

Date: 28 March 2023

Report: REVIEW OF STANDARDS PROCEDURES AND INDEPENDENT PERSON PROTOCOL

Purpose of the report

1. To review the procedures which are used to assess and determine allegations of breach of the code of conduct against Members of the Authority and to review the Independent Person Protocol.

RECOMMENDATION

2. It is recommended that Members:
 - (i) Adopt the revised Local Assessment Procedure, Determination Procedure and Independent Person Protocol set out at **Annex 1**; and
 - (ii) Adopt the revised Scheme of Delegation as set out at **Annex 2**.

Strategic Planning Framework

3. The information and recommendation(s) contained in this report are consistent with the Authority's statutory purposes and its approved strategic planning framework:
 - **Corporate Plan objective**
Objective 36: Operate governance arrangements that are fit for purpose as reported through the Annual Governance Statement and the Annual Governance Report.

Background

4. The Localism Act 2011 requires the Authority to adopt arrangements for dealing with complaints of breach of the Code of Conduct by Authority Members and to have arrangements in place to determine whether or not a Member has failed to follow the Code of Conduct.
5. The Authority initially adopted procedures to deal with Standards complaints in June 2012 which were subsequently reviewed in 2015. The Monitoring Officer with the assistance of the Deputy Monitoring Officer has therefore reviewed the Standards procedures to ensure that they remain fit for purpose.

Local Assessment Procedure

6. The Monitoring Officer has made some proposed changes to the Local Assessment Procedure which are intended to streamline it and ensure that complaints against Members are dealt with fairly, objectively and without undue delay. The Procedure includes details (paragraph 12.1) regarding the management of an investigation of an allegation that a Member has breached the Code of Conduct (which should be in accordance with any guidance issued by the Monitoring Officer) and this negates the need for any freestanding Investigation Procedure.
7. The primary change to the Procedure is to enable the Monitoring Officer (in conjunction with the Independent Person where appropriate) to assess all complaints. The current Procedure enables the Monitoring Officer to refer complaints to the Standards Committee for assessment but in practice this has not happened since May 2019.
8. This change is reflective of the good working relationship between officers and Members and would also reduce the costs associated with the organisation of a special Standards Committee to assess a complaint.
9. Furthermore, the revised Procedure means that should a complaint be investigated and referred for a hearing, the Members of the Standards Committee appointed to the Hearing Panel will come to the hearing having had no previous involvement with the complaint.
10. A new paragraph has been added to the Procedure to enable the Monitoring Officer to reject complaints without notifying the Member where they consider that it is clear from the details that the Member was not acting in their capacity as a Member at the time of the alleged failure to comply with the Code of Conduct.
11. Information about local hearings has also been removed from the Procedure as this is an unnecessary duplication of the Determination Procedure.
12. The assessment criteria have also been reviewed and updated to make them clearer and simpler to apply.

Determination Procedure

13. The revised Determination Procedure provides a summary of the process for dealing with allegations against Members where an investigation has been completed, the Investigating Officer has found a breach of the Code of Conduct and the Monitoring Officer, having consulted with the Independent Person, sends the matter for hearing before a Hearing Panel of the Standards Committee.
14. The primary change to the Procedure is the proposal that a sub-committee of the Standards Committee comprising three members of the Standards Committee, appointed by the Monitoring Officer, should determine whether the Subject Member has breached the Code of Conduct and if so, whether any sanction should be applied. Under the current Procedure the determination of complaints is a matter for the full

Standards Committee. A smaller sub-committee is much more practical and in line with the approach taken by other Authorities.

15. The Procedure has also been condensed, by removing a section on preliminary procedural issues (quorum, declarations of interest etc which is contained in the Authority's Standing Orders) and reducing the level of detail in the hearing procedure by replacing this with something that is simpler yet clearer.

Independent Person Protocol

16. The Authority has devised a Protocol to ensure that there is clarity about the Independent Person role and to make sure that there is clear separation of the roles of the Independent Person, the Monitoring Officer and the Standards Committee.
17. The Protocol was last reviewed in 2018 when the current Independent Persons were appointed. It is therefore due a review which has been conducted in conjunction with the Authority's Independent Persons to ensure that it remains fit for purpose.
18. There have been no significant changes to the Protocol. There are no particular areas of concern to highlight and there have been no legislative changes that would impact on the document. A "light touch review" has therefore been conducted.
19. The primary change to the document is the rewording of Section 2 regarding Member contact with the Independent Person, for clarity. Some paragraphs in the document have also been re-ordered.

Scheme of Delegation

20. Agreeing to changes to the Local Assessment Procedure and the Determination Procedure means that amendments to the terms of reference of the Standards Committee and delegation of powers to the Director of Corporate Services in the Scheme of Delegation to Committees and Officers are required. These changes are indicated at **Annex 2**.

Conclusion

21. The Independent Persons are supportive of the updated Procedures and Independent Person Protocol.
22. At the meeting of the Standards Committee on 7 February 2023, Members resolved to recommend to the Authority that the revised Standards Procedures and Independent Protocol are adopted.

Clare Burrows
Director of Corporate Services

1 March 2023



PROCEDURE FOR LOCAL ASSESSMENT OF MEMBER CODE OF CONDUCT

COMPLAINTS

1. Introduction

- 1.1 The Localism Act 2011 introduced a new ethical framework for local government. Local Authorities have a duty to promote and maintain standards and have the ability to decide what arrangements they need to put in place to discharge that duty.
- 1.2 This procedure sets out the arrangements the Yorkshire Dales National Park Authority has put in place on receipt of a complaint that a Member of the Authority has failed to comply with the Authority's Code of Conduct.

2. Definitions

- 2.1 The following terms are used in this procedure

Authority	Yorkshire Dales National Park Authority
Code of Conduct	the Code of Conduct adopted by the Authority which applies to all Members
Complainant	the person making the complaint
Determination Procedure	the Procedure for dealing with allegations against Members where an investigation has been completed, the Investigating Officer has found a breach of the Code of Conduct and the Monitoring Officer, having consulted with the Independent Person, sends the matter for hearing before a Hearing Panel of the Standards Committee
Hearing Panel	a sub-committee of the Standards Committee comprising three members of the Standards Committee, appointed by the Monitoring Officer, who will determine whether the Subject Member has breached the Code Conduct and if so, whether any sanction should be applied
Independent Person	the person appointed by the Authority under section 28(7) of the Localism Act 2011
Investigating Officer	the person appointed by the Monitoring Officer to undertake a formal investigation

Local Resolution	the informal resolution of a complaint including the matters set out in paragraph 11 of this procedure
Monitoring Officer	the Authority's statutory officer who oversees the assessment and investigation of complaints against Members under the Code of Conduct with specific responsibility in relation to ethical standards
Standards Committee	the Committee responsible for promoting and maintaining high standards of conduct by Members of the Authority
Subject Member	the Member of the Authority against whom an allegation has been made

3. Procedure for making a complaint

- 3.1 Any allegation of a failure to comply with the Code of Conduct must be made in writing (including email or electronic communication of a document) and must be against one or more named Members of the Authority. The allegation should be sent to:

Monitoring Officer, Yorkshire Dales National Park Authority, Yoredale, Bainbridge, Leyburn, North Yorkshire DL8 3EL

E-mail: legal.services@yorkshiredales.org.uk

- 3.2 The complaint should identify:

- (i) the Member(s) complained about;
- (ii) the conduct that caused the complaint; and
- (iii) the part of the Code of Conduct that it is felt has been breached.

- 3.3 The Complainant should provide their name and a contact address or email address, so that receipt of the complaint may be acknowledged and the Complainant may be kept informed of progress and/or the outcome of the complaint.

- 3.4 If the Complainant wants to keep their name and address confidential, they should state the reasons for their request, in which case the request will be considered as detailed in paragraph 6. The Authority does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

4. How the complaint will be dealt with

- 4.1 The Monitoring Officer will acknowledge receipt of the complaint within 5 working days of receiving it, and will keep the Complainant informed of the progress of the complaint. The Monitoring Officer will review every complaint received.

- 4.2 The Monitoring Officer may also:

- a) seek further information to help reach a decision on the complaint which may include entry in the register of interests, information from Companies House or the land registry, any clarification from the Complainant if necessary and other easily obtainable documents;
- b) liaise with the Police if the complaint indicates a failure to declare or register a disclosable pecuniary interest;
- c) if applicable, contact the Monitoring Officer of another local authority to inform them of the receipt of a complaint;
- d) consult with the Independent Person at any stage of this procedure.

4.3 The Monitoring Officer may reject complaints without notifying the Member where they consider that it is clear from the details that the Member was not acting in their capacity as a Member at the time of the alleged failure to comply with the Code of Conduct.

5. Notifying the Subject Member

5.1 The Monitoring Officer will inform the Subject Member about the allegations unless disclosure of the complaint would not be in the public interest, for example if disclosure would prejudice any ongoing or future investigations or if disclosure of the complaint may lead to the identification of the Complainant and intimidation.

5.2 The Subject Member shall be sent a summary or a full copy of the complaint and be invited to comment upon it. The Monitoring Officer shall identify which paragraphs of the Code of Conduct have allegedly been breached and the name of the Complainant (unless the Complainant has requested and been granted confidentiality).

6. Confidentiality of the Complainant's identity

6.1 As a matter of fairness and natural justice, the Subject Member should know who has complained about them. In exceptional circumstances however the Monitoring Officer may grant confidentiality if they are satisfied that at least one of the following grounds for withholding the Complainant's identity is satisfied:

- a) The Complainant has reasonable grounds for believing that they will be at risk of physical harm or other victimisation or harassment; or
- b) The Complainant is an officer who works closely with the Subject Member and they are afraid of the consequences to their employment or losing their job if their identity is disclosed (the Authority's Confidential Reporting policy provides more information to Authority employees); or
- c) The Complainant has medical risks supported by medical evidence associated with the disclosure of their identity; or

d) The Complainant has requested non-disclosure for what the Monitoring Officer considers are good reasons.

6.2 If the Monitoring Officer decides to refuse a request for confidentiality, the Complainant shall be given the opportunity to withdraw the complaint.

7. Withdrawing Complaints

7.1 If a Complainant asks to withdraw the complaint prior to the Monitoring Officer making a decision on it, the Monitoring Officer will decide whether to grant the request. In making a decision, consideration will be given to whether:

- a) the public interest in taking some action on the complaint outweighs the Complainant's wishes;
- b) the complaint is such that action can be taken on it without the Complainant's participation;
- c) an identifiable underlying reason exists for the request to withdraw the complaint,
- d) the Subject Member or another person has put pressure on the Complainant to withdraw the complaint.

8. Initial Assessment

8.1 The Monitoring Officer will as soon as reasonable and usually within 20 working days of receipt of the complaint, consider and determine what action to take on the complaint in accordance with the assessment criteria in the **Appendix**.

8.2 The Monitoring Officer will decide either:

- a) That no action should be taken in respect of it (see paragraph 10); or
- b) To seek local resolution (see paragraph 11); or
- c) To refer the complaint for investigation (see paragraph 12).

8.3 If witnesses to the circumstances giving rise to the complaint are named by the Complainant or by the Subject Member, they may be contacted at this stage for comment. The identity of the Complainant and the Subject Member may be disclosed to any such witnesses.

8.4 After making the decision, the Monitoring Officer will produce a written decision which will include the main points considered, the decision and the reasons for that decision.

8.5 The decision will be sent as soon as possible to the Complainant and to the Subject Member.

9. The Role of the Independent Person

- 9.1 The role of the Independent Person is set out more fully in the **Independent Person Protocol**.
- 9.2 The Monitoring Officer may seek the views of the Independent Person before deciding what action to take.
- 9.3 The Authority must seek the views of the Independent Person and take them into account before deciding what action to take on a complaint which they have decided to investigate.
- 9.4 The Subject Member may seek the views of the Independent Person at any stage. The arrangements for contact should be made through the Monitoring Officer.

10. No action to be taken in respect of the complaint

- 10.1 Where the Monitoring Officer decides that no action should be taken in respect of the complaint, the Monitoring Officer will give notice in writing of that decision and the reasons for it to the Subject Member and to the Complainant.
- 10.2 If the Monitoring Officer has sought the views of the Independent Person prior to deciding that no action should be taken, then the decision should record that the views of the Independent Person have been sought and have been taken into account and, where the decision taken is not in accordance with those views, the decision notice should give reasons.
- 10.3 Where the Monitoring Officer decides that no further action is warranted in relation to the complaint, the complaint will be closed and there is no appeal process.

11. Local Resolution

- 11.1 In appropriate cases, the Monitoring Officer may consider that the matter can be reasonably resolved and may seek to resolve the complaint informally.
- 11.2 This may involve:
- a) the Subject Member accepting that their conduct was unacceptable and offering an apology;
 - b) arranging for the Subject Member to attend training;
 - c) arranging for the Subject Member and the Complainant to engage in a process of conciliation;
 - d) other remedial action (not including an investigation) as appears appropriate to the Monitoring Officer.

12. Referral by the Monitoring Officer for Investigation

- 12.1 Where the Monitoring Officer refers the complaint for investigation, they will appoint an Investigating Officer who may be an Authority officer, an officer from another Authority or an external investigator.
- 12.2 The Investigating Officer should prepare a report containing the findings of the investigation. The purpose of this report is to assist in the determination of whether the Subject Member has acted in breach of the Code of Conduct.
- 12.3 The Investigating Officer will follow any guidance issued by the Monitoring Officer on the investigation of complaints and should aim to complete the investigation within 3 months of being appointed.
- 12.4 At the end of the investigation, the Investigating Officer may produce a draft report and send copies to the Complainant and to the Subject Member for comments on matters of fact. The Investigating Officer will take any such comments received during a period to be specified by the Investigating Officer into account before issuing the final report to the Monitoring Officer.
- 12.5 Where the Investigating Officer's report finds that the Subject Member has not failed to comply with the Code of Conduct, the Monitoring Officer, in consultation with the Independent Person will review the Investigating Officer's report and if satisfied will confirm the findings of no failure to comply with the Code of Conduct.
- 12.6 Where paragraph 12.5 applies, the Monitoring Officer will write to the Complainant and to the Subject Member with the decision and the Investigating Officer's report.
- 12.7 If the Monitoring Officer is not satisfied that the investigation has been conducted thoroughly, the Investigating Officer may be asked to reconsider the report and the conclusions.
- 12.8 Where the Investigating Officer finds that the Subject Member has failed to comply with the Code of Conduct, the Monitoring Officer will review the Investigating Officer's report and will then, having consulted with the Independent Person, either send the matter for hearing before a Hearing Panel of the Standards Committee or seek informal resolution in appropriate cases (the outcome of which will be reported to the Standards Committee). Where that is not appropriate or possible (for example if the Member fails to engage in the suggested resolution), the Investigating Officer's findings shall be reported to a Hearing Panel of the Standards Committee.
- 12.9 All references to a Hearing Panel of the Standards Committee will be conducted in accordance with the **Determination Procedure**. The Hearing Panel will decide whether or not the Subject Member has acted in breach of the Code of Conduct and, if so, whether to impose any of the sanctions open to the Hearing Panel.

13. Revision of these arrangements

- 13.1 The Monitoring Officer has delegated authority to make minor amendments to these arrangements.

14. **Appeals**

- 14.1 There is no right of appeal against a decision of the Monitoring Officer or the Hearing Panel.
- 14.2 If the Complainant or Subject Member considers that the Authority has failed to deal with their complaint properly then they may make a complaint to the Local Government and Social Care Ombudsman:

Website: www.lgo.org.uk/contact-us: details of submitting a complaint online or by typetalk.

Telephone: 0300 061 0614

Postal Address: PO Box 4771, Coventry CV4 0EH

CRITERIA FOR ASSESSMENT OF COMPLAINTS

The Monitoring Officer shall apply the following criteria when considering any complaint that a Member of the Authority has failed to observe the Authority's Code of Conduct in order to decide what action, if any, to take.

The criteria have been adopted with the intent of determining complaints in the public interest in a timely, proportionate and pragmatic way.

The Monitoring Officer may seek the views of the Independent Person before deciding how to deal with the complaint.

1. INVALID COMPLAINTS

The Monitoring Officer is unable to accept the following as valid complaints:

- a) Complaints that are not in writing.
- b) Complaints where a Member is not named.
- c) Complaints about someone who is a member of another Authority. The Monitoring Officer will consider whether to refer the complaint to that authority.
- d) Complaints about incidents or actions that are not covered by the Code.
- e) Complaints about a fault in the way the Authority has or has not done something or matters relating to the policies or performance of the Authority. These are matters which are more appropriately addressed through the Authority's complaints procedure.
- f) Complaints about employees.
- g) Where the substance of the complaint refers to incidents which happened before the member was appointed.

2. ASSESSMENT

(i) Criteria which indicate no further action should be taken:

- a) The Subject Member has admitted making an error and the matter would not warrant a more serious sanction.
- b) The alleged conduct occurred so long ago that there would be little benefit in taking action now or where the evidence in support of the allegation is insufficient to demonstrate a potential breach of the code or so weak or old that it should not be relied upon.

- c) The complaint discloses a potential breach of the Code of Conduct, but the complaint is considered insufficiently serious to merit further action.
- d) The complaint is about someone who is no longer a Member of the Authority or who is seriously ill and further action would not be in the public interest.
- e) The complaint appears politically motivated, malicious or vexatious or tit for tat. Such a complaint may be recognised:
 - i. Through repeated allegations making the same, or broadly similar, complaints against the same Member(s) about the same alleged incident;
 - ii. As intending to cause annoyance, frustration, or worry to the other party (generally vexatious complaints);
 - iii. Through use of aggressive or repetitive language of an obsessive nature through repeated complaints that disclose no breach of the code (generally persistent complaints);
 - iv. Where it seems clear that there is an ulterior motive for making a complaint or complaints;
 - v. From counter-allegations against a Member who previously made a complaint (generally “tit for tat”);
 - vi. Where a Complainant refuses to let a matter rest once they have exhausted the complaints process.
- f) The complaint is anonymous, unless it includes documentary or photographic evidence indicating an exceptionally serious or significant matter to justify further consideration.
- g) Complaints which have already been the subject of an investigation or other action relating to the Code of Conduct or have been the subject of an investigation by another investigatory or regulatory authority and no new material evidence has been submitted which justifies further action.

(ii) Criteria which indicate the complaint should be dealt with by Local Resolution

- a) An apology by the Subject Member would be appropriate.
- b) An explanation by the Subject Member would be appropriate.
- c) A personal undertaking from the Subject Member would be appropriate.
- d) The nature of the complaint indicates that the Subject Member would benefit from training.
- e) The nature of the dispute indicates that some form of dispute resolution would be appropriate.
- f) The circumstances that gave rise to the complaint could be avoided in the future by introducing (or amending) a policy or procedure.

(iii) Criteria which indicate that the complaint should be dealt with by Investigation

- a) The complaint discloses a potential breach of the Code of Conduct that is considered sufficiently serious to justify the cost of an investigation.
- b) The complaint is by or involves a member of staff which ought to be investigated by reason of the nature of the complaint and/or in the interests of transparency.
- c) Other forms of action have been tried without satisfactory outcome and the nature of the complaint is sufficiently serious to warrant investigation.
- d) The nature of the complaint suggests that there is a wider problem throughout the Authority and it is appropriate to extend the action to other members who are not the subject of the complaint.

4. In exceptional circumstances the Monitoring Officer may consider appointing a Monitoring Officer from a different Authority to assess the complaint: -

- a) Where the status of the Member, or the number of Members about whom the complaint is made, or the nature and circumstance of the complaint, would make it difficult for the Monitoring Officer to deal with it. This could happen where complaints give rise to a potential conflict of interest of the Monitoring Officer, other officers or Members of the Standards Committee and suitable alternative arrangements cannot be implemented to address the conflict.
- b) Where the complaint is from the Chief Executive and/or the Monitoring Officer.

Adopted: March 2023
Due for Review: March 2028



PROCEDURE FOR DETERMINATION OF MEMBER CODE OF CONDUCT

COMPLAINTS

1. Introduction

- 1.1 Under section 28 of the Localism Act 2011 the Authority must have arrangements in place to determine whether or not a Member has failed to follow the Code of Conduct.
- 1.2 This Procedure provides a summary of the process for dealing with allegations against Members where an investigation has been completed, the Investigating Officer has found a breach of the Code of Conduct and the Monitoring Officer, having consulted with the Independent Person, sends the matter for hearing before a Hearing Panel of the Standards Committee
- 1.3 The purpose of the hearing is to decide whether or not a Member has failed to comply with the Code of Conduct and if so, to decide whether or not any sanction should be applied and what form any sanction should take.

2. Definitions

- 2.1 The following terms are used in this procedure

Authority	Yorkshire Dales National Park Authority
Code of Conduct	the Code of Conduct adopted by the Authority which applies to all Members
Complainant	the person making the complaint
Hearing Panel	a sub-committee of the Standards Committee comprising three members of the Standards Committee, appointed by the Monitoring Officer, who will determine whether the Subject Member has breached the Code Conduct and if so, whether any sanction should be applied
Independent Person	the person appointed by the Authority under section 28(7) of the Localism Act 2011
Investigating Officer	the person appointed by the Monitoring Officer to undertake a formal investigation
Legal Advisor	the officer responsible for providing legal advice to the Hearing Panel. This may be the Monitoring Officer, another qualified legal officer of the Authority or someone

	external to the Authority appointed for the purpose of the hearing
Monitoring Officer	the Authority's statutory officer who oversees the assessment and investigation of complaints against Members under the Code of Conduct with specific responsibility in relation to ethical standards
Standards Committee	the Committee responsible for promoting and maintaining high standards of conduct by Members of the Authority
Subject Member	the Member of the Authority against whom an allegation has been made

3. Pre-hearing Process

3.1 The Monitoring Officer will ensure that the Complainant and the Subject Member have received a copy of the final investigation report. The Monitoring Officer will write to the Subject Member to propose a date for the hearing and provide a copy of this Procedure.

3.2 The Subject Member will be asked to confirm within 14 days whether they:

- (i) disagree with any of the findings of fact in the Investigating Officer's report, including the reasons for disagreement;
- (ii) will attend the hearing in person;
- (iii) want to be represented at the hearing by a solicitor, barrister or any other person¹;
- (iv) want to give evidence to the Hearing Panel, either verbally or in writing;
- (v) want to call relevant witnesses to give evidence to the Hearing Panel;
- (vi) want any part of the hearing to be held in private giving reasons under the relevant category of confidential or exempt information²;
- (vii) want any part of the investigation report or other relevant documents withheld from the public, giving reasons under the relevant category of confidential or exempt information².

3.3 Following the response from the Subject Member, the Investigating Officer will be asked to confirm within 14 days whether they:

- (i) will be represented at the hearing;
- (ii) intend to call relevant witnesses to give evidence to the Hearing Panel;
- (iii) want any part of the hearing held in private giving reasons under the relevant category of confidential or exempt information²;
- (iv) want any part of the investigation report or other relevant documents withheld

¹ The Hearing Panel will normally give permission for people who are not solicitors or barristers to represent the Subject Member but may refuse permission if the representative is directly involved in the matter that the Hearing Panel will determine.

² Section 100 and Schedule 12A of the Local Government Act 1972 should be referred to for the relevant categories of confidential and exempt information.

from the public giving reasons under the relevant category of confidential or exempt information².

- 3.4 The Monitoring Officer will use this information to prepare a report for the hearing. This will be sent, along with confirmation of the date, time and place for the hearing, to:
- (i) all members of the Hearing Panel;
 - (ii) the Subject Member and their representative;
 - (iii) the Complainant;
 - (iv) the Investigating Officer who will make any necessary arrangements with witnesses; and
 - (v) the Independent Person.
- 3.5 If the Subject Member is also a Member of another authority, the Monitoring Officer will send a copy of the report to the other authority if they request it.
- 3.6 The report prepared by the Monitoring Officer will remain confidential unless and until the Hearing Panel has decided that the hearing will be held in public.

4. Hearing

- 4.1 The role of the Hearing Panel is to decide factual evidence on the balance of probabilities. The hearing is a formal process, not an open discussion. Hearings are normally held in public unless there are reasons under the Local Government Act 1972 for holding the hearing or any part of the hearing in private.
- 4.2 If the Subject Member (or appointed representative) is not present, then the Hearing Panel will consider whether to proceed to hear the case and make a decision in their absence, or whether to adjourn the hearing to another time or date.
- 4.3 The Hearing Panel will elect one of its Members to chair the hearing. At the hearing, the Investigating Officer will present their report, call such witnesses as they consider necessary and make representations to substantiate their conclusion that the Subject 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 Hearing Panel.
- 4.4 The Subject Member will then have an opportunity to give their evidence, to call witnesses and to make representations to the Hearing Panel as to why they consider that they did not fail to comply with the Code of Conduct.
- 4.5 The Hearing Panel can allow witnesses to be questioned by the Subject Member, or the Investigating Officer (or their representative, including a Solicitor or Barrister), directly or through the Chair. The Hearing Panel can also question witnesses.
- 4.6 The Independent Person will be invited to attend to observe the hearing. The Hearing Panel will seek the views of the Independent Person and take those views

into account before deliberating in private and making its decision on whether the Subject Member's conduct constitutes a failure to comply with the Code of Conduct.

- 4.7 If the Hearing Panel concludes that the Subject Member did not breach the Code of Conduct, it will dismiss the complaint.
- 4.8 If the Hearing Panel concludes that the Subject Member did breach the Code of Conduct, the Chair will inform the Subject Member of this finding and the Hearing Panel will then consider what action, if any, the Hearing Panel should take as a result of the Subject Member's failure to comply with the Code of Conduct. In doing this, the Hearing Panel will give the Subject Member an opportunity to make representations to the Hearing Panel and seek the views of the Independent Person and take those into account before making its decision regarding any sanction.
- 4.9 The Hearing Panel may take legal advice, in private if necessary, from its Legal Adviser at any time during the hearing or while considering the outcome. The Hearing Panel should share the substance of any legal advice given with the Subject Member, the Complainant and the Investigating Officer if they are present.
- 4.10 The Chair of the Hearing Panel has the right to depart from this procedure, in consultation with the Legal Advisor, at any hearing where they consider that it is expedient to do so to deal with the case fairly and effectively.

5. Sanctions

- 5.1 If the Hearing Panel decides that the Subject Member has breached the Code of Conduct, it will consider any verbal or written representations from the Investigating Officer and the Subject Member as to whether the Hearing Panel should apply a sanction and what form any sanction should take.
- 5.2 The Hearing Panel will then deliberate in private to consider whether to impose a sanction on the Subject Member and, if so, the nature of the sanction. When deciding on a sanction, the Hearing Panel should ensure that it is reasonable, proportionate and relevant to the Subject Member's behaviour.
- 5.3 If the Hearing Panel decides that it should impose a sanction, it may do one or a combination of the following:
 - (i) Issue a formal censure in writing;
 - (ii) Publish (in whatever way might be chosen) the fact that the Subject Member has been found to have breached the code of conduct;
 - (iii) Recommend to the Authority to remove the Subject Member from any Committee or outside body appointment(s);
 - (iv) Recommend to the Authority to restrict the Subject Member's access to Authority premises, facilities etc. (so long as they are still able to perform their essential role);
 - (v) Instruct the Monitoring Officer to arrange training for the Subject Member.

5.4 The Hearing Panel has no power to suspend or disqualify the Subject Member nor to withdraw their basic or special responsibility allowances, or to recommend other outcomes.

6. Publication of Decision

6.1 As soon as reasonably practicable after the Hearing Panel, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Hearing Panel. The decision notice will include a brief statement of facts, the provisions of the Code of Conduct engaged by the allegations, the views of the Independent Person, the reasons for the decision and any sanctions applied.

6.2 A copy of the Decision Notice will be sent to the Complainant, the Subject Member, the Independent Person; and will be published on the Authority's website and reported to the next meeting of the Standards Committee.

7. Appeals

7.1 There is no right of appeal against the decision of the Hearing Panel.

7.2 If the Complainant or Subject Member considers that the Hearing Panel has failed to deal with the complaint properly then they may make a complaint to the Local Government and Social Care Ombudsman:

Website: www.lgo.org.uk/contact-us: details of submitting a complaint online or by typetalk.
Telephone: 0300 061 0614
Postal Address: PO Box 4771, Coventry CV4 0EH

Adopted: March 2023
Due for Review: March 2028

INDEPENDENT PERSON PROTOCOL

1. Introduction

- 1.1 The Independent Person is a statutory appointment under s28(7) of the Localism Act 2011.
- 1.2 The Authority has a duty to promote and maintain standards of conduct of Members and to deal with allegations involving Member conduct introduced by the Localism Act 2011.
- 1.3 This Protocol is intended to make clear how the relationship between the Authority, the Independent Person, the Monitoring Officer and the Standards Committee will interact within the procedures adopted by the Authority for managing the standards of conduct of Members.
- 1.4 The Protocol is not seeking to be prescriptive but rather to set out the general principles with which all parties will use their best endeavours to comply.
- 1.5 The Authority has appointed more than one Independent Person. This Protocol applies to all Independent Persons in the same way as they are of equal status.

2. Member contact with the Independent Person

- 2.1 The views of the Independent Person may be sought by a Member of the Authority whose behaviour is the subject of a written allegation that they have breached the Code of Conduct (a “formal complaint”). The Monitoring Officer will inform the Member about the role of the Independent Person and arrangements for contact should be made through the Monitoring Officer.
- 2.2 It is the role of the Monitoring Officer, not of the Independent Person, to advise Members on issues of conduct. If a Member contacts the Independent Person before the Independent Person has been notified by the Monitoring Officer of the formal complaint, the Independent Person will refer them to the Monitoring Officer.
- 2.3 The Independent Person should not discuss a potential or actual complaint directly with the potential complainant and shall refer the complainant to the Monitoring Officer to speak directly about any complaint.
- 2.4 The Independent Person shall keep a written record of all contacts they have had in relation to complaints, including the date and time of contact, who contacted them, what was reported to them, and what view (if any) they provided.

3. Considering written allegations

- 3.1 Where the Monitoring Officer is considering a written allegation of a breach of the Code of Conduct by a Member in accordance with the Local Assessment Procedure for complaints against Members, the views of the Independent Person may be sought by the Monitoring Officer when the complaint is assessed. The Independent Person shall provide an objective and impartial opinion which the Monitoring Officer will consider before deciding whether any further action should be taken on the complaint. The issue at this stage is not whether there has been a breach of the Code of Conduct but rather whether, in the light of the Authority's criteria for assessing complaints, the complaint merits investigation or some other form of action.
- 3.2 When issuing the decision, the Monitoring Officer will record that the Independent Person has been consulted and that their views have been taken into account. Where the view of the Monitoring Officer and Independent Person differ, the Monitoring Officer will record this, and the Monitoring Officer's reasons for following a particular course. The decision will make it clear that it is the Monitoring Officer and not the Independent Person who is the decision maker.
- 3.3 Where the Monitoring Officer has referred a complaint for investigation, the Monitoring Officer will provide the Independent Person with a copy of the Investigating Officer's report and will consult with the Independent Person on the findings of the report in terms of deciding the appropriate next steps.

4. Relationship with the Standards Committee

- 4.1 The Independent Person is not a Member of the Standards Committee and therefore cannot vote on any matters put to the meeting.
- 4.2 Where a Hearing Panel of the Standards Committee is convened to consider the investigation report in accordance with the Authority's procedure for the determination of complaints, the Standards Committee will seek the views of the Independent Person (both as to whether there has been a breach of the code of conduct and, if so, what action if any should be taken) before reaching its conclusions. The Independent Person will be provided with the agenda and report for the Standards Committee Hearing Panel, and invited to attend the Hearing Panel to convey their views.
- 4.3 The Independent Person's view will be recorded in any decision notice and, where those views do not reflect the final outcome, reasons will be given. The decision notice will make it clear that it is the Hearing Panel of the Standards Committee and not the Independent Person who is the decision maker.

5. Right of Access to Documentation

- 5.1 The Independent Person shall have a right of access to such files and other documents in the possession or control of the Authority as are necessary to fulfil their duties and obligations as set out in this Protocol, their role description, and the arrangements adopted from time to time by the Authority for dealing with standards

complaints. The Independent Person shall not have a right to undertake a roving commission. Normally access to files and other documents will be through the Monitoring Officer, Deputy Monitoring Officer or other officer appointed on their behalf.

- 5.2 The Independent Person shall receive public agendas and minutes of all meetings of the Authority and its Committees and shall be entitled to attend such meetings as an observer whilst the meeting is open to the public, or otherwise with the permission of the Chairman of the meeting.

6. Confidentiality

- 6.1 The Independent Person shall respect the confidentiality of any documents provided to them and shall be responsible for their safe custody.
- 6.2 The Independent Person should respect the general confidentiality of the Authority's standards process and should not make any comments to the media on any matter relating to the Authority's standards business. Any requests for comments from the media should be referred in the first instance to the Monitoring Officer who may refer these to the Chair of the Standards Committee, or other person within the Authority as appropriate.

7. Role of Other Independent Person

- 7.1 Where one Independent Person is not available to deal with a particular matter, or where an Independent Person has a potential conflict of interest, or otherwise where it is expedient in the opinion of the Monitoring Officer to do so, another Independent Person may be nominated to deal with the matter. In general, which Independent Person will deal with a particular matter should be determined by the Monitoring Officer at the time a written complaint is received, and a case given to the Independent Person at that stage should stay with that person until its conclusion. Wherever possible, changing from one Independent Person to another, or vice versa, part way through a matter should be avoided.
- 7.2 The Independent Person shall not have any involvement, nor make any comment (whether to the complainant, the Authority or otherwise) on any case which is being dealt with by another Independent Person, unless the Monitoring Officer so agrees in writing.

8. Other Matters

- 8.1 The Independent Person has the right to raise any concerns about standards issues with the Authority's Chief Executive, including the right to offer comment on the Authority's performance of its general duty to promote and maintain high standards of conduct.

- 8.2 The Independent Person will normally be consulted on any proposed changes to the Code of Conduct or Local Assessment Procedure for complaints against Members, and their views will be taken into account when changes are made.
- 8.3 In addition to the roles and responsibilities referred to in this Protocol, under the provisions of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 at least two Independent Persons must be appointed to a Member Panel set up to advise the Authority on matters relating to the dismissal of a Statutory Officer of the Authority (the Head of Paid Service, the Chief Finance Officer, the Monitoring Officer).
- 8.4 The Independent Person is considered to be an office holder of the Authority in accordance with the duty under Section 28(7) of the Localism Act 2011, and is therefore entitled to be covered by the Authority's indemnity to Members and Officers, provided that they act reasonably and within the terms of this Protocol and the Role Description.

Adopted: March 2023

Due for Review: March 2028

SCHEME OF DELEGATION TO COMMITTEES AND OFFICERS

B Delegation of Powers to Committees

B4 Standards Committee

The Standards Committee will have the following roles and functions:

B4.1 To promote and maintain high standards of conduct by Members of the Authority.

B4.2 To monitor compliance with the Authority's Code of Conduct for Members and related policies or protocols.

B4.3 To decide upon written applications by Members of the Authority for a dispensation to speak, or to speak and to vote, on any matter coming before the Authority and/or its Committees in relation to which the Member making the application has a disclosable pecuniary interest; and to decide the terms of any dispensation granted where this function has not been delegated to the Monitoring Officer.

B4.4 To make recommendations to the Authority on issues of Member conduct, where these arise out of its consideration of matters referred to in paragraphs B4.1 – B4.3 above.

B4.5 To make recommendations to the Authority on the Authority's Code of Conduct for Members and related policies or protocols.

B5 Standards Committee Hearing Panel

The Standards Committee Hearing Panel will have the following roles and functions:

B5.1 To decide (in accordance with the Authority's Determination Procedure) whether a Member of the Authority has or has not failed to comply with the Authority's Code of Conduct for Members.

B5.2 Following a decision by the Hearing Panel that a Member of the Authority has failed to comply with the Authority's Code of Conduct for Members, to decide whether to take action in relation to the Member and, if so, what action to take or recommend the Authority to take.

C Delegation of Powers to Officers

C3 Director of Corporate Services

C3.1 The Director of Corporate Services is authorised:

- a) to act in relation to the extension of compassionate leave for any employee of the Authority;
- b) to approve special leave for any employee of the Authority;
- c) to authorise relocation expenses;

- d) to approve arrangements for employees of the Authority to undertake election duties;
- e) to make minor amendments to Human Resources policies to reflect legislative changes or to remove any inconsistency or ambiguity;
- f) to ensure that the Authority makes appropriate insurance arrangements;
- g) to determine Lawful Development Certificate applications;
- h) after consultation with the Head of Park Management as necessary, to decide whether or not to make a Definitive Map Modification Order under the Wildlife and Countryside Act 1981;
- i) to make or refuse to make Public Path Orders under the Highways Act 1980 or the Town and Country Planning Act 1990;
- j) to confirm unopposed orders under the Highways Act 1980, the Wildlife and Countryside Act 1981 and the Town and Country Planning Act 1990; to submit opposed orders under the 1981 Act or the 1990 Act to the Secretary of State; and in respect of opposed orders under the 1980 Act, either to decide not to confirm them, or to submit them to the Secretary of State as opposed orders;
- k) to empower the service of statutory notices to ascertain the legal interest of any person in land;
- l) to institute, defend, participate in, settle or withdraw from any legal proceedings in the name of the Authority or an individual Officer of the Authority at Common Law or under any enactment, statutory instrument, order or byelaw conferring functions upon the Authority or in respect of functions undertaken by them and to lodge an appeal against any decision taken in such proceedings. For the avoidance of doubt this authority extends to the taking of all procedural steps, including the service of notices, statutory or otherwise, counter-notices and Notices to Quit;
- m) to authorise Officers of the Authority to prosecute or defend or appear in any legal proceedings by virtue of the provisions of Section 223 of the Local Government Act, 1972 and to appear on behalf of the Authority at any inquiries, tribunal or other body responsible for matters affecting the Authority;
- n) to authorise prosecutions for obstructions to Rights of Way under Section 137 of the Highways Act 1980;
- o) to act as proper officer for the receipt of written requests by Members for a dispensation under Section 33 of the Localism Act 2011 to speak, or to speak and vote, notwithstanding that the Member has a disclosable pecuniary interest;
- p) following receipt of a written allegation that a Member of the Authority has failed to comply with the Authority's Code of Conduct for Members, to consider (in accordance with the Authority's Procedure for Local Assessment of Member Code of Conduct Complaints) what action, if any, should be taken, and in particular whether an investigation should be undertaken;
- q) to appoint three Members to a Standards Committee Hearing Panel who will determine whether the subject Member has breached the Code of Conduct and if so, whether any sanction should be applied;
- r) to set legal charges in connection with Section 106 Agreements; and
- s) to make minor amendments to the Scheme of Delegation to reflect legislative changes or to remove any inconsistency or ambiguity.