



**Arrangements for dealing with allegations  
that a Member has failed to comply with  
the Code of Conduct**

**[INSERT DATE]**

## **Arrangements for dealing with allegations that a Member has failed to comply with the relevant Code of Conduct**

### **BACKGROUND**

Under Section 28 of the Localism Act 2011, Havant Borough Council must have in place “arrangements” under which allegations that an elected or co-opted member of the authority or of a council within the authority’s area (hereinafter referred to as the ‘subject member’) has failed to comply with the authority’s Code of Conduct can be considered and decisions made on such allegations.

These arrangements provide for the council to appoint at least one Independent Person whose views must be sought by the council before it takes a decision on an allegation that it has decided to investigate, and whose views can be sought by the council at any other stage, or by the subject member against whom an allegation has been made.

The council has adopted a Members’ Code of Conduct, which is published on the council’s website and is available for inspection on request from the council’s office (see below).

### **MAKING AN ALLEGATION AND INITIAL ASSESSEMENT**

1. All allegations, that a Councillor has failed to comply with the requirements of the Code of Conduct must be made in writing to the Monitoring Officer<sup>1</sup>.
2. An allegation may be sent by email, or other media, with any supporting information to the Monitoring Officer. A form for this purpose is available on the Council’s website.
3. Anonymous complaints will not normally be investigated, and will only be accepted in exceptional circumstances where the Monitoring Officer concludes that the balance of the public interest lies in doing so, and the fairness of the procedure is maintained.
4. As a matter of fairness and natural justice and in order to preserve the probative value of any evidence given, the Subject Member will usually be told who has complained about them and receive details of the complaint.
5. The allegation must be that the Councillor(s) has or may have breached the Code of Conduct.
6. The Monitoring Officer may refer the matter to the standards committee to take the decision in his or her place and he or she may delegate the matter to his or her deputy(ies) or another officer if, for example he or she believes there is a conflict of interest. This power is at the discretion of the Monitoring Officer.

7. The Monitoring Officer will apply an initial filter to an allegation. The complaint will be assessed by the Monitoring Officer against the Initial Assessment Criteria as follows:-
- (a) Did the alleged conduct occur before the adoption of the Code of Conduct?
  - (b) Was the Subject Member a member of the Borough Council at the time of the alleged conduct?
  - (c) Was the Subject Member acting in an official capacity as a councillor at the time of the alleged conduct? (The case law and legislative position is that Code of Conduct matters can only be dealt with when the allegation is about something that a Councillor did in his or her role as a councillor when acting in an official capacity.)
  - (d) Did the alleged conduct occur when the Subject Member was acting as a member of another authority?
  - (e) If the facts, could be established, as a matter of evidence, could or would the alleged conduct be capable of a breach of the Code of Conduct?
  - (f) Is the complaint limited to dissatisfaction with the Borough Council's decisions, policies and priorities, etc.?

If the complaint fails one or more of the initial jurisdiction tests, no further action will be taken by the Monitoring Officer and the complaint will be rejected.

It is generally considered that complaints relating to the consideration of planning and/or licensing applications will not be dealt with under these Arrangements if there is an alternative legal remedy. The Council has no authority to deal with complaints which relate solely to a member's private life or things they do which are not related to their role as a member.

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<sup>1</sup> As defined by the Local Government & Housing Act 1989, Part 1, Section 5

8. Complaints which identify criminal conduct or breach of other regulations by any person may be referred by the Monitoring Officer to Hampshire Police for consideration, or any other regulatory agency. In such cases the Monitoring Officer may at his or her discretion pause the consideration of the complaint pending action by the other body or commence a parallel investigation into the alleged Code of Conduct breach.
9. Complaints by a councillor about another councillor(s) will be referred by the Monitoring Officer to the relevant group leader(s) for resolution in the first place. If either the Subject Member or the complainant declines to engage with this informal process, or resolution is not possible, within 10 working days from the date of receipt of the complaint, the Monitoring Officer will progress from paragraph 7 below. (For the avoidance of doubt, group leaders do not take on the functions of the Monitoring Officer in this process, which is purely an informal process which has the aim of resolving 'councillor-against-councillor' complaints at the earliest opportunity and reducing the resolution time for complaints).
10. If the Monitoring Officer decides the matter is within scope of these Arrangements, he or she will invite an Independent Person <sup>2</sup> to give his or her views on what action should be taken at this stage. That Independent Person will then remain the Independent Person who will be consulted on that case throughout this process, except in exceptional circumstances.
11. Where a complaint is accepted by the Monitoring Officer, the Monitoring Officer will notify the subject member of the complaint unless there are compelling reasons not to and invite him/her to submit any relevant comments. The subject member will be given 10 working days to respond, from the date of the notification. However, the Monitoring Officer, in consultation with an Independent Person, may withhold the complainant's identity if they can be satisfied that there are reasonable grounds for granting confidentiality, for example a belief that the complainant or any witness to the complaint may be at risk of physical harm or intimidation, or that their employment may be jeopardised if their identity is disclosed.
12. At the end of the 10 working days (regardless of whether any comments have been received by the subject member), and no later than 20 working days from the date of receipt of the complaint, the Monitoring Officer will decide upon one of the following outcomes:
  - a) to take no further action;
  - b) to seek to resolve the matter informally; or
  - c) to refer the matter for investigation.

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<sup>2</sup> The Independent Person is a person who has applied for the post and is appointed by Councillors of the Council. The definition of an Independent Person can be found in Section 28 of the Localism Act 2011.

13. In deciding what action is necessary the Monitoring Officer will consider the following non-exclusive factors:
  - a) whether the complaint contains sufficient evidence to demonstrate a potential breach of the Code;
  - b) whether there are alternative, more appropriate, remedies that should be explored first;
  - c) where the complaint is by one member against another, a greater allowance for robust political debate (but not personal abuse or “unparliamentary” language) may be given;
  - d) whether the complaint is in the view of the Monitoring Officer malicious, politically motivated, or ‘tit for tat’?;
  - e) whether an investigation would not be in the public interest or the matter, even if proven, would not warrant any sanction;
  - f) whether a substantially similar complaint has previously been considered and no new material evidence has been submitted to support the new complaint;
  - g) whether a substantially similar complaint has been submitted and accepted;
  - h) whether the complaint relates to conduct in the distant past (over three months prior to the date of submission of the complaint). This would include assessing any reason why there had been a delay in making the complaint;
  - i) whether the complaint actually relates to dissatisfaction with a council decision rather than the specific conduct of an individual;
  - j) whether the complaint relates to someone who is no longer a member of the council or who is seriously ill; and
  - k) where the matter complained of consists of alleged misconduct in the course of a formal council meeting, whether the matter had already been dealt with satisfactorily during the meeting.
14. All parties will be notified of the Monitoring Officer’s decision and there is no internal right of appeal against that decision.
15. A decision notice will not be published at this stage though the council may issue a public statement if details of the complaint are already in the public domain.
16. The Monitoring Officer will report to the standards committee periodically on cases in which there has been no further action taken.

### **Informal resolution**

17. Where the Monitoring Officer has decided to seek to resolve the matter informally, he or she may do one or more of the following:
  - a) ask the subject member to submit an apology in writing to the complainant;
  - b) convene a meeting between the subject member and the complainant in order to try to resolve the issue informally;
  - c) notify the subject member’s group leader (where they are a member of a group) and suggest that they may wish to take some internal party action;
  - d) suggest that the subject member undergo relevant training;
  - e) other such action that the Monitoring Officer deems appropriate.

18. The Monitoring Officer will decide on a timeframe within which the informal resolution must be completed to an acceptable standard.
19. If either the subject member or complainant refuses to engage with the informal resolution proposed by the Monitoring Officer, or the Monitoring Officer deems the action taken by the member to be insufficient or the informal resolution does not take place in a timely way, the Monitoring Officer will decide, in consultation with an Independent Person, whether the case should be closed, whether an investigation is necessary, or whether some other action should be taken.
20. The Monitoring Officer will notify the complainant of the outcome of the informal resolution.
21. The Monitoring Officer will report to the Standards Committee periodically on the outcome of any informal resolutions proposed and/or implemented.

### **Investigation**

22. Where a matter is referred for investigation, the Monitoring Officer may carry out the investigation him/herself, delegate it to another officer or appoint an external investigator.
23. The Investigating Officer may make such inquiries as they think necessary or expedient for the purposes of conducting the investigation, and may request any person to give such information or explanation as the Investigating Officer thinks necessary or expedient for the purpose of conducting the investigation. The Investigating Officer may require any of the relevant authorities concerned to provide such advice and assistance as may reasonably be needed to assist in the investigation, and to provide reasonable access to such documents in the possession of that authority as appear to the Investigating Officer to be necessary for the purpose of conducting the investigation.
24. Statements will be prepared and agreed with each person interviewed during an investigation, including the Subject Member. The Subject Member will be advised that they may be accompanied by a professional representative or advisor, a Group colleague or friend during the interview. Any other person interviewed may be accompanied by a friend or representative if they so wish. Any accompanying person must either be under a professional duty of confidentiality (a solicitor or legal representative) or have signed a confidentiality agreement in respect of any information disclosed during the interview or hearing that is not in the public domain.
25. The Investigating Officer will complete the investigation within a reasonable period of time according to the nature of the complaint and the extent of the investigation required. It is anticipated that in the majority of cases this shall be within a 3 month period.
26. The Investigating Officer, having concluded the investigation, will consider whether to produce a draft report before the final report. A draft report may be appropriate where the facts are complex or ambiguous, or where the facts are

disputed. Any draft report will be issued to the Subject Member and the Complainant for review and comment and will indicate that it does not necessarily represent the Investigating Officer's final conclusion.

27. If the Investigating Officer issues a draft report, the investigator will consider whether the responses reveal a need for further investigation or for changes to the report. In some complex cases, the Investigating Officer may wish to issue a second draft report before the final report.
28. The Investigating Officer's final report will include all relevant documents, and copies of all witness statements obtained during the investigation. The report will commence with a statement of the Investigating Officer's conclusion. The conclusion will indicate if the evidence supports a failure to comply with the Code of Conduct.
29. The Investigating Officer will submit the final report to the Monitoring Officer. Where the investigation has not been personally conducted by the Monitoring Officer, the final decision as to outcome will nevertheless be made by the Monitoring Officer unless there is a conflict of interest, in which case the decision will be taken by a Deputy Monitoring Officer.
30. At any time during the investigation the Monitoring Officer, the subject member or the complainant may ask for an informal resolution. The Monitoring Officer will consult with the relevant IP to agree this.
31. There may be exceptional circumstances when the Monitoring Officer decides that a case should be closed before a draft or final report has been produced due to a significant change in circumstances. This may include, for example that the subject member is seriously ill or is no longer a member or other action has led to the matter being resolved. In such cases the Monitoring Officer should consult the Independent Person before deciding that the file be closed. A record of the complaint will be kept on file in the event that the subject member returns to office in the future and a subsequent complaint is lodged against them.
32. At the end of the investigation the Monitoring Officer may conclude:
  - a) that there has been no breach of the Code;
  - b) to seek to resolve the matter informally; or
  - c) to refer the matter to the Standards Committee for determination.
33. In cases where the Monitoring Officer has concluded that there has been no breach of the Code all parties will be notified of the Monitoring Officer's decision and there is no right of appeal against that decision. The Monitoring Officer will report the finding to the standards committee and issue a public decision notice.
34. Where the Monitoring Officer decides to seek to resolve the matter informally, he or she shall seek the views of the Independent Person and complainant before concluding whether such an outcome is appropriate. The possible actions are those outlined above at paragraph 14. If the subject member or complainant refuses to engage with the informal action directed by the Monitoring Officer, the Monitoring Officer deems the action taken by the Member

insufficient or the informal action does not take place in a timely way the Monitoring Officer will decide, in consultation with the Independent Person, whether the case should be closed or whether a hearing is necessary. The Monitoring Officer will notify the complainant of the outcome of the informal action.

35. Where the matter is referred for determination, the Standards Hearing Sub-Committee will convene within 2 months. The Monitoring Officer will notify the complainant of the date of the hearing.

### **PRE-HEARING PROCEDURE**

36. Where an investigation report indicates that there has been a breach of the Code of Conduct and the matter cannot otherwise be resolved by local resolution, a hearing will be arranged within three months of receipt. The hearing will be a meeting of the Committee convened specifically for that purpose.
37. A copy of the investigation report will be sent to the Subject Member, the complainant, the Chair or Vice Chair of **Standards Committee**.
38. The Subject Member may provide written response within 15 working days, which response shall set out the Subject Member's reply to the Investigating Officer's report and shall state if they:
  - Disagree with any of the findings of fact in the report, giving the reasons for any disagreement
  - Wish to be accompanied at a hearing by any person
  - Wish to give evidence to the Committee, either orally or in writing
  - Wish to ask any person to give evidence to the Committee
  - Wish any part of the hearing to be held in private
  - Wish any part of the Investigating Officer's report or other relevant documents to be withheld from the public.
39. The Subject Member shall be informed that if, at the meeting of the Committee, they seek to dispute any matter contained in the Investigating Officer's report without having previously notified the intention to do so, the Committee may refuse to allow the disputed matters to be raised unless satisfied that there are good reasons why they have not been raised beforehand.
40. Upon receipt of the Subject Member's response, the Investigating Officer shall be invited to comment on it within ten working days. If the report is disputed the investigating officer must indicate if they are appointing another officer or person to be present the evidence upon which the report was based.
41. Upon receipt of the Investigating Officer's response, the Monitoring Officer will consider the responses of the Subject Member and the Investigating Officer and set a date for the hearing in consultation with the Chair of the Committee.



42. If the Subject Member has indicated they wish a person to attend to give evidence the **Standards Committee** may in its absolute discretion agree to hear from that person. A question may only be asked with the permission and absolute discretion of the Chair of the Committee.
43. Nothing in this procedure shall limit the Chair of the hearing from requesting the attendance of any additional witnesses whose evidence he/she considers would assist the Committee to reach its decision.

### **HEARING PROCEDURE**

44. The Hearing Committee shall decide, on a balance of probabilities, on the evidence presented to it, whether the complaint is upheld.
45. All matters shall be decided by a simple majority of votes cast. If there are equal numbers, the Chair shall have a second and casting vote.
46. The Independent Person shall attend the hearing in an advisory, non-voting capacity.
47. The meeting will be open to the press and public unless confidential or exempt information is likely to be disclosed.
48. The procedure for the hearing shall be as set out below, but the Chair may agree to vary this procedure in any particular instance where they are of the opinion that such variation is necessary in the interests of fairness.
49. The Subject Member may be accompanied during the meeting by another person to support, advise or assist them.
50. The Committee may take legal advice from its legal adviser at any time during the hearing or during its deliberations. The substance of any advice given to the Committee will be shared with the Subject Member and the Presenting/Investigating Officer if they are present at the hearing.
51. At the start of the hearing, the Chair shall introduce each of the members of the Committee, the Independent Person, the Subject Member (if present), the Investigating Officer (if present) and any other Officers present, and shall then explain the procedure which the Committee will follow in the conduct of the hearing.
52. The Committee shall then confirm that it is quorate, and deal with any disclosures of interests.

If the Subject Member is not present at the start of the hearing:

- The Chair will ask the Monitoring Officer if the Subject Member has provided any explanation.
- The Committee shall then consider any reasons which the Subject Member has provided for not attending the hearing and shall decide if in exceptional circumstances an adjournment is justified.

- If the Subject Member has not given any reasons for nonattendance, the Committee shall consider the matter and make a determination in the absence of the Subject Member.
53. If there is disagreement, the Presenting/Investigating Officer will present the evidence which is relevant to the facts in dispute. With the permission of the Committee, witnesses can be called to give relevant evidence. With the permission of the Chairman of the Committee the Subject Member, the Committee members and the Independent Person may ask questions of a witness.
  54. The Subject Member will then present the evidence that is relevant to the facts in dispute. With the permission of the Committee, witnesses can be asked to give relevant evidence. With the permission of the Chairman of the Committee the Subject Member, the Committee members and the Independent Person may ask questions of a witness.
  55. If the Subject Member disagrees with any relevant fact in the report without having given prior notice, they must provide reasons, the Committee may continue with the hearing, relying on the information in the report, may allow the Subject Member to make representations about the issue and invite the Presenting/Investigating Officer to respond. The Committee may in exceptional circumstance postpone the hearing.
  56. The Committee will consider in private, with the Independent Person, all the evidence which it has heard in order to establish its findings of fact, and to reach a conclusion as to whether there has been a failure to comply with the Code of Conduct.
  57. At any stage in the consideration of the matter, the Committee may return to ask further questions of the Investigating Officer or the Subject Member or seek further information. The other party will be given an opportunity to comment upon the questions asked or the responses made.

## **CONFIDENTIALITY AND NOTIFICATION OF COMPLAINT**

58. Unless otherwise permitted under these arrangements or required by legislation, a complaint (and all associated information and documents) that a Member has breached the Code of Conduct shall remain confidential until such time that the Monitoring Officer or Standards Hearing Sub-Committee consider it appropriate (if at all) to disclose the complaint (and all associated information and documents).
59. The Monitoring Officer will, normally advise the Leader of the Council, the Member's Group Leader and the Chief Executive of the receipt of the complaint (together with the name and address of the complainant and brief details of the complaint unless it is subject to confidentiality).
60. The Leader of the Council, the Member's Group Leader and Chief Executive shall not make any representations to the Monitoring Officer at any stage of the process.

61. The Monitoring Officer may decide not to advise the Subject Member, Leader of the Council, Member's Group Leader or Chief Executive of the receipt of the complaint if this might prejudice a subsequent investigation. The Monitoring Officer shall have the discretion to notify other persons of the receipt of the complaint as he/she considers appropriate. The Monitoring Officer shall inform the Complainant and Subject Member should he/she exercise discretion.

## **COMPLAINT SUPPORT**

62. Assistance and support shall be provided to the Complainant and Subject Member throughout this process by the Chief HR Officer or Deputy as appropriate.

## APPENDIX A - PROCEDURE FLOWCHART



