <p>The code is proposed to be amended to set out a definition for personal interests (where a declaration should be made for transparency but participation in the debate and vote is still permitted) and a prejudicial interest (where one can speak as a member of the public but not otherwise and not vote). This is in line with the old standards regime which most members will be familiar with and seem to be following in practice in any event.</p>

Page	Section	Comment and/or area for consideration
4	Currently dealt with in the “notes” section on the top of page 3 of the existing code. Proposed to have its on dedicated section under the “information” heading in the new code	Operational practice has shown that the code needs to be clearer in its provisions on how Members should and should not deal with information. We address that to re-emphasise the gravity of confidentiality obligations, particularly in light of GDPR where personal accountability and significant fines begin to bite.
5	Gifts and Hospitality	Currently the declaration limit for Members is £100 and for officers £5. That is a stark differential for which it is difficult to see any objective reasonable justification. Compared to other authorities, the Member limit is high and the officer limit very low. Members are asked to consider a unified limit for officers and Members.
2	Paragraph 2 of the proposed new code	We have inserted a requirement not to deliberately mislead, after feedback that our code contains no express provisions in that regard. Our view is that this would be covered in any event under the integrity and honesty headings, and to be “truthful” is a requirement of the Nolan principles in any event, but there has been a request to include it so it is for Members to decide whether and how it goes in.
3	Paragraph 4 of the proposed new code	We have included the word “appropriate” before the bit which says Members are subject to scrutiny by local residents. There have been numerous instances where complaints have been brought which have been founded in an unreasonable expectation of what the right to scrutinise Members entails. In some cases, this has bordered upon the harassment of members.
3	Paragraph 8(a)(iv) of the proposed new code (second “(a)”)	We have added a bit in the “respect for others” section designed to make clear that interference or attempted interference with another party in the standards complaints process is itself a breach of the code. Experience has shown that clarification is necessary.
8	Part 4 of the new code	We make reference in the code to a Monitoring Officer Protocol which the Monitoring Officer will produce and update from time to time. The purpose of that protocol is to alert members to the sorts of issues that have been arising and give an indication of how they will be dealt with under the code. That is almost a running “FAQs” intended to guide Member conduct on common or emerging themes. The

Page	Section	Comment and/or area for consideration
		purpose of the reference to it in the Code is to give the Monitoring Officer Protocol the status of guidance to be considered when determining matters under the Code.
5	Sensitive Interests	This section has been clarified.
8	Pre-determination and bias	This section has been added based on wording in the existing Planning Protocol. This was previously overlooked in the Code and is an issue all Members need to be alert to.
6	Paragraph 12 of the proposed new code	A section has been added where the Audit & Governance Committee can add membership of prescribed bodies as a personal interest. This flows from the debate at A&GC of a Notice of Motion requesting that all members be required to declare membership of the freemasons as an interest. The debate at A&GC queried why just the freemasons and not any other organisation. The resolution at A&GC was to deal with this in the constitution review process. This proposed addition to the Code enables A&GC to add that and any other body as being bodies that membership of which requires a declaration, as the A&GC sees fit.
Appendix A	Arrangements for Dealing with Standards Complaints. This is a separate document that sits outside of the code. The existing document was approved by Council. There is considered a need to update that document as explained in the column to the right. It is opportune to do that as part of this process.	<p>There is a legal requirement to have this document. The code references and links to it. There has been a substantial redraft to clarify issues that have cropped up in practice, and to make the process clearer. The document has been combined with an existing “overview of process” document sown at Appendix A. The main changes are:-</p> <ul style="list-style-type: none"> <li>• Providing more scope for the M.O. with the statutorily appointed Independent Person (IP) to reject complaints without first putting them to the subject member. We get a considerable amount of complaints which are not appropriate for the process (usually trivial, unfounded or tit for tat with no public interest element) but currently have to put those to a subject member and convene formal meetings of the IP (both requiring considerable administrative resource and delay) to consider them before invariably dismissing them on very clear grounds. That is an unsustainable drain on resource. The new procedure enables the MO to reject complaints on set criteria consulting the IP as appropriate. Reasons are given and the subject member is</li> </ul>

Page	Section	Comment and/or area for consideration
		<p>given a precis of the complaint when being told it has been received and rejected.</p> <ul style="list-style-type: none"> <li>Other aspects have been clarified by greater explanation/detail on matters which have caused confusion in practice.</li> </ul>
28	Member/Officer Relations Protocol	<p>A proposed new officer/member protocol is attached. This is substantively the same as the current document, although provides more detail and narrative on areas where difficulties and tensions most often arise. There is a proposal to include further narrative by way of hyper linked appendices on particular areas, if Members would find that useful, such as protocols on involvement in procurement processes and on access to and the use of information.</p>
N/A	Local Ward Member Protocol	<p>The Local Ward Member Protocol currently forms part of the Constitution. It is repetitive in places, complicated to follow, and is not well drafted. The Working Group concluded that the key issues which needed to be addressed in the replacement Protocol were to: simplify the document so as to make it easier to follow; to strike the right balance in respect of keeping local members informed of local issues; and to agree the right approach to hyperlinking.</p> <p>The following substantive matters are identified for agreement by the Sub-Committee:</p> <ol style="list-style-type: none"> <li>The Working Group has therefore agreed to utilise a shorter version of the Protocol, which used plain English, and which focusses the minds of its readers upon what is really important to local members. The Sub-Committee's approval is sought in respect of the newly drafted document at Appendix B.</li> <li>The Working Group concluded that there was no need for the Protocol to be contained within the Constitution, so long as it was accessible to those reading the Constitution via a hyperlink. <ul style="list-style-type: none"> <li>It is therefore proposed to hyperlink the document so as to make it available to anyone reading the Constitution.</li> <li>It is further proposed that the document should have the status of a "Tier Two" hyperlink, with the responsibility for reviewing and updating the document resting with the Constitution Committee.</li> </ul> </li> <li>Keeping Ward Members informed: the previous</li> </ol>

Page	Section	Comment and/or area for consideration
		<p>Protocol stated that “Quite Simply, members should be the first to know of events and issues affecting their wards”. This obligation upon officers was not well expressed, and introduced an element of uncertainty as to circumstances where there might be grounds to preserve confidentiality. Sections 2 &amp; 3 of the Protocol therefore seek to strike the right balance.</p>
N/A	<p>Mayoralty Code of Practice</p>	<p>The Constitution currently includes this Code, which is 6 pages long, is repetitious and poorly drafted. Essentially, it is a document which seeks to set out important and helpful guidance and protocols of behaviour in respect of the Mayor. Bevan Brittan advise that it does not need to be part of the Constitution, and could therefore be hyperlinked.</p> <p>The document has been appropriately re-drafted so as to include the important elements of the document. The Sub-Committee’s approval is sought in respect of the newly drafted document at Appendix C, but the Sub-Committee is asked to express a view upon the following issue which was raised by the Working Group.</p> <p>Whereas the existing arrangement for the nomination of Deputy Mayor rests with the ruling Group, and that in reaching a decision, it may choose to invite nominations from other Groups, the Working Group asked for consideration to be given to granting all Groups the right to put forward nominations for the Deputy Mayoralty to the Ruling Group. This would replace the existing arrangement.</p> <p>The Sub-Committee is asked to make an appropriate recommendation to the Constitution Committee.</p>

## LOCALISM ACT 2011 ARRANGEMENTS FOR DEALING WITH STANDARDS COMPLAINTS AGAINST MEMBERS

### 1 INTRODUCTION

#### What does this guidance cover?

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. This guidance covers complaints that a member has failed to comply with their code of conduct. The member complained against is referred to in this guidance as the “subject member”.

These arrangements set out:

- (1) how you can make a complaint about the conduct of an elected or co-opted member of Cheshire East Council or of a town or parish council within the borough.
- (2) how the Council will deal with complaints about members.

There is an overview and flowchart of the process in the [appendix](#) to this document.

#### Codes of conduct

Cheshire East Council has adopted a code of conduct for members, which is available for inspection on the council’s [website](#) and on request from the Monitoring Officer: [monitoringofficercec@cheshireeast.gov.uk](mailto:monitoringofficercec@cheshireeast.gov.uk).

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.

#### What complaints can the Monitoring Officer deal with?

The Monitoring Officer can only deal with complaints that a member has failed to comply with their Code of Conduct. If you wish to make a complaint about:-

- dissatisfaction with a decision or action of the authority or one of its committees
- a service provided by the authority
- the actions of someone employed by the authority
- the authority’s procedures or policies

you can do so using the council’s [corporate complaints process](#) or, in the case of a town or parish council, by contacting that councils clerk.

If your complaint is about a member, then you can use this process. However, you should be aware that there is an assessment criteria that is applied to all complaints to ensure that the processes focuses on complaints where there is a wider public interest in addressing the conduct complained about.

You should consider the assessment criteria set out below before making your complaint in order to understand how your complaint will be dealt with.

### Changes to and departure from this guidance

The Monitoring Officer may amend this guidance from time to time in consultation with the Chairman of the Audit and Governance Committee and the Independent Person<sup>1</sup>. The Monitoring Officer may also depart from this process when s/he thinks it is necessary to do so in order to ensure that a complaint is dealt with fairly and effectively

## **2 HOW DO I MAKE A COMPLAINT?**

### The Complaint Form

Complaints must be submitted in writing to Cheshire East Borough Council's Monitoring Officer using the standard [complaint form](#). When complete, your form should be sent to the Monitoring Officer along with any supporting evidence that you wish to provide. This should be sent by post or email, however email is preferred.

By Post: Monitoring Officer, Cheshire East Council, c/o Municipal Buildings  
Earle Street, Crewe CW1 2BJ

By email: [monitoringofficercec@cheshireeast.gov.uk](mailto:monitoringofficercec@cheshireeast.gov.uk)

The Monitoring Officer will not normally consider a complaint unless it is in writing and a complaint form has been received. This is to ensure that all of the relevant information is provided and, where necessary, consent to share information has been obtained so that the complaint can be processed.

If you do not have access to the internet or have difficulty completing the form please contact please contact 01270 685863 for assistance.

### Information Required

Completing the complaint form ensures all required information is provided. You will need to provide your name, address and email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. Our preference is to communicate with you by email only, but we will do so through conventional post at your request.

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.

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

- the name of the member(s) you believe to have breached the code of conduct
- the name of their council
- which parts of the code you believe have been breached

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- what they have done that you believe breaches the code. 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

It is important that you provide all the information you want us to take 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. Please note that the Monitoring Officer has 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. The remedies which may be applied through this process are set out below.

### Anonymity

Anonymous complaints will not normally be investigated, unless there is clear public interest in doing so and the Monitoring Officer considers that a fair investigation can be carried out.

Requests from complainants for the Monitoring Officer to withhold their identity, so that they remain anonymous to the subject member, are not ordinarily granted.

The Monitoring Officer has to balance the right of the subject member to properly understand the complaint against them and respond to it, with the rights of the person making the complaint. More often than not, this means that the subject member will need to be told who is making the complaint.

In all cases, the subject member is asked not to approach complainants or to talk to them about the complaint. The Code contains provisions designed to protect complainants and the integrity of the complaints process.

Nevertheless, if you want to keep your identity confidential, please ensure that you complete section 6 of the complaint form. Requests for anonymity will only be granted if there is a good reason for asking us to do this, and if doing so will not prejudice the subject member's ability to properly respond to the complaint.

We will normally use the following criteria when considering your request -

- You have reasonable grounds for believing that you will be at risk of physical harm or harassment if your identity is disclosed
- You have an employment relationship with the subject member(s) and you are afraid of the potential consequences upon that relationship 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
- Whether the complaint can be investigated without revealing your identity
- The seriousness of the complaint
- The degree to which the subject member may be prejudiced by withholding your identity

The Monitoring Officer will only grant your request if he considers that a fair investigation can still be carried out. You will be informed of the decision and the reasons for it.

If your request for confidentiality is not granted, no further action will be taken unless you confirm that you are happy for the council to release your identity to the subject member.

### **3 WHAT HAPPENS AFTER I SUBMIT MY COMPLAINT FORM?**

#### Confidentiality Requirements

The complaints process is confidential. This means that during each stage of the process up to and, in some cases, including the holding of a Sub-Committee hearing (see below) to determine a complaint, matters are dealt with in confidence.

Information supplied by the complainant(s) and the subject member(s) to the Monitoring Officer will only be supplied to other parties to the complaint in accordance with the procedure.

With the exception of a professional advisor retained for those purposes who is also bound by a duty of confidentiality, the parties to the complaint must not pass on any information relating to the complaint to any third party without first obtaining the written permission of the Monitoring Officer.

Any complainant who fails to comply with the confidentiality requirements risks being found to have contravened the process which may result in no further action being taken on their complaint.

Any member who fails to comply with the procedure risks being subject to a complaint that they have breached the Code simply on account of having made such a disclosure.

#### Acknowledgement

The Monitoring Officer will acknowledge receipt of your complaint within 5 working days of receiving it, and will keep you informed of progress. It may be necessary to seek further clarification from you at this stage.

### Preliminary Assessment

The Monitoring Officer will undertake a preliminary assessment of your complaint, consulting the Independent Person where appropriate, before making and notifying you of his/her decision on whether and how the complaint should proceed. The Monitoring Officer will endeavour to do so within 5 working days of acknowledging your complaint. The Monitoring Officer is not determining, at this stage, whether or not there has been a breach of the Code.

### Preliminary Assessment Criteria

If your complaint indicates that a criminal offence may have been committed (or some other regulatory infraction) the matter will be reported to the appropriate regulatory body. It may be the case that the complaint cannot be further considered under this process until an associated external investigation has been completed.

If your complaint also relates to or raises concerns about a council service (or an officer of the council), it may first need to be dealt with under the relevant corporate complaints/disciplinary process that applies. This is so that the outcome and any proposed action resulting from any such process can be taken into account when assessing the code of conduct complaint.

The preliminary assessment will also consider whether:-

- 1) The complaint is against one or more named members of Cheshire East Council or a town or parish council within the borough.
- 2) The subject member was in office at the time of the alleged conduct
- 3) The subject member was acting in their official capacity as a member at the time of the alleged conduct.
- 4) There is (or following further enquiries or investigation is likely to be) enough information to form a view as to whether or not a breach of the code has or has likely occurred.

If these tests are not met, no further action will be taken. If these tests are met, the Monitoring Officer will go on to consider whether the complaint:-

- 5) Has been made in time. Complaints lodged more than 6 months after the conduct that is being complained about occurred will not normally be considered unless there are extenuating circumstances
- 6) Is trivial, malicious, vexatious, politically motivated or a "tit for tat" complaint. The complaints process exists to deal with matters of conduct where it is in the public interest to do so. The Monitoring Officer must be mindful of resource considerations and not allow the process to be used as a mechanism to seek to take members to task for conduct which may technically amount to a breach of the code but where there is little or no wider public interest in pursuing the matter.

- 7) Is a repeat complaint. The Monitoring Officer will not normally consider complaints which have been substantively considered (whether or not under this process) within the previous six month period.

#### Informing the subject member

The subject member will not normally be told about the complaint until this preliminary assessment has been undertaken. However, in some cases in order to undertake this assessment it may be necessary to notify the subject member of the complaint and request further information from the subject member or some other person.

Where the complaint relates to a town or parish council member, the Monitoring Officer may inform the relevant clerk of the complaint and seek further information from the clerk.

If more information is required at this stage, the time limit for completing the preliminary assessment may be extended.

Following Preliminary Assessment, the Monitoring Officer may decide to:-

- 1) Take no further action
- 2) Refer the matter to an Independent Assessment Meeting

#### Notification of Preliminary Assessment Decision

Once a decision following Preliminary Assessment has been made, letters of notification will then be sent to you and the subject member informing you of the decision made and the reasons for it.

If the decision is to take no further action, the subject member will be provided with a precis of the complaint and, subject to the provisions on anonymity, the identity of the complainant. The Monitoring Officer may offer advice to the complainant, subject member or both. The Monitoring Officer may also notify the relevant Group Leader, Whip or town or parish clerk of the complaint and the decision taken.

If the decision is to refer the matter to an Independent Assessment Meeting, then unless s/he has already done so, the Monitoring Officer will supply the subject member with a copy of your complaint (and accompanying materials) and will be invited to respond to it in writing. Data protection rules may require some information to be removed from the complaint before it is submitted to the subject member. You will be notified if this is necessary. The subject member will be invited to respond to the complaint within 5 days of the date of the notification letter.

#### Independent Assessment Meeting

If the complaint is referred to an Independent Assessment Meeting, the Monitoring Officer will endeavour to convene and hold that meeting and notify you and the subject member of the outcome of the same within 20 working days of the date of the Preliminary Assessment Notification Letter. This may not always be possible depending on the availability of the Monitoring Officer and the Independent Person. You will be kept informed of progress and timescales.

The Independent Assessment Meeting is an opportunity for the Monitoring Officer and Independent Person to consider the complaint and the subject member's response to it. The purpose of meeting is for the Monitoring Officer, in consultation with the Independent Person, to decide whether it appears that a breach of the code may have occurred and to determine what action, if any to take on the matter.

The Monitoring Officer is not determining, at this stage, whether or not there has been a breach of the Code. The Monitoring Officer is determining whether the circumstances are such that:-

1. No further action should be taken
2. The matter is suitable for informal resolution
3. The matter should be formally investigated

#### Independent Assessment Criteria

In addition to revisiting the Preliminary Assessment Criteria (where appropriate), and to determine the appropriate next course of action, the Monitoring Officer and Independent Person will consider:-

1. Whether there is sufficient information available to him to decide what action should be taken
2. The seriousness of the matters alleged
3. The likely effectiveness of the remedies available
4. The public interest<sup>ii</sup>

#### Notification of Independent Assessment Decision

Once a decision following Independent Assessment has been made, letters of notification will then be sent to you and the subject member informing you of the decision made and the reasons for it.

If the decision is to take no further action, the Monitoring Officer may offer advice to the complainant, subject member or both. The Monitoring Officer may also notify the relevant Group Leader, Whip or town or parish clerk of the complaint and the decision taken.

If the decision is that the matter is appropriate for informal resolution, the Monitoring Officer will make recommendations accordingly. Informal resolution options include:-

1. An explanation and/or apology from the subject member
2. Mediation
3. Training
4. Referral of the matter to the Group Leader, Whip and/or Parish Clerk to be resolved where the complaint is between two members and political group intervention/agreement is appropriate.
5. Some other practical "conflict management" agreement between the complainant and subject member

The Monitoring Officer may take into account the response to and effectiveness of recommendations made for informal resolution in deciding whether or not the matter should nevertheless be formally investigated and pursued further under this process.

If the decision is that the matter should be formally investigated, then the following provisions of this guidance apply.

### Formal Investigation

If the Monitoring Officer decides that the complaint merits formal investigation, they will appoint an Investigating Officer. This may be another senior officer the council, another council or an external investigator. The Monitoring Officer will determine the terms of reference for any investigation in consultation with the Independent Person.

### Investigation Process

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 subject member against whom you have complained and provide him/her with a copy of any additional materials you have provided. He/she will also ask the subject member to understand his/her explanation of events, and to identify what documents the subject member thinks he/she needs to see and who the subject member thinks he/she needs to interview.

### Investigation Report

At the end of his/her investigation, usually within 8 weeks of being appointed the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to you and to the subject member. This provides you both with the opportunity, within 5 working days of the report being sent to you, to make representations to the Investigating Officer on any matter of fact in the draft report that you disagree with or that you think requires more consideration.

Having received and taken account of any comments which you or the subject member 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, in the opinion of the Investigating Officer, the code of conduct has been breached and the Investigating Officer's recommendations as to remedies or further action.

The Monitoring Officer will review the Investigating Officer's report in consultation with the Independent Person. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, or considers there to be errors or omissions in the report, he 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. You will be kept informed of timescales.

### Decision Following Investigation

If (or once) satisfied that the investigation has been properly undertaken and that there are no material errors or omissions in the Investigating Officer's report, the Monitoring Officer will write to you and to the member concerned within 15 working days of receiving the Investigating Officer's final report notifying you of what action, if any, will follow and the reasons for that decision. The Monitoring Officer is not constrained by the recommendations in the Investigating Officer's report.

If the Monitoring Officer's decision is to take no further action, the Monitoring Officer may offer advice to the complainant, subject member or both. The Monitoring Officer may also notify the relevant Group Leader, Whip or town or parish clerk of the complaint and the decision taken.

If the decision is that the matter is appropriate for informal resolution, the Monitoring Officer will make recommendations accordingly. Informal resolution options include:-

6. An explanation and/or apology from the subject member
7. Mediation
8. Training
9. Referral of the matter to the Group Leader, Whip and/or Parish Clerk to be resolved where the complaint is between two members and political group intervention/agreement is appropriate.
10. Some other practical "conflict management" agreement between the complainant and subject member

The Monitoring Officer may take into account the response to and effectiveness of recommendations made for informal resolution in deciding whether or not the matter should nevertheless be referred to the Audit and Governance Hearing Sub-committee.

If the decision is that the matter should be referred to the Audit and Governance Hearing Sub-committee, then the following provisions of this guidance apply.

### Audit & Governance Hearing Sub-Committee

Where the Monitoring Officer considers that it is in the public interest for the matter to be considered by Hearing Sub-Committee, a Sub-Committee will be convened to determine whether the subject member has failed to comply with the code of conduct.

### Pre-Hearing Process

The Monitoring Officer will normally conduct a pre-hearing process within 3 months of receiving the Investigating Officer's report. The subject member will be required to give his/her response in writing 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.

On receiving the subject member's response, a meeting of the Hearing Sub-Committee will then be convened. The Hearing Sub-Committee will comprise three elected members of the Audit and Governance Committee plus an Independent Person, who has not previously been consulted on the complaint.

As part of this meeting, the Chairperson of the Hearing Sub-Committee (appointed from the elected members present) may issue directions about the way in which the hearing will be conducted, for example agreeing the number and identity 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 the complainant or the subject member present.

Prior to a hearing, any documentation issued or exchanged during the process must be treated by all recipients as confidential unless and until 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 point the sub-committee agrees that the meeting should be held in public, the investigator's report will be made available to the press and public in attendance at the meeting.

### Hearing Process

At the hearing, an appointee of the Monitoring Officer will present to the sub-committee, calling witnesses as necessary (which may include the complainant), the case that the subject member has failed to comply with the code of conduct. 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. Normal hearing rule will apply in terms of their being opportunities to question witnesses and test evidence, furtherance to the principles of natural justice

If the subject member (or appointed representative) is not present, then the sub-committee will consider whether to proceed to hear the case and make a decision in absence, 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.

On conclusion of the evidence, the Hearing Sub-Committee will decide, with the benefit of any advice from the Independent Person, whether 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 and no further action will be taken. In that event, the sub-committee may still make general recommendations to the council or its members on any remedial actions if considers necessary to address the issues raised.

Where the Hearing Sub-Committee determines that the member has failed to comply with their code of conduct, the Chairperson will inform the subject member of this finding. The Independent Person will give his/her views on the matter, which will be recorded in the minutes of the meeting. The Chairman of 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 subject member an opportunity to make representations about that and will consult the Independent Person deciding what action, if any, to take.

### Remedies

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 subject member;
- Publish its findings in respect of the subject member's conduct;
- Report its findings to Cheshire East Borough Council or make recommendations to the town or parish council for consideration;
- 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 subject 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 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 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 a member or to withdraw a member's allowance. It also cannot impose a sanction on a town or parish councillor, it can only make recommendations to the member's town/parish council as to what action should be taken. Whilst the town/parish council cannot overturn a finding of breach, it can accept, modify or reject the sub-committee's recommendations.

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

#### Following 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 subject member concerned, and to the town or parish council, if relevant. He/she will also make that decision notice available for public inspection by way of publishing the minutes of the meeting and will report the outcome to the Audit and Governance Committee as part of its bi-annual report on standards matters.

## **4 APPEALS**

With the exception of external legal and Local Government Ombudsman processes, there is no right of appeal for you or for the subject member against a decision of the Monitoring Officer or of the Hearing Sub-Committee.

## **5 REPORTS TO THE AUDIT AND GOVERNANCE COMMITTEE**

The Monitoring Officer will present a reports to the Audit and Governance Committee at appropriate intervals giving details of;

- (a) the number of complaints received, broken down into borough and town/parish;
- (b) the paragraphs alleged to have been breached;
- (c) the status of complaints in progress;
- (d) the outcome of complaints, where concluded;
- (d) what action has, where appropriate, been taken.

## **6 DOCUMENT RETENTION**

The documentation relating to a complaint will be retained for 6 years from the conclusion of the complaint, irrespective of the outcome of the complaint. For the avoidance of doubt, minutes of the Hearing Sub-Committee will be retained in the same way as the minutes of other council decision making bodies.

### **INSERT PROCESS FLOW CHART HERE**

<sup>1</sup> *The Independent Person* - The Council must appoint at least one Independent Person and seek that person's views before it takes decision on a complaint that it has decided to investigate. The Independent Person's views can also be sought by the council on any other issue in the complaints handling process. The Independent Person will also provide, on request, procedural advice to a subject member or to a complainant.

<sup>1</sup> *Public Interest* – Public Interest considerations are at the heart of this process. The Monitoring Officer must balance the appropriate use of public resource in dealing with complaints with the extent to which it may be in the public interest to take further action, and what that further action should be (informal resolution of a formal investigation perhaps leading to a finding of a breach of the code and sanctions being imposed).

If the complaint relates to an ex-member who is now a member of another council the Monitoring Officer may ask that council to consider the complaint.

If the subject member resigns during the process, is or becomes seriously ill or has died, the Monitoring Officer will have to decide whether it is in the public interest to continue with the process. The views of the complainant will be sought in making that decision.

A pattern of behaviour, findings of breach or failed informal resolutions may be relevant in determining whether it is in the public interest to invoke a different course of action than that which might have been invoked in the case of a first or single incident. However, the Monitoring Officer will be mindful of the fact that a number of unsubstantiated allegations do not amount to a proven course of conduct or behaviour.

# Local Ward Member Protocol

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## Community Champions

1. Local ward members, as community champions, have an important role to play in representing the Council in their wards:
  - a. responding to the concerns of their constituents;
  - b. in meetings with partners; and
  - c. serving on external bodies and organisations.

## Keeping ward members informed

2. It is essential for the proper running of the Council that members are fully informed, in a timely manner, about matters upon which they may be required to make decisions, or which affect their wards; including, but not limited to, being informed about consultation exercises, planning applications, pre-planning application meetings, and public meetings or events; except where:
  - a. an individual's right to personal confidentiality overrides this;
  - b. any criminal investigation or police action might be prejudiced; or
  - c. where exempt information would be compromised.

Whilst the presumption will be in favour of information being provided to local members, the Monitoring Officer will decide any question as to whether the above exceptions apply.

3. Subject to this, it is accepted that members need to be made aware of issues within their wards if they are to be effective in their roles as spokespersons on behalf of their local communities.

## Identifying local issues in reports

4. Reports to the Council's decision-making bodies should identify the wards affected by the issues contained in those reports. This will enable local ward members to make themselves aware of these issues, and may then decide to attend the meeting in question, or to make further enquiries about the decision which is proposed to be made.

## Committing the Council to take action

5. Local ward members are reminded that they do not have the right to commit the Council or its officers to any particular course of action, and should ensure that they do not convey to the public any false impression of commitment or give any undertaking that they are not in a position to personally fulfil.

## Mayoralty Code of Practice

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1. The Mayoralty is the most exalted position within the gift of the Council. Officers, Members and staff must, at all times, respect the Mayor and show deference to his/her office.
2. The Mayor's construction or application of any of the Council's Constitution, or as to the proceedings of Council, should not be challenged.
3. Throughout the Mayor's term of office, he/she should remain politically impartial in all matters of policy and should not be involved in political matters or campaigns, or in controversial matters. The Mayor may therefore choose not to attend political group meetings during his/her year of office.
4. Any press enquiries about the Mayor should be made via the Communications Team.
5. The Mayor should not be appointed as Chairman or Vice Chairman or member of any committee or sub-committee of the Council, or as a Deputy Cabinet member, or be appointed to act as a Director of any of the Council's alternative service delivery vehicles. He/she may accept ex-officio positions with outside organisations or bodies where his/her membership stems from the position of Mayor. He/she may attend the annual meeting or other special meetings of an outside organisation or body and may accept the position of patron or president, but should not become actively involved during his/her term of office.
6. The Deputy Mayor will be chosen for election by the political group which has the majority of Council members. Prior to doing so, they may invite another political group or groups to put forward a nomination for their consideration. The Deputy Mayor will normally succeed to the Mayoralty in the following year. The selection process should normally ensure that, upon election to office, the Mayor will have served at least one term of office as a local authority councillor.
7. The Deputy Mayor will support the Mayor in the fulfilment of civic engagements, and will take the chair in the absence of the Mayor at Council meetings.
8. The Mayor may choose to organise a civic service at a venue to be chosen by him/her, and may also choose to appoint a Chaplain.
9. In his/her capacity as civic head or first citizen, the Mayor represents the Sovereign in the Borough, ranking in precedence only after the Lord Lieutenant (if attending in his official capacity representing the Queen) and members of the Royal Family. He/she should therefore officiate at all formal civic events, involving the Council, the public and press. In the absence of the Mayor, the Deputy Mayor should officiate or, at the Mayor's discretion, and always subject to his/her ruling, the appropriate Portfolio Holder may do so.

10. The Mayor and Deputy Mayor should wear their robes, chains and badges of office on all formal occasions within the Borough. At meetings of the Council, the Mayor and Deputy Mayor should wear their robes, chains and badges of office except where they Mayor determines that robes should not be worn.
11. The Mayor and Deputy Mayor should wear their chains and badges of office when attending functions, unless they determine that the wearing of a ribbon would be more appropriate.
12. Members of the Council should be appropriately dressed at Council meetings and should stand when the Mayor enters and leaves the room or chamber where a meeting is taking place.
13. The mace should be used on all Borough ceremonial occasions and will be carried before the Mayor.
14. The offices of Mayoress or Consort and Deputy Mayoress or Consort have no legal status. The appointment to these offices is made upon the invitation of the Mayor and Deputy Mayor, but where persons other than relatives are proposed for appointment, these are at the discretion of the Civic Sub-Committee (or replacement).
15. Support is provided to the Mayor and Deputy Mayor by the Head of Governance and Democratic Services, and their accommodation shall be in the Mayor's Parlours at Macclesfield Town Hall and the Crewe Municipal Buildings.
16. In circumstances where the Mayor is indisposed, the Deputy Mayor will be requested to assume the full duties of the post of Mayor for that time, but will not take the title. Where the Deputy Mayor is similarly indisposed, the Deputy Mayor Elect or the Leader of the Council will assume his or her civic and social duties, but will not take the title.
17. The former Mayors of the Council will be presented with a medallion as a memento of their office, which should be worn on such occasions and at such event as they are advised to do so.
18. The Mayor may organise "Mayor's at Home" events, at which light refreshments will be provided.
19. The Mayor should accept as many invitations as possible to attend events and functions. Where there are conflicting invitations, the Mayor may ask the Deputy Mayor to assist.
20. Any fundraising activities undertaken for the Mayor's charity are the responsibility of the Mayor, the Mayoress and friends. Fundraising for the Mayor's charity is discretionary. Officers will only provide support to the Mayor in respect of charitable activity at formal civic occasions, the Mayoral Ball, and the selling of tickets/reservation of places. The Mayor may consider establishing a committee to assist him/her in the preparation for this activity.

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<sup>i</sup> *The Independent Person* - The Council must appoint at least one Independent Person and seek that person's views before it takes decision on a complaint that it has decided to investigate. The Independent Person's views can also be sought by the council on any other issue in the complaints handling process. The Independent Person will also provide, on request, procedural advice to a subject member or to a complainant.

<sup>ii</sup> *Public Interest* – Public Interest considerations are at the heart of this process. The Monitoring Officer must balance the appropriate use of public resource in dealing with complaints with the extent to which it may be in the public interest to take further action, and what that further action should be (informal resolution of a formal investigation perhaps leading to a finding of a breach of the code and sanctions being imposed).

If the complaint relates to an ex-member who is now a member of another council the Monitoring Officer may ask that council to consider the complaint.

If the subject member resigns during the process, is or becomes seriously ill or has died, the Monitoring Officer will have to decide whether it is in the public interest to continue with the process. The views of the complainant will be sought in making that decision.

A pattern of behaviour, findings of breach or failed informal resolutions may be relevant in determining whether it is in the public interest to invoke a different course of action than that which might have been invoked in the case of a first or single incident. However, the Monitoring Officer will be mindful of the fact that a number of unsubstantiated allegations do not amount to a proven course of conduct or behaviour.