

## **Procedures for dealing with allegations of a breach of the Members' Code of Conduct**

### **Introduction**

This procedure sets out the arrangements which will be followed by the Monitoring Officer and the Member Conduct Panel when dealing with allegations that a member or co-opted member (the 'subject member') has failed to comply with the Members' Code of Conduct.

This procedure is intended to ensure that complaints are dealt with fairly, proportionately, transparently and impartially, in accordance with the principles of natural justice and the Council's duty under section 27 of the Localism Act 2011 to promote and maintain high standards of conduct by members and co-opted members.

The Council will aim to deal with complaints as promptly as possible, recognising that the time required will depend on the nature, complexity and seriousness of the complaint, the availability of parties and witnesses, whether further information is required, whether an Independent Person or external investigator is involved, and whether any related police or regulatory process is ongoing. Indicative timescales may be set out in guidance and may be extended where necessary in the interests of fairness and proper consideration of the complaint.

This procedure will be kept under review by the Monitoring Officer and reported to the Constitution & Ethics Committee for amendment where necessary, including in light of changes in legislation, statutory guidance, national good practice, or significant changes to the Council's Constitution or standards arrangements.

A flowchart which sets out the arrangements that will be followed when dealing with each complaint is attached as **Appendix 1**.

### **Making a Complaint**

A Complaint Form and details of how to make a complaint are on the County Council's website <https://www.leicestershire.gov.uk/about-the-council/how-the-council-works/councillors-and-conduct/councillor-code-of-conduct>

A complainant is encouraged to use the complaint form, as this helps ensure that all relevant information is provided. However, a complaint will not be rejected solely because the form has not been used, provided it is made in writing and contains sufficient information to allow the Monitoring Officer to understand the allegation and assess whether it falls within this procedure.

A complaint should, so far as possible, identify the member or co-opted member complained about, explain what is alleged to have happened, when and where it happened, why the complainant considers the Code may have been breached, and provide any supporting documents, screenshots, witness details or other relevant information.

### **Support and reasonable adjustments**

The Council will seek to ensure that both complainants and subject members understand the procedure and are given appropriate procedural information during the process. This may include reasonable adjustments, signposting to relevant support, explanation of the process and, for the subject member, confirmation of the statutory right to seek the views of an Independent Person. The Council will not provide legal advice or advocacy to either party.

### **Independent Persons**

Independent Persons have been appointed to support the Council's complaint handling process. A protocol setting out the relationship between those Independent Persons and the County Council in the process, is attached as **Appendix 2**.

## **CONFIDENTIALITY**

In the absence of a specific statutory requirement regarding confidentiality under the Localism Act, the Council has the ability to set its own processes and can therefore resolve that all ongoing Code of Conduct complaints are subject to a requirement of confidentiality by all participants in the process until such time as the case is concluded and **any outcome is published or reported back to the Committee in accordance with this procedure**. A breach of this requirement may be a separate breach of the Code of Conduct.

**In applying these confidentiality provisions, the Monitoring Officer will have regard to fairness, natural justice, the public interest, data protection requirements, privacy rights and any risk of prejudicing an investigation or related process.**

The requirements for confidentiality and when a complaint will be made public are set out below and differ depending on the stage a complaint is at, and whether or not a member/coopted member has been found to have breached the Code.

## **1 - Receipt of a complaint by the Monitoring Officer**

### **Acknowledging receipt of a complaint and notifying the subject member**

1. The Monitoring Officer will acknowledge receipt of a complaint as soon as possible **and will provide the complainant with information about the next stage of the process. Where appropriate, the Monitoring Officer**

may also indicate the likely timescale for the initial assessment, recognising that timescales may vary depending on the nature, complexity and urgency of the complaint.

2. The Council will aim to deal with complaints as promptly as possible. Indicative timescales are not absolute and may be extended where necessary, including where further information is required, an Independent Person or external investigator is involved, the matter is complex or high profile, a related police or regulatory process is ongoing, or an extension is otherwise required in the interests of fairness.
3. Unless there are exceptional circumstances (e.g. there is a risk that by so doing an investigation may be prejudiced), the Monitoring Officer will tell the subject member that a complaint has been made about them and seek their views at the first opportunity. As a matter of fairness and in the interests of natural justice, subject to paragraphs 3 to 6 below, the subject member will usually be told:
  - that a complaint has been made about them.
  - the name of the complainant.
  - details of the allegation(s) made.
  - the relevant paragraphs of the Code of Conduct it is alleged they have breached.
  - that they have a statutory right to contact and seek the views of one of the Independent Persons appointed by the County Council at any point whilst the complaint is being considered.
  - Where the subject member is invited to provide initial comments, the Monitoring Officer will normally specify a response period, which may be extended where reasonable

#### Name of complainant

4. Requests by a complainant for their identity to be withheld will only be granted in exceptional circumstances and at the discretion of the Monitoring Officer, for example, when:
  - The complainant has reasonable grounds for believing they will be at risk of physical harm if their identity is disclosed;
  - The complainant suffers from a serious health condition and there are medical risks associated with their identity being disclosed;
  - The complainant is an officer working closely with the subject member and is afraid of the consequences for their employment prospects if their identity is disclosed, notwithstanding the County Council's Whistleblowing Policy.
5. If the Monitoring Officer decides to refuse a request for confidentiality, they may offer the complainant the option to withdraw their complaint, rather than proceed with their identity being disclosed.

6. In certain circumstances the Monitoring Officer may decide that the public interest in proceeding with an investigation outweighs the complainant's wish to have their identity withheld. In such cases the complainant will be notified of this decision as soon as possible.

Details of the allegation(s) made

7. The Monitoring Officer will decide the level of detail to provide to a subject member about the allegations made. They may not provide any information or may limit this if they consider that not doing so would be against the public interest or might prejudice a future investigation. Any decision to withhold or limit the details provided will be kept under review.

### **Anonymous complaints**

8. The Monitoring Officer will determine whether or not to consider an anonymous complaint. **Anonymity is distinct from confidentiality. An anonymous complaint is one where the complainant's identity is not known to the Council. A confidential complaint is one where the complainant's identity is known to the Council but is withheld from the subject member or others for a specific reason. Anonymous** complaints will not normally be considered unless the Monitoring Officer decides that the information or evidence provided indicates a serious or significant matter that requires consideration which can be satisfactorily dealt with without the need to interview the complainant.

### **Withdrawal of complaints**

9. Requests by a complainant to withdraw their complaint will be considered by the Monitoring Officer who will have the discretion to agree to this or not. In making that decision, the Monitoring Officer will have regard to:
  - Whether the public interest in taking some action on the complaint outweighs the complainant's desire to withdraw it.
  - Whether the complaint is such that action can be taken on it without the complainant's participation.
  - Whether there is an identifiable underlying reason for the request to withdraw the complaint, e.g. is there information to suggest that the complainant may have been put under pressure to withdraw the complaint.
  - Whether previous complaints of a similar nature have been made or upheld.

### **Multiple complaints**

10. If a number of complaints from different complainants are received about the same matter and/or subject member, the Monitoring Officer

will determine how best to consider these, making the most practical use of time and resources. They may group the complaints and consider these together and may refer them to the Member Conduct Panel for consideration at a single meeting.

11. The Monitoring Officer will use their discretion on whether to notify the complainants that other complaints have been received and whether or not these will be joined together.

### **Public access and communication with the press**

12. No comment will be made on whether or not a complaint has been received until a decision has been made about what action to take either by the Monitoring Officer or the Member Conduct Panel. Until this point the approach by the Monitoring Officer will be reactive and not proactive, and no comment on individual cases will be made.
13. In any event, no information will be released to the press in respect of a complaint until all parties have been informed.

### **Referral to the Police**

14. **Where the complaint concerns conduct that may amount to a criminal offence, including potential offences relating to Disclosable Pecuniary Interests, the Monitoring Officer may decide, at any point in the process, that referral to the police or other relevant agency is required.** The Monitoring Officer has the authority to do this without seeking views from elsewhere and shall have the discretion to determine whether or not the subject member and/or the complainant will be advised of the referral, taking into account advice from the police where appropriate. In some instances, proceeding with the conduct complaint will be put on hold until the outcome of the police investigation is known.

## **2 - Initial **Threshold/Jurisdictional** Test by the Monitoring Officer: **can the Council deal with the complaint?****

15. On receipt of a complaint, the Monitoring Officer *must* be satisfied that:
  - a. the complaint has been properly received in writing;
  - b. the complaint is against one or more named members or co-opted members of the Authority;
  - c. the named member or co-opted member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time;
  - d. the member or co-opted member was acting in their capacity as a member or co-opted member of the Authority at the time of the alleged misconduct (so far as this is ascertainable at this early stage);

- e. the complaint, if proven, would be a breach of the Code under which the member or co-opted member was operating at the time of the alleged misconduct.
16. If the complaint fails one or more of the above tests, the complaint cannot be considered further as a breach of the Code. The Monitoring Officer will inform the complainant as soon as possible that no further action can be taken and the reasons for this. **Where there is genuine doubt at this stage, the Monitoring Officer may proceed to early assessment and/or seek further information before reaching a final view.**
  17. The Monitoring Officer will also consider whether or not it is practicable and appropriate for the complaint to be dealt with under the Members' Code of Conduct. The Monitoring Officer may conclude that the complaint cannot/should not be dealt with under the Code because, for example:
    - Another procedure for dealing with complaints is more appropriate;
    - The remedy sought by the complainant is not available under the Members' Code of Conduct;
    - The complaint is about a decision or policy of the County Council, not the member as an individual.
  18. In these circumstances the Monitoring Officer may:
    - Advise the complainant of a proposed alternative remedy and seek the complainant's views on the way forward; or
    - Refuse to deal with the matter under this procedure, giving reasons for so doing.
  19. If it is not possible for the Monitoring Officer to determine whether or not a complaint satisfies the above tests without obtaining further information, the Monitoring Officer will proceed to consider the complaint, but will have the discretion to cease further action at any such time it becomes clear that the complaint fails one or more of the these tests.
  20. Where it is unclear whether the complainant wishes to make a formal complaint, the Monitoring Officer will contact the complainant to clarify the position and offer advice.

### **3 - Early Assessment by the Monitoring Officer: **should action be taken/possible informal resolution?****

21. The Monitoring Officer will consider the complaint against the Council's adopted Criteria and the public interest and **proportionality** factors set out in Appendix 3.

22. The Monitoring Officer can, if they consider it necessary and appropriate:
- Seek to informally confirm the basic facts of the allegation(s) made and obtain any necessary information required to determine whether the complaint merits further action or investigation;
  - contact the complainant for clarification of their complaint and ask them to provide such supporting information that the Monitoring Officer considers might be relevant;
  - enter into discussions with the subject member and any other person who they consider appropriate.

**Informal resolution does not normally involve a finding of fact or a finding that the Code has been breached, unless the subject member expressly accepts fault. It may include, depending on the circumstances, an apology, clarification, mediation, training, mentoring, advice from the Monitoring Officer, review of a protocol or procedure, or wider action to address governance or relationship issues. The Monitoring Officer will seek the views of the Independent Person and, where appropriate, may seek the views of both the complainant and subject member before deciding whether informal resolution is appropriate. Their views will be taken into account but neither party will have a veto on the proposed action. Where informal resolution is pursued, the Monitoring Officer will normally set a timescale and explain what will happen if the proposed action is not completed or is not considered satisfactory.**

### **Views of an Independent Person**

23. The Monitoring Officer will consult with one of the Independent Persons appointed by the County Council and seek their views on the complaint and the proposed course of action **before reaching a decision under paragraph 23. The Monitoring Officer will take those views into account but remains the decision-maker at this stage.**

### **Decision of the Monitoring Officer**

24. The Monitoring Office will reach one of the following decisions:
- a. To take no further action under this process;
  - b. To resolve the matter informally, if this is possible;
  - c. To refer the complaint to the Member Conduct Panel for further consideration, where (a) and (b) above do not apply.
25. The Monitoring Officer will write to the relevant parties informing them of their decision and the reasons for that decision. If they decide that no further action will be taken, or an agreed informal resolution has been reached, then the matter will be closed and the complainant will



have no right to a review of that decision. Where the Monitoring Officer's decision differs from the views of the Independent Person, the decision notification will record that the Independent Person has been consulted and will explain, in summary, the reasons for the decision reached.

#### **Public access and communication with the press**

26. Where a conclusion has been reached that the Code of Conduct has not been breached or where the Monitoring Officer concludes, following the initial assessment of a complaint, that no further action needs to be taken, the identity of the member will remain confidential. This is because there is no reason for making their identity public in these circumstances and no public interest in doing so.
27. Where a complaint has been informally resolved by agreement without the need for a formal investigation (this is usually by way of an apology which is offered and accepted) the identity of the member who is the subject of the complaint and a summary of the complaint will be reported to the Constitution & Ethics Committee as part of the Monitoring Officer's reporting regarding member conduct. It is considered to be in the public interest that these details are made public where there is an acknowledgement of fault on behalf of the relevant councillor. Where informal resolution does not involve an acknowledgement of fault, the Monitoring Officer will determine what, if any, anonymised information should be reported for oversight and learning purposes.

#### **4 - Referral by the Monitoring Officer to the Member Conduct Panel**

28. A meeting of the Member Conduct Panel will be convened as soon as possible if the Monitoring Officer decides this is necessary.
29. To ensure that all complaints are dealt with in a fair and balanced way the Member Conduct Panel will have regard to the Criteria For Assessing Complaints attached as Appendix 3.
30. The Monitoring Officer will prepare an appropriate report for the Panel to consider and this will include or summarise any views obtained from one of the Independent Persons, unless there is a lawful reason for withholding or limiting the information provided.

#### **Access by the Public to reports and the meeting of the Panel**

31. The Panel may have to consider unfounded and potentially damaging complaints about an individual member/co-opted member which it would not be appropriate to make public at this early stage of the process and prior to an investigation having been carried out. Therefore, the usual approach will be that all information will be



regarded as 'exempt' under paragraphs 1 and 10 of Part 1 of Schedule 12A of the Local Government Act 1972 and the public will not be entitled to be present at the meeting.

### **Independent Persons attendance at the Panel Meeting**

32. The Monitoring Officer will provide the Independent Person with a copy of their report and where appropriate, invite them to attend the meeting of the Member Conduct Panel so that their views can be sought by the Panel as they consider necessary.

### **Decision of the Member Conduct Panel**

33. The Member Conduct Panel will reach one of the following decisions:

- a. No further action be taken;
- b. Referral for other action;
- c. Referral for investigation.

34. A decision to refer a matter for investigation or other action is not a finding that the Code has been breached. It means only that the Panel considers, applying the adopted criteria, that further action is warranted.

35. The complainant has no right to a review of the decision taken by the Member Conduct Panel.

#### Referral for Other Action

36. The Member Conduct Panel can decide that **action other than** an investigation should be taken and it can refer the matter back to the Monitoring Officer to carry this out and to provide the complainant with appropriate advice.
37. It may not always be in the interests of good governance to undertake or complete an investigation into an allegation of misconduct. The information obtained by the Monitoring Officer when carrying out their early fact finding exercise may have revealed sufficient information to allow the Panel to determine that any further investigation would be of little or no benefit.
38. The action decided upon does not have to be limited to the subject member if the allegation(s) indicate a wider problem within the Authority. In such cases the Panel may ask that the issues arising from the complaint be further addressed by the appropriate officers/bodies.
39. **Other action may include, but is not limited to, advice, training, mentoring, mediation or conciliation, an apology or clarification, review of procedures or protocols, or wider action where the complaint**

indicates broader governance, relationship or cultural issues. Where the Member Conduct Panel considers that an apology is an appropriate and proportionate form of other action, it may ask the subject member to provide an apology and may specify whether that apology should be made privately to the complainant, to another identified person or body, or publicly. Where the Panel considers that a public apology is appropriate, it may ask that the apology be provided in a form suitable for publication on the Member Conduct Panel's webpage or other appropriate part of the Council's website, subject to any necessary consideration of confidentiality, data protection, privacy, fairness and the public interest. Where no investigation has taken place, other action will not normally be expressed in terms that imply a finding that the Code has been breached.

40. Where the Member Conduct Panel requests a public apology as part of an informal resolution or as other action, the apology may be published on the Member Conduct webpage for a period of up to three months, unless the Panel considers that a longer period (not exceeding six months) is justified by the seriousness of the matter and the public interest in publication.

#### Referral for Investigation

41. If the Panel decides to refer the complaint to the Monitoring Officer for investigation, the Monitoring Officer will write to the complainant, the subject member and any other relevant parties informing them of the Panel's decision, the reasons for that decision and advising them who will be responsible for conducting the investigation.

#### Conflicts of interest

42. Where a potential conflict of interest arises involving the Monitoring Officer, Deputy Monitoring Officer, Independent Person, investigator, Panel member or other person involved in the process, appropriate steps will be taken to preserve fairness and independence. This may include appointing another officer, an external investigator, external legal adviser, or the Monitoring Officer of another authority.

## **5 - The Investigation**

### **Conducting the Investigation**

43. The Monitoring Officer will need to ensure that the Member Conduct Panel can be independently advised throughout the process. It is unlikely that an investigation can be carried out by the same person who then advises the Panel at a hearing if there is any dispute as to the facts or as to whether there has been a breach of the Code. The Monitoring Officer will therefore usually delegate the conduct of the

investigation to someone else.

44. The investigation can be carried out by the Monitoring Officer or the - Deputy Monitoring Officer, another officer of the County Council, or it could be commissioned to be carried out by an external investigator.
45. The Monitoring Officer may issue guidance to the investigator on the conduct of the investigation and the parameters within which this should be carried out. **The scope of the investigation should be sufficiently clear to allow the investigator, complainant, subject member and Independent Person to understand the issues being investigated.**

### **Findings of the Investigator**

46. On completion of the investigation, the investigator must make a finding in their report as to whether or not the subject member has failed to comply with the Code of Conduct. **The investigation report should normally set out the complaint, relevant Code provisions, evidence considered, findings of fact, analysis, and the investigator's conclusion.**

#### No Breach of the Code

47. If the investigator concludes that there has been no breach of the Code, the Monitoring Officer will have the discretion to determine whether or not this is reasonable and whether to refer the report to the Member Conduct Panel for further consideration at a hearing. In cases where the investigation has been conducted by the Monitoring Officer, discretion to determine whether or not the findings of that investigation is reasonable and whether to refer the report to the Member Conduct Panel will be exercised by the Deputy Monitoring Officer.
48. Before making this decision, the Monitoring Officer (or Deputy Monitoring Officer) *will* consult with an Independent Person appointed by the County Council (and the Chairman of the Member Conduct Panel that referred the matter for investigation).
49. If the Monitoring Officer (or Deputy Monitoring Officer) decides that no further action should be taken, the complainant, the subject member and the members of the Member Conduct Panel will be notified of this and the reasons for that decision as soon as possible.
50. The complainant will have no right to a review of this decision.

#### A Breach of the Code

51. If the investigator concludes that there has been a breach of the Code, the Monitoring Officer will consider whether it is appropriate and necessary to hold a formal hearing, or whether the matter can be

otherwise resolved. Where the Monitoring Officer considers it appropriate, a hearing will be held before the Member Conduct Panel.

52. If the Monitoring Office considers that the matter can be otherwise resolved, before making a decision not to hold a hearing, the Monitoring Officer will first consult with one of the Independent Persons and the Chairman of the Member Conduct Panel that agreed an investigation should be undertaken into the complaint.

### **Public access to the investigation report**

53. Where a conclusion has been reached that the Code of Conduct has been breached and is to be considered further by the Member Conduct Panel (alternative resolution not being appropriate/possible), the investigation report will remain confidential until such time as the hearing into the complaint takes place. This is to avoid “trial by media” in advance of a case being heard so that panel members are not prejudiced by anything that is published in the media.
54. In other circumstances where no further action is intended, or the matter is otherwise resolved, the Monitoring Officer (or where appropriate the Deputy Monitoring Officer) will determine to what extent the investigation report can and shall be made public. In considering this issue the Monitoring Officer (or Deputy Monitoring Officer) will consult with the member concerned and with the Chair of the **Member Conduct Panel**. Any decision in relation to publication will take into account the public interests in such publication and privacy and the Human Rights Act implications arising.

## **6 – Hearings of the Member Conduct Panel**

### **A – The Pre-Hearing Process**

55. After completion of the final investigation report the Monitoring Officer will:
  - a. Send a copy of the final investigation report to the subject member;
  - b. Request a written response from the subject member to the findings contained in the investigation report and any evidence in support of their argument which they intend to rely on at the hearing;
  - c. Remind the subject member of their statutory right to seek the views of one of the Independent Persons appointed by the County Council regarding the complaint;
  - d. Ask the subject member whether they consider that any part of the investigation report or other relevant documents should be withheld from the public and whether any part of the hearing should not be held in public and the reasons for this;

- e. Ask the subject member to identify whether they disagree with any of the facts contained in the investigation report and to outline what these are and the reasons why they disagree;
  - f. Advise the subject member that they should attend the hearing and give evidence to the Panel either verbally or in writing;
  - g. Ask the subject member whether they propose to call any witnesses in support of their case and if so, to provide details of these;
  - h. Ask the member to provide in writing the views of any Independent Person which they have contacted and advise them that this Independent Person will be invited to attend the hearing.
  - i. **Inform the subject member of the proposed hearing procedure, including how evidence, witnesses, questions and submissions will be managed, subject to any directions given by the Panel.**
56. The Monitoring Officer will highlight to the subject member that, if they do not respond to the above requests for information within the timescales provided, the Member Conduct Panel may decide not to consider new issues raised or introduced late or at the hearing, unless there are particular circumstances that have prevented the member from submitting the information requested.
57. Once received, the Monitoring Officer will send a copy of the subject member's response to the investigator and ask them to provide:
- a. A response to the subject member's representations;
  - b. Confirmation that they are able to attend the hearing to respond to any questions raised by the Panel;
  - c. Details of any witnesses they propose to call;
  - d. Confirmation of whether they consider that any part of the investigation report or other documentation should be withheld from the public and whether any part of the hearing should be held in private together with the reasons for that view.
58. **The Monitoring Officer may also seek clarification from the complainant or other relevant parties where this is necessary to ensure that the Panel has sufficient information to conduct a fair hearing.**
59. The Monitoring Officer *will* seek the views on an Independent Person at appropriate stages during the pre-hearing process.

## **B – The Hearing**

### **Public access to the Agenda, the investigation report and other papers to be considered by the Panel**

60. An Agenda for the hearing will be produced and circulated five clear working days before the hearing in accordance with the Authority's normal meeting procedures. The name of the subject member will be

detailed on the Agenda, published on the County Council's website and made available to the press.

61. The investigation report and all supporting papers to be considered by the Panel will be made public with the agenda unless the Monitoring Officer considers that some or all of this information should be treated as 'exempt' in accordance with Schedule 12A of the Local Government Act 1972.
62. The Monitoring Officer will prepare a hearing bundle which will contain all necessary information to support the Member Conduct Panel at the hearing and to enable it to make its decision. This will include the views obtained from the Independent Persons.

### **At the Hearing**

63. The hearing before the Member Conduct Panel will be in accordance with standing orders adopted by the Council.
64. The Panel has the ability to manage each hearing as it sees fit provided it acts fairly. For example, the Panel may limit the number of witnesses if it considers the number is unreasonable. The Panel will normally take a decision on whether to hear any particular evidence or witness only after having heard submissions from both parties on the issues.
65. The Panel will withdraw to consider the case and come to a decision in private at the conclusion of the hearing and, as appropriate, at any stage during the hearing process.

### Attendance of Independent Persons

66. The Independent Person(s) whose views have been sought at any stage will be required to attend the hearing in order to give their views to the Panel at the conclusion of the hearing and before it withdraws to make its decision.

### Non attendance by the subject member

67. If the subject member is not present, the Panel will determine whether or not to proceed in their absence, having taken into account any representations received, or to adjourn the hearing to another date.

### Raising new issues

68. The Member Conduct Panel will only allow either party to introduce new issues in exceptional circumstances.

### Witnesses

69. Either party if they intend to call witnesses may be asked by the Monitoring Officer to provide an outline or statement of the evidence their witnesses' intend to give at the hearing. If either party does not give prior notice to the Monitoring Officer that they intend to call witnesses as part of the Pre-hearing Process above, the Member Conduct Panel may resolve that it will not hear evidence from such witnesses.

### Representation

70. Legal representation will not normally be allowed before hearings of the Member Conduct Panel. **However, the Panel may permit legal or other representation where it considers this necessary in the interests of fairness, having regard to the seriousness or complexity of the matter, any equality or vulnerability issues, the capacity of the subject member to present their case, and the potential consequences of the hearing.**

### **Decision of the Member Conduct Panel**

71. If the Panel concludes that there has been no breach of the Code then no further action will be taken against the subject member and the matter will be regarded as resolved.
72. If the Panel concludes that there has been a breach of the Code, it will consider whether and what sanction would be appropriate to impose. The sanctions might include a formal letter to the subject member stating that there has been a breach of the Code, referral for other action, e.g. a requirement to attend training or to make a formal and public apology, or formal censure of the subject member. **Following a final decision after formal investigation, the Council will publish a decision notice unless there are lawful reasons for withholding some or all of the information. The notice will normally include a brief summary of the complaint, the relevant provisions of the Code, the findings of fact, the decision and reasons, the views of the Independent Person, and any sanction or other action imposed.**
73. **The sanctions available to the Panel are limited to those available under the current statutory framework and the Council's local arrangements. The procedure will be reviewed if further statutory sanctions or powers are introduced.**
74. Neither the complainant nor the subject member will have the right to a review of the decision of the Member Conduct Panel. **This position will be reviewed if legislation introduces a local right of review or national appeals mechanism.**



75. If the Member Conduct Panel refer the matter for other action and the subject member fails to comply with that decision within the specified timescale without a reasonable reason having been provided, the Monitoring Officer will report this fact to the Corporate Governance Committee as the body responsible for the promotion and maintenance of high standards of conduct by members and co-opted members within the County Council. **Failure to comply with a sanction or agreed action may also be relevant to any future assessment of conduct, where appropriate and lawful.**

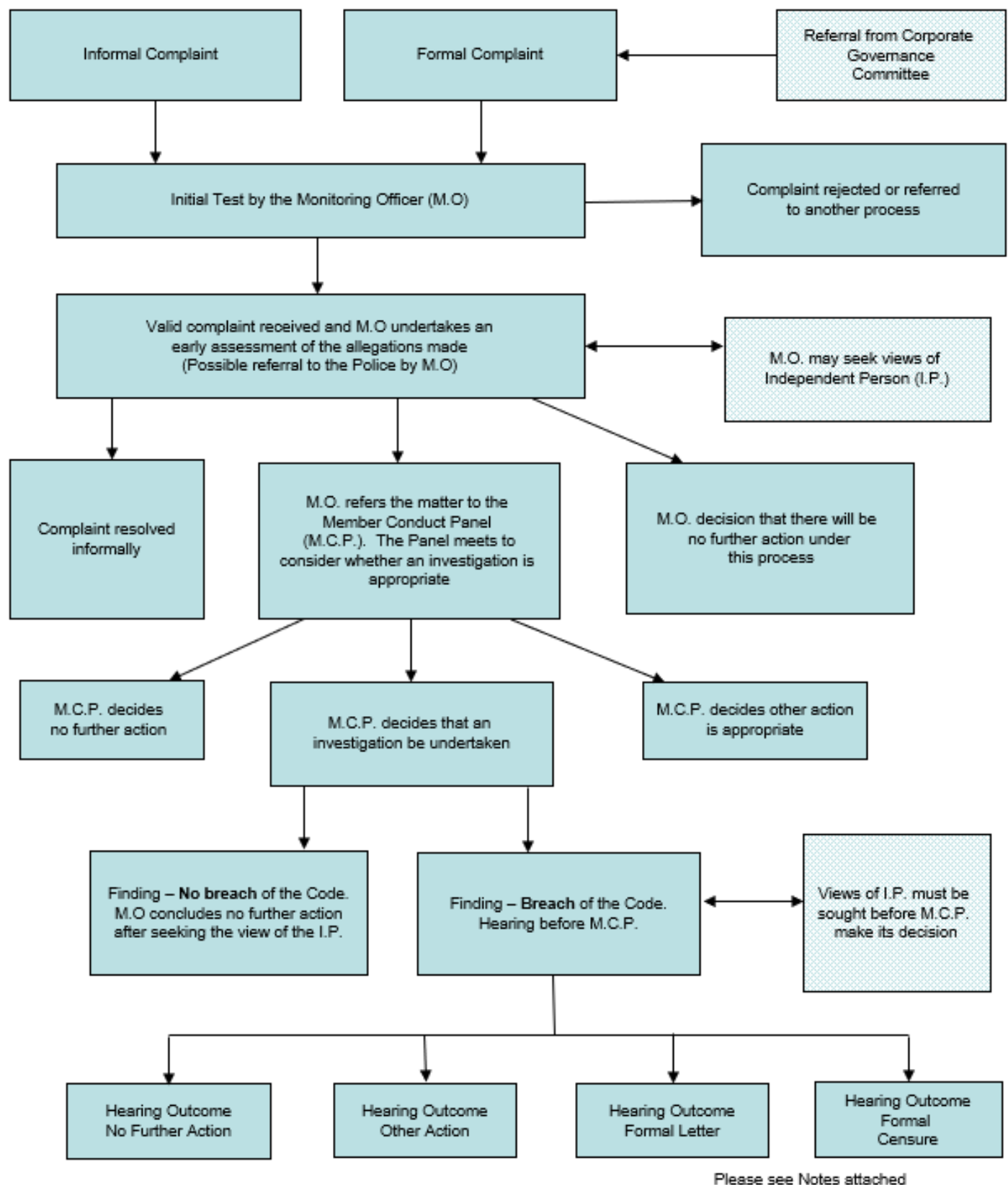
### **Communication with the press**

76. Until the conclusion of the process through publication of the Member Conduct Panel's decision, all requests for information or other contacts from the press should be referred to the Monitoring Officer.
77. Prior to any hearing members of the Member Conduct Panel, if approached by the press, should decline to comment and refer the press to the Monitoring Officer or the County Council's Communications Team.

### **Oversight and organisational learning**

78. **The Monitoring Officer will report periodically to the Constitution & Ethics committee on the operation of the member conduct arrangements. Reports may include complaint volumes, general themes, outcomes, learning points, training needs and any recommended changes to the Code, this procedure or related protocols. Where appropriate, information may be anonymised or reported confidentially to protect fairness, privacy and legal obligations.**
79. **The Monitoring Officer may also engage with Group Leaders, group whips or other senior members, as appropriate, to discuss standards issues, training needs and the promotion of high standards, without disclosing confidential complaint information, unless it is lawful and appropriate to do so.**

## **FLOW CHART FOR THE MEMBER CONDUCT PROCESS**



## Notes

- At every stage in the process, reasons for decisions will be given.
- Complaints may be made by members or officers of the County Council, members of the public or on referral from the Constitution & Ethics Committee.
- Members/Co-opted members who are the subject of a complaint will be advised of the allegations and their views sought at the first opportunity unless there are wholly exceptional circumstances, such as that member being seriously ill or unavailable or it is clear that the Monitoring Officer will conclude that no further action will be taken or there is a risk that by so doing an investigation may be prejudiced.
- At any stage of the process, if it becomes clear to the Monitoring Officer that the complaint should be referred to the police, he/she will then have authority so to do without seeking the views of the Member Conduct Panel or an Independent Person. In these circumstances, the member/co-opted member who is the subject of the complaint may not be advised of the referral.
- References to 'other action' include an apology or training for a member/co-opted member; other action is an alternative to formal investigation or may be an outcome (in some cases with a formal letter or censure) to a hearing.
- Legal representation will not normally be allowed before hearings of the M.C.P.
- An investigation may be carried out by the Monitoring Officer, the Deputy Monitoring Officer, another Officer of the County Council, or commissioned by the Monitoring Officer.



## **Leicestershire County Council**

### **Protocol for Independent Persons**

#### **1. Purpose and status**

This Protocol sets out the role of the Independent Person(s) appointed by Leicestershire County Council under section 28(7) of the Localism Act 2011, and how they will work with the Monitoring Officer, the Member Conduct Panel and members who are the subject of allegations under the Members' Code of Conduct.

It forms part of the Council's local standards arrangements for the purposes of sections 27 and 28 of the Localism Act 2011 and should be read together with the Procedure, the Members' Code of Conduct and the relevant provisions of the Council's Constitution. In the event of any inconsistency between this Protocol and the Procedure, the Procedure will take precedence unless and until it is amended by the Council or under delegated authority.

The purpose of the role is to support the Council in maintaining high standards of member conduct, and to provide an independent external view within the Council's standards arrangements. The Members' Code of Conduct forms part of the Constitution applies to councillors and co-opted members and is intended to promote high standards of behaviour consistent with the Seven Principles of Public Life.

This Protocol should be read alongside:

- Part 5A of the Constitution (Members' Code of Conduct);
- the Council's guidance on making a complaint about members;
- the Council's Member Conduct Panel procedures and practice; and
- any relevant officer employment procedure rules relating to statutory officer dismissal.

#### **2. Statutory basis for the role**

Under section 28 of the Localism Act 2011, the Council must have arrangements for investigating and deciding allegations that a member or co-opted member has failed to comply with the Members' Code of Conduct, and

those arrangements must include the appointment of at least one Independent Person. Before the Council makes a decision on an allegation that it has decided to investigate, the Independent Person's views must be sought and taken into account. In addition, the Council may seek the views of the Independent Person at other stages of its local procedure, and a member or co-opted member whose conduct is the subject of an allegation may seek the Independent Person's views in accordance with these arrangements.

A person is not eligible if they are, or within the previous five years have been, a member, co-opted member or officer of the Council, or of a parish council for which the Council is principal authority, or if they are a relative or close friend of such a person. The vacancy must be publicly advertised, the candidate must apply, and the appointment must be approved by a majority of full Council.

Leicestershire County Council has chosen to appoint a pool of Independent Persons, rather than relying on a single officeholder, to support its member conduct arrangements and to provide resilience and flexibility, including where a conflict of interest may arise. In September 2024 the Council approved a pool of six Independent Persons for a four-year term ending on 30 September 2028, following a joint recruitment exercise with the Leicester, Leicestershire and Rutland Combined Fire Authority.

### **3. Core role of the Independent Person**

The Independent Person's role is to provide an objective, impartial and external perspective on standards complaints and related governance issues. The role is consultative, not determinative: the Independent Person is not the decision-maker, does not investigate complaints, and does not vote on whether a complaint is upheld or what sanction should follow. Those decisions remain with the Council acting through its adopted procedures, including the Monitoring Officer and the Member Conduct Panel.

The LGA's Guidance on Member Model Code of Conduct Complaints Handling explains that Independent Persons are there to support councils on Code of Conduct complaints and standards issues, and that their involvement should help ensure fairness, proportionality, transparency and impartiality in the complaints process. The same guidance notes that a subject member may seek the Independent Person's views at any stage and that councils may seek those views at stages other than post-investigation.

The Independent Person is not an advocate for either the complainant or the subject member. Where a member who is the subject of an allegation seeks the Independent Person's views, the Independent Person may explain the process, the Code, and the nature of the standards framework, but should not

become the member's representative or advise them what to say in response to the complaint.

Where the Independent Person's views are sought by the Monitoring Officer or the Member Conduct Panel, those views should be recorded in writing, together with confirmation that they have been considered. Where a decision is taken which differs from the Independent Person's view, the reasons for that decision should be recorded.

#### **4. Role within Leicestershire County Council's complaint process**

The detailed complaint-handling process is set out in the Procedure for dealing with allegations of a breach of the Members' Code of Conduct. This Protocol does not replace that Procedure. Its purpose is to explain how the Independent Person will be involved within that process.

Complaints must be made in writing. The Monitoring Officer first determines whether the complaint is a valid complaint under the Code and undertakes such initial fact-finding as is necessary to decide whether it may be resolved informally, whether no further action is required, or whether further action should be considered. The Monitoring Officer **may** consult the Independent Person **at any stage** of the complaint-handling procedure.

**Informal resolution:** The Monitoring Officer may consult the appointed Independent Person when carrying out the initial assessment of a complaint, including when considering whether the matter may be resolved informally, whether no further action is appropriate, or whether the complaint should be referred to the Member Conduct Panel.

**No further action:** Following consultation with the appointed Independent Person, if the Monitoring Officer considers that no further action is required, both complainant and subject member are notified. There is no right of review under the Council's procedure.

**Referral to Member Conduct Panel for decision on next steps:** If, after consultation with the appointed Independent Person, the Monitoring Officer considers that further action may be required, the complaint may be referred to the Member Conduct Panel. The Panel will meet in private at that stage to consider whether an investigation is appropriate or whether another form of action should be directed.

**Invitation to attend Member Conduct Panel:** The appointed Independent Person may be invited to attend the private Member Conduct Panel meeting considering early assessment to outline their view on the complaint before the Panel decides whether to take no further action, direct "other action", or refer the matter onwards.

### **Role during an investigation**

**Commissioning an investigation:** The Monitoring Officer **may** consult the Independent Person before commissioning an external investigation.

**Deferring or ending an investigation:** The Monitoring Officer **will** consult the Independent Person before deciding to defer or end an investigation.

**Extensions:** Timetable extensions may be agreed, and the Monitoring Officer **may** consult the Independent Person about any significant extension.

**Draft investigation report:** Where the Member Conduct Panel decides to commission an investigation, the draft investigation report **will** be sent to the appointed Independent Person for comment. The Independent Person will be asked to confirm whether they are satisfied that the investigation is of an acceptable standard and within scope.

**Final report:** the final investigation report **will** be issued to the Independent Person.

**No breach finding:** If the investigator finds no breach, the Monitoring Officer **will** consult the appointed Independent Person when deciding whether any further action is required.

**Breach finding:** If the investigator finds a breach, the Monitoring Officer **will** consult the appointed Independent Person when deciding whether the matter should proceed to a hearing before the Member Conduct Panel.

**Hearing:** Where a complaint proceeds to a hearing, the Member Conduct Panel **must** seek and take into account the views of the appointed Independent Person before reaching its decision. The Independent Person's role at hearings is set out further in section 7 of this Protocol.

Reports to the Panel are usually treated as confidential until an investigation has been carried out resulting in a finding of breach. Where the Panel makes a finding of breach, it may impose or recommend outcomes in accordance with the Procedure and the Council's adopted arrangements.

## **5. Contact with the subject member**

Section 28 of the Localism Act 2011 allows a member or co-opted member whose conduct is the subject of an allegation to seek the views of the Independent Person. That statutory opportunity must be exercised in a way which preserves the fairness, confidentiality, integrity and impartiality of the Council's complaints process.

The Independent Person is not an adviser, advocate or representative for the subject member. The Independent Person may explain their role, the standards framework, the relevant Code of Conduct provisions and the procedure being followed and may give an independent view on issues within their role. The Independent Person must not advise the subject member how to respond to the complaint, how to present their case, what evidence to produce, what arguments to advance, or what outcome to seek.

Any contact between a subject member and an Independent Person should be arranged through the Monitoring Officer or Democratic Services. Direct contact should not take place unless authorised by the Monitoring Officer. This is to ensure that availability, confidentiality, conflicts of interest, consistency and proper record-keeping are managed appropriately.

Where a subject member seeks the Independent Person's views, the Independent Person should make clear at the outset that any substantive communication may need to be recorded and disclosed within the Council's member conduct process where fairness requires. Communications with the Independent Person are not automatically confidential.

The Independent Person should not receive confidential or one-sided representations on the merits of a complaint unless the Monitoring Officer has agreed the arrangements for doing so. Where the Independent Person receives information or representations which may be relevant to the complaint, the Monitoring Officer should be informed so that appropriate arrangements can be made for recording, disclosure and procedural fairness.

A brief written record should be made of any substantive contact, including the date, form of contact, attendees, broad matters discussed and any views given. Where a complaint has been referred to the Member Conduct Panel, the Panel should normally be informed that contact has taken place and, where relevant, be provided with any substantive views given by the Independent Person.

The Independent Person should immediately inform the Monitoring Officer if they consider that contact from a subject member, complainant or any other person is inappropriate, persistent, pressurising, or risks compromising their actual or perceived independence. The Independent Person's involvement must not be used by any party as a means of lobbying, influencing or applying pressure about the outcome of a complaint.

## **6. Independence, conflicts of interest and confidentiality**

The statutory scheme depends on the Independent Person remaining independent in fact and appearance. An Independent Person must therefore disclose to the Monitoring Officer, as soon as possible, any circumstance



which could call their independence or impartiality into question, including any prior relationship with the complainant, the subject member, or any material witness.

Where such a conflict exists, the Monitoring Officer should allocate the matter to another Independent Person from the Council's pool. The Council's use of a pool of six Independent Persons supports this approach and helps avoid the risk that one person is repeatedly drawn into cases where there may be conflicts or perceived bias.

The Council's public procedures indicate that complaints and reports are often handled in private at the assessment stage, and that confidentiality requests by complainants are considered carefully by the Monitoring Officer against fairness, natural justice and the public interest. The Independent Person must therefore treat all complaint information, papers and discussions as confidential, unless and until disclosure is authorised through the Council's procedures or is otherwise legally required.

## **7. Attendance at the Member Conduct Panel**

The Independent Person may be invited to attend meetings of the Member Conduct Panel where their views are required or would assist the Panel in carrying out its functions under the Council's member conduct arrangements.

At an early assessment meeting, the Panel will usually meet in private and the complainant and subject member will not normally be present. At that stage, the Independent Person's role is to assist the Panel by providing an independent view on the appropriate next step under the Procedure, including whether no further action, informal resolution, other action or investigation may be appropriate. The Independent Person does not take part in the Panel's decision and must not vote.

Where a complaint proceeds to a hearing, the Independent Person's role is different. The Panel must seek and take into account the views of the Independent Person before reaching its decision on an allegation that has been investigated. At a hearing, the Independent Person's views should normally be given in the presence of the parties, so that the process is fair and transparent. The Independent Person should not retire with the Panel during its private deliberations and should not participate in the Panel's decision-making.

The Independent Person may be asked questions by the Panel to clarify their views. They should avoid entering into adversarial exchanges with the parties or appearing to act as investigator, legal adviser, advocate for either party, or decision-maker. This preserves the distinction between the roles of the Monitoring Officer, any investigator, the Independent Person and the Panel.

The Panel's decision notice should record that the Independent Person's views were sought and taken into account. Where the Panel's decision differs from the Independent Person's view on a material issue, the reasons for that difference should be recorded.

## **8. Sanctions and outcomes**

If the Member Conduct Panel concludes that a member has failed to comply with the Code, the Council's public guidance says it may impose or recommend a range of outcomes, including: a formal letter, censure, a written apology, training, restrictions on the member's access to Council resources, and recommendations concerning committee appointments, Cabinet membership, outside appointments, premises access and contact with officers.

The Independent Person may properly offer a view on the appropriateness and proportionality of any proposed outcome, but the final decision remains with the Council acting through its adopted procedures.

## **9. Role in statutory officer dismissal cases**

Independent Persons appointed under section 28(7) of the Localism Act 2011 also have a separate statutory role in relation to the proposed dismissal of the Council's Head of Paid Service, Monitoring Officer or Chief Finance Officer.

This is a distinct function from the Independent Person's role in member conduct complaints. When an Independent Person is invited to serve on an independent panel in connection with the proposed dismissal of a statutory officer, they are acting under the statutory officer dismissal arrangements, including the Local Authorities (Standing Orders) (England) Regulations 2001 as amended, and the Council's relevant Officer Employment Procedure Rules. They are not acting under the Members' Code of Conduct complaints procedure.

Where appointed to such a panel, the Independent Person's role is to contribute to the panel's advice, views or recommendations in accordance with the applicable statutory officer dismissal procedure. Before voting on the dismissal of a statutory officer, full Council must take into account the advice, views or recommendations of the panel, any conclusions arising from an investigation, and any representations from the officer concerned.

The practical arrangements for statutory officer dismissal cases will be dealt with separately from member conduct complaints. Information received by an Independent Person in one role must not be used in another role unless this is authorised, lawful and consistent with the requirements of fairness, confidentiality and data protection.

## 10. Support, training, communications and practical arrangements

The Monitoring Officer and Democratic Services will support the Independent Persons so that they can perform their role effectively within the Council's member conduct arrangements.

Independent Persons will be provided with access to relevant material, which may include:

- the Council's Constitution;
- the Members' Code of Conduct;
- the Procedure for dealing with allegations of a breach of the Members' Code of Conduct;
- this Protocol;
- relevant LGA guidance and standards material;
- recent relevant decisions or learning points from completed cases; and
- any other briefing or training material considered necessary by the Monitoring Officer.

The Monitoring Officer will arrange induction and periodic briefing or training for Independent Persons as appropriate. The Monitoring Officer may also meet with the Independent Persons individually or collectively from time to time to discuss the operation of the standards arrangements, learning from completed cases and any relevant changes in legislation, guidance or local procedure.

The Independent Person must treat all complaint information, reports, papers, discussions and correspondence as confidential unless disclosure is authorised through the Council's procedure, required by law, or necessary to ensure fairness in the handling of a complaint.

All media enquiries or requests for comment relating to member conduct complaints, the role of the Independent Person, or any matter in which an Independent Person has been involved must be referred to the Monitoring Officer. The Independent Person must not comment to the media or make public statements about any complaint or standards matter without the prior agreement of the Monitoring Officer.

The Independent Person may, where appropriate and with the agreement of the Monitoring Officer, support informal resolution, mediation, conciliation or training connected with conduct issues, provided that this does not compromise their independence or their ability to give an impartial view at any later stage of the same matter.

Where the Independent Person is involved in a matter before the Member Conduct Panel, they may receive the relevant agenda, report, papers and minutes relating to that matter, subject to confidentiality and access-to-

information requirements. The Independent Person may suggest to the Monitoring Officer or the Chair matters relevant to the operation of the member conduct arrangements which may merit future consideration by the Panel or the Corporate Governance Committee.

The Independent Person may raise concerns about the operation of the standards arrangements with the Monitoring Officer. Where the concern relates to the Monitoring Officer, or cannot appropriately be addressed by the Monitoring Officer, the Independent Person may raise the matter with the Chief Executive.

The Council may consult Independent Persons on proposed changes to the Members' Code of Conduct, the complaints procedure or this Protocol where their practical experience would assist.

The Independent Person will be given access to such confidential information as the Monitoring Officer considers reasonably necessary for the proper discharge of their role, subject to confidentiality, data protection, legal professional privilege and the requirements of fairness.

The Independent Person must declare any general or case-specific interests to the Monitoring Officer as soon as they arise. The Monitoring Officer will maintain appropriate records of Independent Person interests.

The Independent Person is treated as an officeholder for the purposes of the role and is covered by the Council's indemnity arrangements when acting reasonably, in good faith and within the scope of this Protocol.

## **11. Review of this Protocol**

This Protocol will be reviewed periodically by the Monitoring Officer and may be updated to reflect changes in legislation, statutory guidance, LGA guidance, the Council's Constitution, the Members' Code of Conduct, the complaints procedure or operational learning from the member conduct process.

## **PUBLIC INTEREST AND PROPORTIONALITY CRITERIA FOR ASSESSING COMPLAINTS**

**In deciding whether further action is warranted, the Monitoring Officer and/or Member Conduct Panel will consider whether it is in the public interest and proportionate to pursue the matter. Relevant factors may include the seriousness of the allegation, the evidence available, whether the alleged conduct forms part of a pattern of behaviour, the impact on individuals and on public confidence, whether informal resolution is realistic, whether the matter raises wider governance or training issues, and the likely benefit of investigation compared with the resources involved. The criteria set out below will be used by the Monitoring Officer and the Member Conduct Panel to assess complaints and decide whether they should be investigated.**

1. Where the information provided is not sufficient to make a decision as to whether the complaint should be referred for investigation or other action, no further action will be taken on the complaint. If further information is received, the matter will be reconsidered.
2. Where the member complained about is no longer a member of the authority but is a member of another authority, the complaint will be referred to the Monitoring Officer of that authority to consider.
3. Where the matter complained about has already been subject to a previous investigation or other action, it is unlikely that further action will be warranted unless substantial new evidence is produced by the complainant and there is something more to be gained by pursuing the matter further.
4. Where a considerable period of time has passed since the alleged conduct and there would be little benefit in taking action now, it is likely that further action will not be warranted.
5. Where the complaint is considered too trivial or not sufficiently serious **to justify further action under this procedure** it is unlikely that further action will be warranted. Where a complaint is judged to be relatively minor a balance needs to be drawn between the need to address the complaint against the resources which might be involved in undertaking an investigation and a hearing.
6. Where a complaint appears to be malicious, politically motivated or tit for tat, it is unlikely that further action will be warranted, unless the behaviour alleged is exceptionally serious or significant. **However, the fact that a complaint arises in a political context will not, of itself, mean that no further action should be taken.**

7. Where a complaint relates to the content of a political leaflet, it is unlikely that further action will be warranted unless the contents enter the realm of extreme and deliberately offensive remarks about other people.
8. Where a complaint relates to name calling between members or the use of rude or inappropriate language, it is unlikely that further action will be warranted, unless there is a special factor to the allegation such as a threat of violence.
9. Complaints that come from council decisions, the implementation of council policy (even where this is apparently flawed), the competence of members or the accuracy of their statements will not usually warrant investigation.
10. Where the complaint alleges bullying, harassment, discrimination, intimidation, misuse of position, compromise of officer impartiality or conduct which may significantly affect public confidence in the Council, this may weigh in favour of further action, subject to the evidence available and the overall proportionality of proceeding.
11. A complaint which might appear less serious in isolation may warrant further action where it forms part of an alleged pattern of similar behaviour or indicates wider governance, cultural or relationship issues.
12. Where the complaint concerns political expression, debate or comment on matters of public interest, the Monitoring Officer and/or Member Conduct Panel will have regard to the importance of freedom of expression, while recognising that this does not prevent action being taken where the alleged conduct may amount to a breach of the Code.
13. An anonymous complaint should only be referred for investigation or some other action if it includes documentary or photographic evidence indicating an exceptionally serious or significant matter.

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