



## **PART 5A MEMBER CODE OF CONDUCT**

- 1.** As a member or co-opted member of the Royal Borough of Kingston upon Thames you shall have regard to the following principles – selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
- 2.** Accordingly, when acting in your capacity as a member or co-opted member -
  - 2.1** You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend or close associate.
  - 2.2** 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.
  - 2.3** 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.
  - 2.4** You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office.
  - 2.5** You must be as open as possible about your decisions and actions and the decisions and actions of your authority and should be prepared to give reasons for those decisions and actions.
  - 2.6** You must declare any pecuniary and non-pecuniary interests (Personal Interests), that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including declaring such interests in accordance with paragraphs 8 and 9 below.
  - 2.7** You must, when using or authorising the use by others of the resources of your authority, ensure that such resources are not 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.

**2.8** You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example.

**2.9** You must act in accordance with the Council's Constitution and the policies contained within it and any other relevant Council policies.

### **General obligations**

3. Do treat others with respect.
4. Do not do anything which may cause the Authority to breach any of the provisions in the Equality Act 2010.
5. Do not do anything which may cause you or the Authority to breach any of the provisions in the Bribery Act 2010.
6. Do not bully any person.
7. Do not intimidate or attempt to intimidate any person who is or is likely to be:
  - (a) a complainant,
  - (b) a witness, or
  - (c) involved in the administration of any investigation or proceedings,

in relation to an allegation that a member (including yourself) has failed to comply with this Code of Conduct.

8. Do not do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Authority.



- 9.** Do not disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, unless:
- (a) you have the consent of a person authorised to give it;
  - (b) you are required by law to do so;
  - (c) the disclosure is made to a third party for the purpose of obtaining professional advice, provided that the third party agrees not to disclose the information to any other person; or
  - (d) the disclosure is:
    - (a) reasonable and in the public interest; and
    - (b) made in good faith and in compliance with the reasonable requirements of the authority.
- 10.** Do not prevent another person from gaining access to information to which that person is entitled by law.
- 11.** Do not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Authority into disrepute.
- 12.** Do not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage.
- 13.** Do 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.
- 14.** Do ensure, when using or authorising the use by others of the resources of the Authority:
- (a) that you act in accordance with the Authority's reasonable requirements;
  - (b) that such resources are not used improperly for political purposes (including party political purposes); and
  - (c) that you have regard to the Local Authority Code of Publicity (2011) made under the Local Government Act 1986.



**15.** Do ensure, when taking decisions as part of or on behalf of the Authority, that you have regard to any relevant advice provided to you by:

- (a) the Authority's Chief Finance Officer; or
- (b) the Authority's Monitoring Officer;

where that advice is offered pursuant to his or her statutory duties.

**16.** Do give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by the Authority.

### **Councillor Recall Scheme**

**17.** You are expected to abide by the obligations placed upon Members by the Councillor Recall Scheme set out at Annex 1 to this Code which provide a mechanism for electors to seek to recall a Councillor if they are not properly representing local residents.

### **Disclosable Pecuniary Interests**

**18.** You must comply with the statutory requirements to register, disclose and withdraw from participation in the discussion or vote in respect of any matter in which you have a Disclosable Pecuniary Interest as defined by the Localism Act 2011 and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 and as currently set out at Annex 2 to this Code.

**19.** You must, within 28 days of taking office as a member or co-opted member, notify the Council's Monitoring Officer of any disclosable pecuniary interest, where the pecuniary interest is yours, or that of a "relevant person", being 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.



20. If a disclosable pecuniary 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 (unless the interest is a 'sensitive interest'[1] in which case you need not disclose the nature of the interest).
21. 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.
22. Unless a dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a disclosable pecuniary interest. Additionally, you must observe the restrictions the authority places on your involvement in matters where you have a pecuniary or non pecuniary interest (a Personal Interest) as defined by the authority.

## Other Personal Interests

23. In addition to the requirements of Paragraphs 3-7, if you attend a meeting at which any item of business is to be considered and you are aware that you have a Personal Interest in that item, you must make a verbal declaration of the existence and nature of that interest at or before the consideration of the item of business or as soon as the interest becomes apparent. There may be exceptional circumstances where the interest is such that participation in the matter might reasonably be regarded as being contrary to the guiding principles of the Code of Conduct set out in paragraphs 2.1-2.8. In this eventuality you should consider whether it is appropriate to refrain from participation in the relevant discussion and voting on the matter.
24. You have a Personal Interest in an item of business of your authority where –
  - (i) a decision in relation to that business might reasonably be regarded as affecting the well-being or financial standing of you or a member of your family or a person with whom you have a close



association to a greater extent than it would affect the majority of the Council Tax payers, ratepayers or inhabitants of the ward or electoral area for which you have been elected or otherwise of the authority's administrative area, or

- (ii) it relates to or is likely to affect any of the interests listed in the Table to this Code, but in respect of a member of your family (other than a "relevant person") or a person with whom you have a close association and that interest is not a disclosable pecuniary interest.

### **Predisposal and predetermination**

- 25. The Council often has to make controversial decisions that affect people adversely and this can place individual members in a difficult position. They are expected to represent the interests of their constituents and political party and have strong views but it is also a well-established legal principle that members who make these decisions must not be biased nor must they have pre-determined the outcome of the decision. This is especially so in "quasi-judicial" decisions in planning and licensing committees.
- 26. Predisposition is lawful. Members may have strong views on a proposed decision, and may have expressed those views in public, and still participate in a decision. This will include political views and manifesto commitments. The key issue is that the member ensures that their predisposition does not prevent them from consideration of all the other factors that are relevant to a decision, such as committee reports, supporting documents and the views of objectors. In other words, the member retains an "open mind". Section 25 of the Localism Act 2011 confirms this position by providing that a decision will not be unlawful because of an allegation of bias or pre-determination "just because" a member has done anything that would indicate what view they may take



in relation to a matter relevant to a decision. However, if a member has done something more than indicate a view on a decision, this may be unlawful bias or predetermination so it is important that advice is sought where this may be the case.

27. Predetermination and bias are unlawful and can make a decision unlawful. Predetermination means having a “closed mind”. In other words, a member has made his/her mind up on a decision before considering or hearing all the relevant evidence. Bias can also arise from a member’s relationships or interests, as well as their state of mind. The Code’s requirement to declare interests and withdraw from meetings prevents most obvious forms of bias, e.g. not deciding your own planning application. However, members may also consider that a “non-pecuniary interest” under the Code also gives rise to a risk of what is called apparent bias. The legal test is: “whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the Committee was biased’. A fair minded observer takes an objective and balanced view of the situation but Members who think that they have a relationship or interest that may raise a possibility of bias, should seek advice from the Monitoring Officer.

## **Gifts and Hospitality**

28. 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.
29. The Monitoring Officer will place your notification on a public register of gifts and hospitality.
30. This duty to notify the Monitoring Officer does not apply where the gift, benefit or hospitality comes within any description approved by the authority for this purpose.



## Anti Semitism

31. The Council has adopted the International Holocaust Remembrance Association's definition of anti semitism reproduced below. You must not engage in activity which meets this definition. Examples of behaviours which, depending on the circumstances, could constitute anti semitism are attached at Annex 3.

*'Anti semitism is a certain perception of Jews, which may be expressed as a hatred towards Jews. Rhetorical and physical manifestations of anti semitism are directed towards Jewish or non-Jewish individuals and/or their property, towards Jewish community institutions and religious facilities'*

## Complaints

The procedure for dealing with complaints under the Code of Conduct is set out at Annex 4.

*Note: The Council has adopted the template Code of Conduct produced by the Department for Communities and Local Government subject to the additions and adaptations approved by the Council on 16 October 2012, 22 April 2014, 14 July 2015 and 11 December 2018.*

[Member Code of Conduct](#)

## MEMBER CODE OF CONDUCT - ANNEX 1

### Councillor Recall Scheme

#### Introduction

1. The Council has introduced this scheme to give electors a mechanism to seek to 'recall' a local Councillor if they are not properly representing local residents. Currently the scheme has no statutory basis but has been formally adopted by the Council as an adjunct to the Member Code of Conduct. All serving Councillors at the time the scheme is introduced (July 2015) and those subsequently elected to the Council will be asked to





confirm that they will abide by its provisions pending the introduction of legislation to a similar effect.

### The Scheme

2. In the event of one or more of the following criteria being met:
  - (a) A Councillor's attendance at meetings of the Council, a Committee or a Sub-Committee of which they are a member over the whole of a Municipal year is less than 20% of those they were eligible to attend at the point at which a petition is started;
  - (b) A Councillor has attended less than two Full Council meetings within a municipal year;
  - (c) A Councillor has attended less than 20% of Neighbourhood Committee meetings within a municipal year;
  - (d) A Councillor has been convicted of a crime for which a prison sentence (whether suspended or not) has been imposed and the appeal period has expired without the sentence being overturned;
  - (e) A Councillor has moved their main place of residence outside of the Borough

the Monitoring Officer, acting in consultation with the Independent Person appointed by the Council to advise on Code of Conduct matters, will consider the circumstances and determine whether an e-petition should be initiated on the Council's website calling for the resignation of the Councillor concerned.

3. Before so doing, the Monitoring Officer shall notify the Councillor who has met one or more of the foregoing criteria and give them the opportunity to make any representations. Any such representations must be made within a period of 10 working days from the date of the Monitoring Officer's notification. The Monitoring Officer, again in consultation with the Independent Person, will consider any such representations made and determine the course of action to be taken in accordance with this scheme.



4. Where, having made any necessary enquiries, and having consulted with the Independent Person, the Monitoring Officer is satisfied that there is a valid reason (e.g illness) for the Councillor concerned having failed to meet one or more of criteria (a), (b) or (c) above, or where the Member's absence has been approved by the Council itself, no further action shall be taken.
5. The Monitoring Officer will not normally be in a position to exercise any discretion in relation to criteria (d) or (e) above, as they are both largely matters of fact.
6. Where the Monitoring Officer has decided that a petition shall be initiated on the Council's e-petition site, such a petition shall name the Councillor concerned, the Ward they represent and the grounds under which the Monitoring Officer considers the Recall Scheme has been 'triggered'. It shall also set out the threshold in terms of electorate numbers referred to in paragraph 8 below for that particular Ward.
7. Once initiated, the petition will be live on the Council's website to collect signatures for a period of three calendar months or when the electoral threshold is reached, whichever is the sooner.
8. Where, at the end of the three month period, or sooner, a number of registered local government electors equivalent to at least 33% (the threshold figure) of the total number of electors registered in the Ward on the first day of the month in which the petition was launched have validly subscribed to the petition, the Councillor who is the subject of the petition will be advised of the fact by the Monitoring Officer and asked to consider, in accordance with the terms of this scheme, resigning from the Council.
9. Where a Councillor resigns in accordance with this scheme, the Council's Returning Officer shall call a By-Election to fill the resultant vacancy in accordance with the usual statutory timescales, unless the vacancy occurs within six months of the next scheduled four yearly Council Elections.
10. The Councillor concerned may stand in that By-Election if they so choose.



11. Should a Councillor decide not to stand down, the circumstances of the case shall be referred to the Audit, Governance and Standards Committee for consideration and to determine whether any further action should be considered.
12. The Audit, Governance and Standards Committee shall have overall responsibility for the operation of this scheme and shall receive an annual report on its operation.
13. Nothing in this scheme shall detract from the statutory provisions relating to the disqualification of serving Councillors under the Local Government Act, 1972 (as amended) or the Representation of the People Act 1983 (as amended) or the provisions of the Council's Member Code of Conduct relating to the Declaration of Pecuniary Interests.
14. The provisions of this scheme shall not apply in circumstances where any By-Election triggered as a result of this scheme would otherwise have taken place in the 6 month period leading up to the four yearly Council elections.

[Member Code of Conduct](#)

## MEMBER CODE OF CONDUCT - ANNEX 2

### Disclosable pecuniary interests

<b>Subject</b>	<b>Prescribed description</b>
<i>Employment, office, trade, profession or vacation</i>	<i>Any employment, office, trade, profession or vocation carried on for profit or gain.</i>
<i>Sponsorship</i>	<p><i>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.</i></p> <p><i>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.</i></p>
<i>Contracts</i>	<p><i>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—</i></p> <p><i>(a) under which goods or services are to be provided or works are to be executed; and</i></p> <p><i>(b) which has not been fully discharged.</i></p>
<i>Land</i>	<i>Any beneficial interest in land which is within the area of the relevant authority.</i>
<i>Licences</i>	<i>Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.</i>



<p><i>Corporate tenancies</i></p>	<p><i>Any tenancy where (to Member's knowledge)—</i>  <i>(a) the landlord is the relevant authority; and</i>  <i>(b) the tenant is a body in which the relevant person has a beneficial interest.</i></p>
<p><i>Securities</i></p>	<p><i>Any beneficial interest in securities of a body where—</i>  <i>(a) that body (to Member's knowledge) has a place of business or land in the area of the relevant authority; and</i>  <i>(b) either—</i></p> <p><i>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</i></p> <p><i>(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.</i></p>

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[1] 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.



## **MEMBER CODE OF CONDUCT ANNEX 3**

### **International Holocaust Remembrance Association - Examples of Anti Semitism to Guide Organisations**

The IHRA has published examples to guide organisations on the implementation of the definition. The Alliance has pointed to the following examples which may serve as illustrations: Manifestations might include the targeting of the state of Israel, conceived as a Jewish collectivity. However, criticism of Israel similar to that levelled against any other country cannot be regarded as antisemitic. Antisemitism frequently charges Jews with conspiring to harm humanity, and it is often used to blame Jews for "why things go wrong." It is expressed in speech, writing, visual forms and action, and employs sinister stereotypes and negative character traits.

The IHRA advises that contemporary examples of antisemitism in public life, the media, schools, the workplace, and in the religious sphere could, taking into account the overall context, include, but are not limited to:

- Calling for, aiding, or justifying the killing or harming of Jews in the name of a radical ideology or an extremist view of religion.
- Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as collective - such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions.
- Accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, or even for acts committed by non Jews.
- Denying the fact, scope, mechanisms (e.g. gas chambers) or intentionality of the genocide of the Jewish people at the hands of



National Socialist Germany and its supporters and accomplices during World War II (the Holocaust).

- Accusing the Jews as a people, or Israel as a state, of inventing or exaggerating the Holocaust.
- Accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations.
- Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavour.
- Applying double standards by requiring of it a behaviour not expected or demanded of any other democratic nation.
- Using the symbols and images associated with classic antisemitism (e.g., claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis.
- Drawing comparisons of contemporary Israeli policy to that of the Nazis.
- Holding Jews collectively responsible for actions of the state of Israel.

**Antisemitic acts are criminal** when they are so defined by law (for example, denial of the Holocaust or distribution of antisemitic materials in some countries).

**Criminal acts are antisemitic** when the targets of attacks, whether they are people or property- such as buildings, schools, places of worship and cemeteries- are selected because they are, or are perceived to be, Jewish or linked to Jews.

**Antisemitic discrimination** is the denial to Jews of opportunities or services available to others and is illegal in many countries.





## **MEMBER CODE OF CONDUCT ANNEX 4**

### **CODE OF CONDUCT COMPLAINTS PROCEDURE**

#### **Arrangements for Dealing with Standards Allegations under The Localism Act 2011**

##### **1. Context**

- 1.1 These 'Arrangements' set out how a complaint may be made that an elected or co-opted member of this Authority has failed to comply with the Authority's Code of Conduct, and sets out how the Authority will deal with allegations of a failure to comply with that Code of Conduct.
- 1.2 Under sections 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 committee or sub-committee of the Authority, has failed to comply with the Authority's Code of Conduct can be investigated and decisions made on such allegations.
- 1.3 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 against whom an allegation has been made.

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

- 2.1 The Council has adopted a Code of Conduct for members and co-opted members.

##### **3. Making a complaint**



- 3.1 Complaints alleging that a member has breached the Code of Conduct must be in writing explaining how it is alleged the code of conduct has not been complied with. Complaints are to be made within 3 months and will not be considered outside that time unless there are exceptional circumstances. The complainant should complete the Council's complaint form and send it to the Monitoring Officer, Guildhall, High Street, Kingston upon Thames KT1 1EU. A copy of the complaint form is on the Council's web site at [www.kingston.gov.uk](http://www.kingston.gov.uk).
- 3.2 Whilst complainants will be encouraged to complete the complaint form to ensure all required information is provided, where a complaint is received in writing and contains enough information the complaint will be progressed without requiring the complainant to complete the form. Where a complaint is received officers may seek further clarity from the complainant before progressing.
- 3.3 The complainant must provide us with their name and a contact address or e-mail address, so that we can acknowledge receipt of the complaint and keep them informed of its progress. If they wish to keep their name and address confidential, they must indicate this in the space provided on the complaint form, in which case we will not disclose it to the member against whom the complaint has been made without their prior consent. However there may be exceptions, such as those outlined in paragraph 3.6 below. A request from a complainant for confidentiality should be supported by reasons. The Authority does not normally investigate complaints received anonymously or where the complainant cannot otherwise be identified, unless there is a clear public interest in doing so.
- 3.4 The Monitoring Officer will log the complaint and write to the complainant within five working days acknowledging receipt of the complaint.
- 3.5 The Monitoring Officer is a senior officer of the Authority who has statutory responsibility for maintaining the Register of Members' Interests and who is responsible for administering the system in respect of complaints of member misconduct. The Deputy Monitoring Officer



may take the role of the Monitoring Officer if the Monitoring Officer is unable to act.

- 3.6 The Monitoring Officer will normally disclose to the subject member the details of the complaint, except where such disclosure would be against the public interest or would prejudice any future investigation, or where the complainant has requested confidentiality. If any one of these exceptions applies the Monitoring Officer may only notify the member of the fact that an allegation has been made and the reasons why details cannot be disclosed. A complainant who has requested confidentiality will be informed if the Monitoring Officer considers that it is necessary to divulge their details to the member so that an investigation can be progressed.

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

- 4.1 The Monitoring Officer will review every complaint received and, after consultation with the Independent Person, take a decision as to whether it merits formal investigation. This decision will normally be taken within 28 days of receipt of the complaint. Where the Monitoring Officer has taken a decision, he/she will inform the complainant and the member of his/her decision and the reasons for that decision.
- 4.2 The Monitoring Officer will take account of the following criteria in reaching their decision:-
- (a) It is against a councillor or co-opted member.
  - (b) The councillor or co-opted member was in office at the time of the alleged conduct.
  - (c) If proven, the complaint would be a breach of the Code of Conduct in force at the time of the alleged misconduct.
  - (d) The complainant has provided sufficient information for referral for investigation or any other action.



- (e) The complaint is about someone who is no longer a member of the Council, but is a member of another relevant authority.
  - (f) The complaint has already been the subject of an investigation or other action relating to the Code of Conduct.
  - (g) The complaint is about something that happened so long ago that there will be little benefit in taking action now, or it is not feasible to investigate for any other reason.
  - (h) The complaint is too trivial to warrant further action or not in the public interest.
  - (i) The complaint appears to be simply frivolous, vexatious, politically motivated or tit-for-tat.
- 4.3 Where the Monitoring Officer requires additional information in order to come to a decision they may seek such information from the complainant, and may request information from the member against whom the complaint is directed.
- 4.4 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 by the Authority. Where the member or the Authority makes a reasonable offer of informal resolution, but the complainant is not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.
- 4.5 If the 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?**



- 5.1 If the Monitoring Officer decides that a complaint merits formal investigation, they will appoint an Investigating Officer, who may be another senior officer of the Authority, an officer of another authority or an external investigator. The Monitoring Officer will write to the relevant parties:
- (a) informing them that the matter has been referred for investigation;
  - (b) if appropriate, advising them who is to be responsible for conducting the investigation;
  - (c) advising them how the investigation will be carried out and within what timescale; and
  - (d) giving any member who is the subject of the investigation the opportunity to comment on the complaint made.
- 5.2 The Investigating Officer will decide whether they need to meet or speak to the complainant to understand the nature of the complaint and so that the complainant can explain their understanding of events and suggest what documents the Investigating Officer needs to see, and who the Investigating Officer needs to interview.
- 5.3 The Investigating Officer will normally write to the member against whom the complaint has been made and provide them with a copy of the complaint, and ask the member to provide their explanation of events, and to identify what documents the Investigating Officer needs to see and who he needs to interview. In exceptional cases, where it is appropriate to keep the identity of the complainant confidential or disclosure of details of the complaint to the member might prejudice the investigation, the Monitoring Officer can delete personal details from the papers given to the member, or delay notifying the member until the investigation has progressed sufficiently.
- 5.4 At the end of their investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to the complainant and to the member concerned, to give them both an

opportunity to identify any matter in that draft report with which they disagree.

- 5.5 Having received and taken account of any comments which may be made on the draft report, the Investigating Officer will send their 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?**

- 6.1 The Monitoring Officer will review the Investigating Officer's report and, if he is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to the complainant and to the member concerned, notifying them that he/she is satisfied that no further action is required, and give both of them a copy of the Investigating Officer's final report. The findings will be reported to the Council for information, without question or debate, unless the member asks that they be not reported. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he 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?**

- 7.1 The Monitoring Officer will review the Investigating Officer's report and will then either send the matter for a hearing before a Code of Conduct Panel or, after consulting the Independent Person, seek a resolution.

### **Resolution**

- 7.2 The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, they will consult with the Independent Person and with the complainant and seek to agree what is considered to be a fair resolution which also helps to ensure higher standards of conduct in the future. Such



resolution may include the member accepting that their conduct was unacceptable and offering an apology, and/or other remedial action by the authority. If the member complies with the suggested resolution, the Monitoring Officer will report the matter to the Audit and Governance Committee for information, but will take no further action. However, if the complainant tells the Monitoring Officer that any suggested resolution would not be adequate; the Monitoring Officer will refer the matter for a hearing.

## Hearing

- 7.3 If the Monitoring Officer considers that resolution is not appropriate, or the complainant is not satisfied by the proposed resolution, 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 a Code of Conduct Panel. The Panel will then conduct a hearing before deciding whether the member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the member. The hearing will be attended by the Independent Person to provide advice to the Panel.
- 7.4 The Monitoring Officer will conduct a 'pre-hearing process', requiring the member to give their response to the Investigating Officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing, and the Chair of the Code of Conduct Panel may issue directions as to the manner in which the hearing will be conducted.
- 7.5 Hearings of the Code of Conduct Panel will not be held in public.
- 7.6 A member who is the subject of a hearing may be represented by counsel, by a solicitor or, with the consent of the Code of Conduct Panel, by any other representative.
- 7.7 If a member who is the subject of a report to the Code of Conduct Panel fails to attend a hearing of which that member has been given notice, the Code of Conduct Panel may:



- (a) unless it is satisfied that there is sufficient reason for such failure, consider the allegation and make a determination in the absence of that member; or
  - (b) adjourn the hearing to another date.
- 7.8 At the hearing, the Investigating Officer will open the case, calling such witnesses as they consider necessary, and make representations to substantiate their conclusion that the member has failed to comply with the Code of Conduct. For this purpose the Investigating Officer may ask the complainant to attend and give evidence to the Code of Conduct Panel. The member will then have an opportunity to give their evidence, to call witnesses and to make representations to the Code of Conduct Panel as to why they consider that they did not fail to comply with the Code of Conduct.
- 7.9 The Code of Conduct Panel may place a limit on the number of witnesses a member who is the subject of a hearing may call if it considers that the number that the member proposes to call is unreasonable.
- 7.10 The Code of Conduct Panel may conclude that the member did not fail to comply with the Code of Conduct, and so dismiss the complaint. If the Code of Conduct Panel concludes that the member did fail to comply with the Code of Conduct the Chair will inform the member of this finding and the Code of Conduct Panel will then consider what action, if any, the Code of Conduct Panel should take as a result of the member's failure to comply with the Code of Conduct. In doing this the Code of Conduct Panel will give the member an opportunity to make representations to the Panel, but will then decide what action, if any, to take in respect of the matter.

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





- 8.1 The Council has decided that the Code of Conduct Panel may take such action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly the Code of Conduct Panel may:-
- (a) Instruct the Monitoring Officer to arrange training for the member.
  - (b) Publish its findings in respect of the member's conduct.
  - (c) Report its findings to Council for information, without discussion or debate.
  - (d) The Monitoring Officer write to the member with their advice on the conduct.
  - (e) Censure or reprimand by the Code of Conduct Panel.
  - (f) Recommend the Council to censure.
  - (g) Recommend the removal of the member from all outside appointments to which they have been appointed or nominated by the Authority.
  - (h) Recommend to the member's Group Leader that the member be removed from particular portfolio responsibilities.
  - (i) Recommend to the member's Group Leader (or in the case of un-grouped members, recommend to the Council or to committees) that the member be removed from any or all committees or sub-committees of the Council.
  - (j) Withdraw facilities provided to the member by the Council, such as a computer, web site and/or e-mail and internet access.
  - (k) 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.
- (l) Recommend to change/adopt a Council process.



- 8.2 The Code of Conduct Panel has no power to suspend or disqualify the member or to withdraw the member's allowance.

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

- 9.1 At the end of the hearing, the Chair will state the decision of the Code of Conduct Panel as to whether the member failed to comply with the Code of Conduct and as to any actions which the Code of Conduct Panel resolves to take.
- 9.2 As soon as reasonably practicable thereafter the Monitoring Officer will prepare a formal decision notice, in consultation with the Chair of the Code of Conduct Panel, and send a copy to the complainant and to the member, 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 Code of Conduct Panel?**

- 10.1 The Code of Conduct Panel will comprise three Councillors from the Audit, Governance and Standards Committee on a proportionate basis, where practicable, and an Independent Person (in an advisory capacity).

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

- 11.1 The Independent Person is a person who has applied for the post following advertising of a vacancy for the post, and is appointed by a positive vote from a majority of all the members of Council. They must be consulted by the Monitoring Officer before they decide whether or not to carry out an investigation and are available to advise a member who is the subject of a complaint. It is a statutory appointment.



11.2 A person cannot be 'independent' if he/she:-

- (l) is, or has been within the past five years, a member, co-opted member or officer of the Authority.
  
- (m) is a relative, or close friend, of a person within paragraph (a) above. For this purpose, 'relative' means –
  - (i) spouse or civil partner;
  - (ii) living with the other person as husband and wife or as if they were civil partners;
  - (iii) grandparent of the other person;
  - (iv) a lineal descendent of a grandparent of the other person;
  - (v) a parent, sibling or child of a person within paragraphs (i) or (ii);
  - (vi) a spouse or civil partner of a person within paragraphs (iii), (iv) or (v); or
  - (vii) living with a person within paragraphs (iii), (iv) or (v) as husband and wife or as if they were civil partners.

## 12. Withdrawal of complaint

12.1 The complainant can request, but there is no right, to withdraw a complaint and it is for the Monitoring Officer in any particular case to consider and decide whether or not to agree to a withdrawal. When making a decision the Monitoring Officer will give due consideration to such matters as:

- a) whether there are identifiable underlying reasons for the withdrawal request;
  
- b) whether the public interest in taking action on a complaint outweighs the reasons behind the complainant's withdrawal request; and
  
- c) whether the complaint can be adequately investigated without the complainant's participation.



### **13. Revision of these arrangements**

- 13.1 The Council may by resolution agree to amend these arrangements, and the Chair of the Code of Conduct Panel may depart from these arrangements where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

### **14. Appeals**

- 14.1 There is no right of appeal for the complainant or for the member against a decision of the Monitoring Officer. The member may seek permission to appeal to the First-tier Tribunal against any sanction imposed by the Code of Conduct Panel.
- 14.2 If either party feels that the Authority has failed to deal with the complaint properly, they may make a complaint to the Local Government Ombudsman.