

## **Appendix B**

### **INVESTIGATION AND HEARING PROCEDURE**

#### **1. Introduction**

This procedure applies when a complaint is received that a Member, Co-opted Member or Parish Member has or may have failed to comply with the Code of Conduct for Members.

The person making the complaint will be referred to as “the Complainant” and the person against whom the complaint is made will be referred to as the “Subject Member.”

No Member or Officer will participate in any stage of the arrangements if he or she has, or may have, any personal conflict of interest in the matter.

#### **Making a complaint**

A complaint must be made in writing to: –

Chris Moister,

Monitoring Officer

South Ribble Borough Council

Civic Centre

Leyland

PR25 1DH

OR

[chris.moister@southribble.gov.uk](mailto:chris.moister@southribble.gov.uk)

The Monitoring Officer will acknowledge receipt of the complaint within 5 working days of receiving it.

#### **Initial Assessment**

The Monitoring Officer will carry out the initial assessment of any complaint. This will normally be in conjunction with one of our Independent Persons.

The Monitoring Officer will in assessing the complaint assume the allegation to be true and then ask the following questions:-

1. was the councillor a sitting councillor at the time of the alleged behaviour? And
2. was the councillor acting in that capacity at that time (it is a rebuttable presumption they were)? And
3. Is the behaviour complained of a breach of the code of conduct?

If the answer to any of those 3 questions is no then the complaint will be rejected.

In deciding how to progress a valid complaint, the Monitoring Officer must decide if it is in the public interest for it to proceed. In assessing the public interest the following factors will be taken into account

- Is the complaint vexatious does it appear to be malicious, vexatious, politically motivated or tit-for-tat
- Has there been a similar previous complaint(s) which has already been resolved.
- Is the complaint is about something that happened so long ago that those involved are unlikely to remember it clearly enough to provide credible evidence, or where the lapse of time means there would be little benefit in taking action now
- Is the complaint is serious enough to merit any action and:-
  - (i) The resources needed to investigate and determine the complaint are wholly disproportionate to the allegations or;
  - (ii) Whether, in all the circumstances, there is no overriding public benefit in carrying out an investigation
- Is the Member is relatively inexperienced, or has admitted making an error and the matter would not warrant a more serious sanction
- Is there a wider problem throughout the authority which ought to be addressed on a more corporate basis
- Whether training or conciliation would be the appropriate response.

Having applied the public interest test the Monitoring Officer, in consultation with an Independent Person, will decide to either

- Take no action; or
- Refer the matter for Informal Resolution; or
- Refer the complaint for investigation; or
- Take any action they feel would resolve the issue.

In reaching the decision the Monitoring Officer must have regard to the views of the Independent Person and must, should they decide not to follow the IP's recommendation, provide reasons for departing from it.

### **Informal Resolution**

In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for an investigation. Such informal resolution may involve the Subject Member accepting that his/her conduct was unacceptable and offering an apology, or taking other steps.

If the complaint identifies criminal conduct or breach of other regulations by any person, the Monitoring Officer is authorised to report this to the Police or other prosecuting or regulatory authorities.

The Monitoring Officer will endeavour to seek resolution of complaints without formal investigation wherever practicable.

Where the Monitoring Officer offers Informal Resolution and the subject members declines the complaint would usually be referred for investigation.

## **Investigation**

If the Monitoring Officer decides that a complaint merits formal investigation then he may appoint an Investigating Officer. The Investigating Officer will usually meet the complainant, the subject of the complaint and any other person they think appropriate to undertake a fair investigation. They may also review other evidence such as but not limited to documents or recordings of meetings or the incident.

All members are reminded that the Code of Conduct includes a requirement on members to co-operate with standards investigations.

At the end of their investigation, the Investigating Officer will produce a draft report and will send copies of that draft report to the Complainant and to the Subject Member, for comments. The Investigating Officer will take such comments into account, before issuing their final report to the Monitoring Officer.

The Investigation may recommend:-

- No identified breach of the code of conduct; Having reviewed the report and if satisfied with the recommendation, the Monitoring Officer will issue a Confirmation Decision confirming no breach, notify the Subject Member and complainant and close the matter.  
A copy of the report and Confirmation Decision will be made available to the Independent Person and Parish Council Clerk if the subject member is a parish councillor.

If the Monitoring Officer is not satisfied the investigation has been conducted satisfactorily, they will refer it back to the Investigating Officer seeking reconsideration of the points at issue.

- There is an identified breach or breaches of the code of conduct; If the Monitoring Officer agrees with the conclusion of the Report they will either
  - After consultation with the Independent Person seek Informal Resolution; or
  - Arrange for a Hearing Panel to consider the complaint and determine the outcome.

## **Hearings Panel**

The Hearings Panel will consist of either the full Standards Committee or a sub-committee of that Committee, no less than 3 members.

The Independent Persons are invited to attend all meetings of the Hearings Panel and their views must be sought and taken into consideration before the Hearings Panel takes any decision on whether the Member's conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

The Council has agreed a procedure for local hearings which is attached as Appendix A.

The Chair of the Hearing Panel will usually follow the procedure but has the absolute discretion to depart from it and any such departure will not of itself invalidate the hearing.

At the conclusion of the Hearing the panel may find that there is no breach or that a member has failed to comply with the Code of Conduct. Where there is a finding of breach Hearings Panel may –

- Publish its findings in respect of the Member's conduct; and/or
- Report its findings to Council (or to the Parish Council) for information; and/or
- Censure; and/or
- Recommend to the Member's Group Leader (or in the case of un-grouped Members, recommend to Council) that he/she be removed from any or all Committees or Sub-Committees of the Council; and/or
- Recommend to the Leader of the Council that the Member be removed from the Executive, or removed from their Portfolio responsibilities; and/or
- Instruct the Monitoring Officer to (or recommend that the Parish Council) arrange training for the Member; and/or
- Recommend to Council or Parish Council that the Member be removed from all outside body appointments to which they have been appointed or nominated by the Council (or by the Parish Council); and/or
- Withdraw (or recommend to the Parish Council that it withdraws) facilities provided to the Member by the Council, such as a computer, website and/or email and Internet access; and/or
- Exclude (or recommend that the Parish Council exclude) the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

Any sanction imposed by the Hearings Panel shall commence immediately unless the Hearings Panel directs that a sanction shall commence on another date within six months from the imposition of the sanction.

The Chairman should normally announce the decision of the Hearings Panel at the hearing. Written confirmation of the findings of the Hearings Panel should be given as soon as is reasonably practicable to the Subject Member, Independent Person, Standards Committee of any other authority concerned, any parish council concerned, and any person who made an allegation that gave rise to the investigation.

The Hearings Panel and/or Standards Committee may consider making any recommendations to the authority concerned with a view to promote and maintain higher standards of conduct among its members.

### **Appeals**

Subject to Judicial Review, or a decision of the Local Government Ombudsman, there is no right of appeal against a decision of the Monitoring Officer or of the Hearings Panel.

## **General Matters**

### **Maintenance of Confidentiality by Members**

Any Member involved in a complaint – whether as Complainant, Subject Member or Witness – is strongly recommended not to speak to the Press about the complaint (or to discuss it on social media) whilst that complaint is still being dealt with by the Monitoring Officer and/or Standards Committee

### **The Independent Person(s)**

The Independent Person must be a person who has applied for the post following advertisement of vacancy for the post, and appointed by a positive vote from a majority of all the Members of Council at a meeting of the Full Council.

The Council currently has two such Independent Persons. Subject members may take advice from an Independent Person.

The detailed rules relating to who can be an Independent Person are set out in the Localism Act 2011.

### **Anonymous Complaints**

If a Complainant has asked for their identity to be withheld, this request will be considered by the Monitoring Officer at the Initial Assessment stage. As a matter of fairness and natural justice, the Member should usually be told who has complained about them and receive details of the complaint.

If the Monitoring Officer decides to refuse a request by a Complainant for confidentiality, they will offer the Complainant the option to withdraw the complaint, rather than proceed with his or her identity being disclosed. The Monitoring Officer will balance whether the public interest in taking action on a complaint will outweigh the Complainant's wish to have his or her identity withheld from the Member.

## HEARINGS PROCEDURE

1. Any hearing will either be before the full Standards Committee or a duly appointed Hearing Panel. Any reference to "Panel" in this procedure also refers to the Committee if the full Committee is sitting.
2. After everyone involved has been formally introduced, the Chair will explain how the Panel is going to run the hearing.
3. The Chair will introduce the Independent Person(s) and explain that whilst they do not have a decision making role they are present to provide an independent view which the Panel are obliged to consider.
4. The Subject Member may be represented or accompanied at the meeting by a solicitor or barrister, or with the permission of the Panel, another person.
5. The Chair will ensure that the Subject Member (the member the subject of the complaint) is ready and happy to proceed. If the Subject Member indicates that they are not ready, they must give reasons why. The Committee will decide whether the hearing should proceed and must act reasonably in coming to that decision.
6. If the Subject Member is not present at the start of the hearing:
  - The Chairman should ask the Monitoring Officer whether the Subject Member has indicated his/her intention not to attend the Hearing
  - The Panel should then consider any reasons which the Subject Member has provided for not attending the Hearing and should decide whether it is satisfied that there is sufficient reason for such failure to attend
  - If the Panel is satisfied with such reasons, it should adjourn the Hearing to another date
  - If the Panel is not satisfied with such reasons, or if the Subject Member has not given any such reasons, the Hearings Panel should decide whether to consider the matter and make a determination in the absence of the Subject Member, or to adjourn the Hearing to another date.
7. With the permission of the Panel witnesses may give evidence either on behalf of the Investigator or on behalf of the Subject Member.

### Findings of fact

8. The Panel will ask the Subject Member whether there are any significant disagreements about the facts contained in the Investigating Officer's report. If there is no disagreement about the facts, the Panel can move on to Stage 3.
9. If the Subject Member disagrees with any relevant fact in the Investigating Officer's report, without having given prior notice of the disagreement, they must give good reasons for not mentioning it before the hearing. A Subject Member would be expected to give at least 7 days' notice to the Monitoring Officer of any such disagreement with any relevant fact.

10. After considering the Subject Member's explanation for not raising the issue at an earlier stage, the Panel may then:

- continue with the hearing, relying on the information in the Investigating Officer's report
- allow the Subject Member to make representations about the issue, and invite the Investigating Officer to respond
- postpone the hearing to allow the Investigating Officer to consider and investigate the new issue.

11. Where prior notice of any disagreement has been given the Investigating Officer, will be invited to make representations on the challenged facts.

12. The Subject Member will then have the opportunity to make appropriate representations.

13. At any time, the Panel may question the Investigating Officer or the Subject Member.

14. The Panel will usually move to another room to consider the representations and evidence in private. Also present will be the Monitoring Officer, the Independent Person and a Democratic Services Officer. On their return, the Chair will announce the Panel's findings of fact.

#### Conclusions of the Panel

15. Having made the finding on the facts the Panel will then consider whether the Subject Member has failed to follow the Code.

16. The Subject Member should be invited to give relevant reasons why the Panel should decide that they have not failed to follow the Code.

17. The Panel should then consider any verbal or written representations from the Investigating Officer.

18. The Panel may, at any time, question anyone involved on any point they raise on their representations.

19. The Subject Member should be invited to make any final relevant points.

20. The Panel will then move to another room to consider the representations. The Monitoring Officer, the Independent Person and a Democratic Services Officer will accompany them. The views of the Independent Person should be sought and considered by the Panel. Where the Panel depart from the view of the Independent Person they should record the reasons why.

21. On their return, the Chair will announce the Panel's decision as to whether the Subject Member has failed to follow the Code.

22. If the Panel decides that the Subject Member has not failed to follow the Code, the Panel will inform the Subject Member accordingly.

23. If the Panel decides that the Subject Member has failed to follow the Code, it will consider any verbal or written representations from the Investigating Officer and the Subject Member as to:

- whether the Panel should apply a sanction
- what form any sanction should take

24. The Panel may question the Investigating Officer and Subject Member, and take legal advice, to make sure they have the information they need in order to make an informed decision.

25. The Panel will then retire with the Monitoring Officer, the Independent Person and a Democratic Services Officer. They will consider whether to impose a sanction on the Member and, if so, what sanction it should be. The Independent Person will not be able to participate in making the decision (i.e. vote) but their views must be considered by the Panel. Where the Panel depart from the Independent Person's views they must record reasons why.

26. The Panel will be limited to the sanctions listed in the procedure for the administration of complaints. The Panel must ensure that any sanction is reasonable and proportionate to the breach.

27. On their return, the Chair will announce the Panel's decision. In accordance with the Council's Assessment Criteria the Panel has the option to make any of the following decisions on the complaint:

- that no further action be taken
- that the matter be referred to the Group Leader for Informal Action
- that the matter is referred for Informal Resolution or other action
- that the matter is referred for Formal Investigation by an Investigator
- that the matter is referred to the Police or other relevant Regulatory Agency

28. Both the subject member and the complainant should be informed in writing of the outcome of the Panel Hearing within 2 working days.