

COUNCIL OF THE ISLES OF SCILLY

PROCEDURES FOR THE ASSESSMENT AND REVIEW OF ALLEGATIONS OF BREACHES OF THE MEMBERS' CODE OF CONDUCT

Introduction

This document sets out the procedures that the Council of the Isles of Scilly will apply in discharging its legal responsibilities under the Localism Act 2011 to determine allegations of breaches of the Members' Code of Conduct and, where appropriate, refer those allegations for investigation.

The procedures are arranged in the following sections:

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1 Making a complaint

1.1 The following points should be noted before making a complaint under the Code of Conduct:

- (i) complaints can only be accepted if they relate to a member's behaviour whilst they are acting, or giving the impression that they are acting, in their official capacity. Complaints which appear to be against a member acting in their private capacity will be rejected;
- (ii) determinations under these procedures can only relate to a member's conduct and cannot comment upon or interfere with any decisions they have been involved in as this is specifically excluded under the Localism Act 2011. For example, if a complaint relates to a member's behaviour in relation to the determination of a planning application, the consideration of a complaint under this procedure will relate only to the member's conduct and it will not comment on the decision relating to the planning application, save to the extent necessary to explain the determination of the code of conduct complaint.
- (iii) as a result, complaints relating to a function of the Council of the Isles of Scilly which sits outside of these procedures will be dealt with in accordance with the Council's relevant internal procedures, but we will tell you to whom the complaint has been referred; and

1.2 All complaints must be in writing and we can supply a complaints form for you to use if you wish. Written complaints can be posted or delivered to:

The Monitoring Officer
Council of the Isles of Scilly
Town Hall
St Mary's
Isles of Scilly
TR21 OLW

Or complaints can be emailed to: simon.mansell@cornwall.gov.uk

- 1.3 We will assist you if you have a disability that prevents you from making a complaint or makes it difficult for you to put your complaint in writing. We can also help if English is not your first language.
- 1.4 If you are unable to make a written complaint, we will offer to put your complaint into writing, and you will be asked to sign or otherwise indicate to our satisfaction that you want to make a complaint in those terms as set out and it will be your responsibility to provide any supporting documentation. If you are unwilling to sign the documentation or indicate your satisfaction the complaint will be rejected unless the Monitoring Officer is satisfied that the circumstances justify an exception being made.

Anonymous complaints

- 1.5 Anonymous complaints will be rejected but if such complaints suggest that a criminal offence has been committed the Monitoring Officer will determine whether it is appropriate to refer the complaint to the police or some other relevant body.

Self reporting

- 1.6 The nature of the ethical standard regime is for a complaint to be assessed and if proven a remedy to be offered to the Complainant for the actions of the Subject Member. Therefore, it is difficult for a complaint to be assessed that has been self referred by a member and may prevent a further complaint from being brought by someone aggrieved by the Members actions.
- 1.7 As a result, members who consider they may have breached the Code are encouraged to seek advice from the Monitoring Officer in order to determine what actions may be open to them.

2 Complainant confidentiality

- 2.1 Usually, the Subject Member (the Councillor whom the complaint has been made against) will be told at the outset who has complained about them.

- 2.2 If a Complainant asks for their identity to remain confidential it will be considered on its merits and the following will be taken into consideration:
- (i) whether the Complainant reasonably believes that they, or somebody closely connected to them, will be at risk of harm if their identity is disclosed;
 - (ii) that the Complainant is reasonably concerned about the consequences to their employment, or that of somebody closely connected to them, if their identity is disclosed;
 - (iii) that the Complainant, or somebody closely connected to them, suffers from a medical condition and there is evidence of medical risks associated with their identity being disclosed or confirmation from an appropriate medical professional that that is the case;
 - (iv) whether the specifics of the complaint will disclose who has made the complaint even without confirming their identity; and
 - (v) the public interest: In some cases the public interest in proceeding with the complaint may outweigh the Complainant's wish to have their identity withheld.
- 2.3 If confidentiality request is agreed, the complaint will be progressed without the Complainant's identity being disclosed.
- 2.4 If it is not considered appropriate to grant confidentiality the Complainant will be offered the opportunity to withdraw the complaint, but this is subject to the determination made by the Monitoring Officer under paragraphs 2.2 and 3.5.
- 2.5 If confidentiality is initially granted and a complaint then rejected confidentiality will be maintained.

3 The public interest test

- 3.1 When a complaint is received, the Monitoring Officer will carry out a public interest test against which complaints will be filtered to determine whether the allegation is within these procedures and, if so, whether it should be rejected or proceed to formal assessment. This will normally be done within 10 working days.

- 3.2 Complaints will be rejected if they do not satisfy the following three initial tests:
- (i) Is the complaint about one or more named members of a relevant authority?
 - (ii) Was the Subject Member in office at the time of the alleged conduct?
 - (iii) If proven, would the complaint disclose a breach of the Code of Conduct?
- 3.3 When there is insufficient information to make a determination as to whether the conduct complained of may demonstrate a potential breach of the Code of Conduct the Monitoring Officer may offer the Complainant a further 14 days to provide further information to support the complaint. If further information is not provided within 14 days of being requested, the complaint will be rejected. The use of this paragraph 3.3 should not be taken as an assessment of the complaint.
- 3.4 Should the Monitoring Officer be satisfied that there is sufficient information to make a determination that the complaint satisfies the initial tests it will then be considered further and will usually be rejected at this stage if, in the opinion of the Monitoring Officer, any of the following applies:
- (i) it appears the complaint relates to a member acting in their private capacity;
 - (ii) the complaint is the same or substantially the same as a complaint previously dealt with, whether submitted by the Complainant or some other person;
 - (iii) it is over 6 months since the alleged behaviour occurred and it would be unfair, unreasonable or otherwise not in the public interest to pursue unless there are, in the Monitoring Officer's opinion, exceptional circumstances, such as there has been a failure to declare a disclosable pecuniary interest, which would warrant the complaint being progressed;
 - (iv) the complaint is considered, on an objective basis, to be trivial and there are no public interest reasons to pursue it;
 - (v) the complaint discloses such a minor technical breach of the Code of Conduct that it is not in the public interest to pursue;

(vi) the complaint is or appears to be malicious, politically motivated, tit-for-tat or otherwise submitted with an improper motive and the complaint is not considered to disclose sufficiently serious potential breaches of the Code of Conduct, such as the failure to declare a disclosable pecuniary interest, to merit further consideration;

(vii) the Subject Member has remedied or made reasonable endeavours to remedy the issues to which the complaint relates, and the complaint does not disclose sufficiently serious potential breaches of the Code of Conduct to merit further consideration;

(viii) the complaint is about a person who is no longer a member of a relevant authority and there are no overriding public interest reasons to merit further consideration;

(ix) the complaint is from a councillor about another councillor of their council and the Monitoring Officer considers the allegations to be such that the issues between the councillors ought to be capable of resolution between them; and

(x) it would otherwise be inappropriate to expend the Council's resources on determining the complaint having regard to the circumstances of the complaint, any previous related complaints and the public interest.

3.5 Section 4 of these procedures will be applied to those complaints that are not rejected at this stage.

3.6 If a complaint is rejected at this initial stage the Monitoring Officer will:

- Seek the views of an Independent Person on the rejection of the complaint;
- write to the Complainant to advise that the complaint will not be progressed, explaining why;
- write to the Subject Member with details of the complaint and Complainant advising that the complaint will not be progressed and explaining why

3.7 there will be no right of appeal with regards to the rejection of a complaint at this stage of the process and any complainant which may not agree with the rejection of their complaint can address these concerns to the Local

Government and Social Care Ombudsman.

- 3.8 Conflicts of Interest; should any officer who is involved with any of the steps set out within these assessment procedures consider that they have a conflict of interest they will advise the Monitoring Officer of the interest and take no further part in dealing with the complaint that has created the conflict.

4 Assessment of Complaints

Behaviour that constitutes a criminal offence

- 4.1 Where a complaint is received which discloses behaviour that may constitute a criminal offence the Monitoring Officer will determine whether to refer such allegations to the police or other appropriate body. If the conduct relates to the failure to declare a disclosable pecuniary interest this will be done by initially undertaking the assessment of the complaint in the manner set out below prior to any referral in order to determine if a potential failure to declare a disclosable pecuniary interest has occurred.
- 4.2 Where a complaint is referred to the police or some other body the Council will not take any action on the complaint, other than the referral, until the body to whom the complaint was referred to decide to take no action or any action they take has been finally determined.
- 4.3 The Council of the Isles of Scilly will take such action as is necessary to ensure that it does not compromise the integrity of any investigation or proceedings undertaken by another body in relation to the allegations

Multiple complaints about a member

- 4.4 There may be instances when a number of complaints will be received about the same member from different Complainants that relate to the same incident. When a complaint is substantially the same it will be processed as a single complaint taking into consideration all of the complaints received up to the time the complaint is processed. A single decision notice will be issued

and will reflect the fact there has been more than one Complainant associated with the matter, though all may not be named. If further complaints relating to the same matter are received after the complaint is being processed these will not be added to the complaint but the Complainants will be advised that a complaint about this matter is already being considered.

Complaints about a matter that has been assessed

- 4.5 There are occasions when a complaint is received on a matter that is the same or similar to a matter that has already been assessed. If this is the case this will be rejected in accordance with the initial filtering as set out at paragraph 3.3(ii) above. The Complainant who has raised the new complaint will be sent a copy of the decision notice that has previously been issued but, as the complaint has been rejected at initial filter, will not be given the opportunity to ask for a review of the decision if they disagree with the findings at assessment.

Complaints about multiple matters and members

- 4.6 Complaints can be received that relate to multiple member and multiple matters. On these occasions, if the complaint passes initial assessment the Monitoring Officer will make every effort to determine each of the complaints separately, though there may be a need to process the complaint form as received. On occasion there may be a need to ask the Complainant to re-submit separate complaints about each matter and if this is the case the time scales for determining the complaint will not start until the complaint has been received in the format requested. Should this be requested that will not be treated as a rejection of the complaint.

5 Procedure for the Assessment of Complaints following Initial Assessment

5.1 Those complaints which are not rejected at initial assessment or referred to the police or another body will be assessed in accordance with the following procedure:

Step	Action
1	A copy of the complaint papers will be sent to the nominated Independent Person
2	<p>Following this the following procedure will be followed:</p> <ul style="list-style-type: none"> • The Complainant will be sent an acknowledgment of the complaint. • The Subject Member will be sent a copy of the complaint and will be given the contact details of an Independent Person assigned to the complaint against them. The Subject Member will be advised they can contact the Independent Person throughout the complaint process, but initial contact must be between 9am and 5pm, Monday to Friday.
3	<ul style="list-style-type: none"> • The Subject Member is given the opportunity to speak to the Independent Person and to provide their written response to the complaint to the Monitoring Officer. Any response is to be restricted to 2 sides of A4, but copies of supporting documents and witness statements may be attached. • The Subject Member should advise the Monitoring Officer if they do not wish to respond to the complaint. • The Subject Member's written response and any supporting documents will be copied to the Independent Person. • Unless otherwise agreed with the Subject Member in advance the Subject Member's written response must be provided within 14 days of the complaint being sent to them.
4	The Independent Person will form a view based on the complaint, the Subject Member's written response and any telephone conversations they

	have with the Subject Member. The Independent Person will provide their view on the complaint to the Monitoring Officer within 15 days of being sent the complaint or within 5 days of being sent a copy of the Subject Member's written submission if this is supplied after the 15 days has expired.
5	Irrespective of whether the Subject Member contacts the Independent Person or provides a written response within 10 days the complaint will proceed to assessment and the Council will not be obliged to take into account any late submissions and is not obliged to send a reminder letter to the Subject Member.
6	The Monitoring Officer will determine the complaint in accordance with the assessment criteria set out later in this document and the assessment will include the views of the Independent Person assigned to the matter. As part of this determination if the findings of fact are not agreed between the Subject Member and the Complainant the Monitoring Officer will seek the Subject Members views on the key facts of the complaint prior to completing their assessment.
7	As part of the assessment the Monitoring Officer will prepare an assessment decision notice together with a covering report which will be sent to a panel of 3 members of the Scrutiny Committee, with the panel consisting of the Chairman or Vice Chairman of the Committee and two other members of the Committee. The Subject Member will be invited to make a written or oral submission to the Panel on the finding and the Panel will then consider the findings and provide their views on the findings of the Monitoring Officer. Where appropriate a further version of the report will be prepared by the Monitoring Officer for consideration by the Panel.
8	Following the process as set out at 7 above a copy of the Decision Notice will be sent to the Complainant and the Subject Member.

5.2 All Decision Notices are public domain from the time they are issued.

5.3 We will aim to conclude the assessment within 30 days of the end of the

period within which the Subject Member may submit a written response.

- 5.4 During the pre-election period known as 'purdah' complaints will be accepted and assessed however, no decision notices will be issued during purdah and, if a complaint is received in advance of the purdah period you will be advised when the Decision Notice relating to your complaint will be issued.

6. Procedure for the Review of Complaints

- 6.1 Depending on the decision made at assessment, either the Complainant or the Subject Member may have a right to request a review of the decision and, where that is the case, they will have 14 days from the date of the decision notice to make a written request for a review of the decision.

Complainant's right to request a review

- 6.2 The Complainant may only request a review where the finding is either:
- (i) no finding as to whether there has been a breach of the Code of Conduct and no further action;
 - (ii) No finding of whether there has been a breach of the Code of Conduct and it is not considered in the public interest to refer for investigation; or
 - (iii) no breach of the Code of Conduct.
- 6.3 If the Complainant requests a review, they must provide substantive reasons within the 14-day time period which starts on the date of the Decision Notice. 'Substantive reasons' means those which have not previously been provided to support their complaint, together with any supporting documents which are relevant but which, again, have not previously been provided. Simply expressing disagreement with the assessment decision without giving substantive reasons that have not previously been provided or simply repeating the original complaint will result in the request for review being rejected.

6.4 If the request for review is rejected the Complainant and the Subject Member will be advised in writing of the reasons for rejection. The rejection of a request to review from the Complainant is final and if the Complainant is dissatisfied with the rejection they should address their concerns to the Local Government and Social Care Ombudsman.

Subject Member's right to request a review

- 6.5 The Subject Member may only request a review where the finding is either:
- (i) a finding of a breach of the Code of Conduct but without any sanction or recommended action; or
 - (ii) a finding of a breach of the Code of Conduct and the imposition of a sanction or recommending appropriate action.
- 6.6 If the Subject Member asks for a review of the decision, they must provide substantive reasons within the 14-day time period which starts on the date of the decision notice. 'Substantive reasons' means those which have not previously been provided, together with any supporting documents which are relevant but which, again, have not previously been provided. Simply expressing disagreement with the assessment decision without giving substantive reasons that have not previously been provided or simply repeating the original response to the complaint will result in the request for review being rejected. However, to the extent it is appropriate to do so, regard will also be had to the Subject Member's legal rights and the interference a finding of breach has on those rights, including through the potential effect on their reputation as a councillor.
- 6.7 As part of the review process the Independent Person who gave their views on the initial complaint will be asked for their views on the request for a review from the Subject Member.
- 6.7 If the request for review is rejected the Subject Member and the Complainant will be advised in writing of the reasons for rejection.

The Review

6.8 It is considered that the grounds within the request for review are substantive and the matter processed to a review the review will be undertaken by a different officer to the one who conducted the initial assessment, on behalf of the Monitoring Officer, though the officer who undertook the initial assessment may provide comments on the request for review. Ordinarily the same Independent Person will continue to be assigned to the complaint given that they are completely neutral and independent of the person determining the complaint but also will be able to provide the Subject Member with a continuity of their view throughout the review period.

6.9 Those requests for review which are not rejected will be reviewed in accordance with the following procedure:

	Complainant requests review	Subject Member request review
1	<ul style="list-style-type: none"> The request will be acknowledged within 3 working days. The Subject Member will be advised that a request for review has been received and will be sent a copy of the request and any accompanying documents. 	<ul style="list-style-type: none"> The request will be acknowledged within 3 working days. The Complainant will be advised that a request for review has been received and will be sent a copy of the request and any accompanying documents.
2	The Independent Person will be sent a copy of the request for review and any supporting documents, or they will be advised that the review is proceeding.	
3	The Subject Member is again given the opportunity to speak with the Independent Person and has 10 days from the date the review request is sent to the other party in which to do this.	
4	<ul style="list-style-type: none"> The Subject Member will be given the opportunity to provide their written response to the request for review. We ask that 	<ul style="list-style-type: none"> The Complainant will be given the opportunity to provide their written response to the request for review. We ask that this be

	<p>this be restricted to 2 sides of A4, but copies of supporting documents or witness statements may be attached.</p> <ul style="list-style-type: none"> • Unless otherwise agreed because of exceptional circumstances, this must be provided within 10 days of the review request being sent to the Subject Member. • Any written response the Subject Member makes will be forwarded to the Independent Person. 	<p>restricted to 2 sides of A4, but copies of supporting documents or witness statements may be attached.</p> <ul style="list-style-type: none"> • Unless otherwise agreed because of exceptional circumstances, this must be provided within 10 days of the review request being sent to the Complainant. • Any written response the Complainant makes will be forwarded to the Independent Person.
5	<p>The Independent Person will form a view based on the request for review, the response to that request and any telephone conversations they have with the Subject Member. The Independent Person will provide their view on the complaint to the Monitoring Officer within 14 days of being sent the request for review or within 5 days of being sent a copy of the response to the request for review if later.</p>	
6	<p>Irrespective of whether the Subject Member contacts the Independent Person or provides a written response within 10 days the complaint will proceed to review, and the Council will not be obliged to take into account any late submissions.</p>	<p>Irrespective of whether the Complainant provides a written response within 10 days the complaint will proceed to review, and the Council will not be obliged to take into account any late submissions.</p>

7	The Monitoring Officer will determine the request for review in accordance with the assessment criteria set out later in this document and the assessment will include the views of the Independent Person assigned to the matter. As part of this determination if the findings of fact are not agreed between the Subject Member and the Complainant the Monitoring Officer will seek the Subject Members views on the key facts of the complaint prior to completing their assessment.
8	As part of the review the Monitoring Officer will prepare a review decision notice together with a covering report which will be sent to a panel of 3 members of the Scrutiny Committee, with the panel consisting of the Chairman or Vice Chairman of the Committee and two other members of the Committee. The Subject Member will be invited to make a written or oral submission to the Panel on the finding and the Panel will then consider the findings and provide their views on the findings of the Monitoring Officer. Where appropriate a further version of the report will be prepared by the Monitoring Officer for consideration by the Panel.
9	A review decision notice will be sent to the Complainant, the Subject Member and, where appropriate, the Clerk to the Subject Member's council within 5 working days of the complaint being reviewed.

6.10 We aim to conclude steps 1 to 8 above within 28 working days of receipt of a valid request for review. If it is not possible to do this within this time, we will write to the Complainant, the Subject Member and, where appropriate, the Clerk to the Subject Member's council to advise them of the revised timescale.

6.11 There are no further rights of review following the above stages.

7 Assessment and Review Criteria

7.1 These assessment criteria are subject to review by the Scrutiny Committee, and this will usually be on a bi-annual basis or as changes in statute require.

7.2 The assessment criteria are used as a guide only and the timescales within

them are not statutory. The Complainant and Subject Member will be advised if there will be a delay to the determination of the complaint.

7.3 All complaints will be considered on their merits and according to all of the facts, as reasonably determined on the basis of the information presented to the Monitoring Officer only. Officers are not obliged to try to 'make' a case for the Complainant by identifying information that would support the complaint.

7.4 Complaints that appear similar may actually differ significantly because of the particular circumstances of the complaint and it is for this reason that the assessment criteria can only be a guide.

Findings at assessment and review

7.5 If the above tests are all met, the findings may be as follows.

Reference should also be made to the table at paragraph 7.7	
No finding of whether there is a breach of the Code of Conduct and no further action taken	This is the appropriate finding to make when on the facts it is not possible to determine whether there has been, or may have been, a breach of the Code of Conduct; and taking into account the public interest, the allegation does not merit investigation. There is nothing in the complaint or the response to it to suggest that there may be some benefit in further action being taken and the complaint is therefore closed and no further action is to be taken.
No finding of whether there has been a breach of the Code of Conduct and it is not considered in the public interest to refer for investigation	This is the appropriate finding to make when on the facts it is not possible to determine whether there has been, or may have been, a breach of the Code of Conduct; and taking into account the public interest, the allegation does not merit investigation.
No finding of	This is the appropriate action to take when on the facts it is

<p>whether there is a breach of the Code of Conduct but action other than investigation is appropriate</p>	<p>not possible to determine there has been, or may have been a breach of the Code of Conduct, it is not considered in the public interest to refer the matter for investigation but the complaint or response to it discloses an underlying issue that other action, such as mediation or training on the Code of Conduct or council procedures, may assist with this may be desirable.</p>
<p>Finding of no breach of the Code of Conduct</p>	<p>This is an appropriate finding to make when the facts available demonstrate that, on the balance of probabilities, there has been no breach of the Code of Conduct. If there is no breach of the Code of Conduct a sanction cannot be imposed but other action such as mediation or training may still be considered. See paragraph 6.9 for further information on other action.</p>
<p>Finding of a breach of the Code of Conduct (without investigation)</p>	<p>This is an appropriate finding to make in the following circumstances:</p> <ul style="list-style-type: none"> • It can clearly be shown on the balance of probabilities from the information that has been provided by the Complainant and the Subject Member, or otherwise secured in relation to the allegation, that the Code of Conduct has been breached; or • The Subject Member has admitted to the breach of the Code of Conduct, whether or not they have offered to remedy the breach; and • In either case it can be shown that an investigation is unlikely to establish any further independent relevant evidence regarding the complaint; or taking into account the public interest, the cost of undertaking an investigation cannot be justified. <p>When a breach of the Code of Conduct is found the Monitoring Officer will determine whether it is appropriate to impose a sanction, recommend other action or take no action.</p>
<p>Referral for investigation</p>	<p>A complaint should usually be referred for investigation in the following circumstances:</p> <ul style="list-style-type: none"> • The Subject Member has denied the allegations, but the

	<p>information presented indicates that there may be a breach of the Code of Conduct; and</p> <ul style="list-style-type: none"> • On the information provided the potential breach of the Code of Conduct is sufficiently serious that an investigation should be undertaken to establish the facts to facilitate the determination whether there has been a breach and, if so, to inform what sanction or other action might be appropriate, if any.
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Sanctions, other action, etc.

7.6 The Council must discharge its statutory duties to promote and maintain high standards of conduct and to have in place arrangements by which allegations of breaches of the Code of Conduct may be investigated and determined. In determining what response is appropriate in relation to complaints that reach the assessment or review stage regard will be had to the following:

No further action	<p>This may be an appropriate response to a complaint where, for example:</p> <ul style="list-style-type: none"> (i) there is no finding as to whether there has been a breach of the Code; (ii) there is a finding of no breach of the Code; (iii) there is a finding of breach of the Code but the breach is trivial, a technical breach, an innocent mistake that has had limited impact or otherwise of limited effect; or (iv) there is nothing in the complaint or the response to it to suggest that there may be some benefit in further action being taken.
Censure	<p>This sanction will be an appropriate response to the most serious breaches of the Code.</p> <p>In all cases relating to a censure the Monitoring Officer will refer the wording of the censure to the Panel of members of</p>

	<p>the Scrutiny Committee for consideration. During their deliberations on this the option will be open to the Panel recommend to Council that the censure is read out at a full meeting of Council.</p>
Other action	<p>Neither the Council of the Isles of Scilly nor any other body can compel any member to participate in or undertake any form of remedial action. Instead, the Council has to rely on the member's conscience and their willingness to observe and comply with the Code of Conduct and to give recognition to the importance of the related procedures for the determination and investigation of complaints.</p> <p>Notwithstanding this, the Council may request or recommend some action on the part of the Subject Member or even of wider application. Examples of other action include:</p> <ul style="list-style-type: none"> (i) training for the individual member on the Code of Conduct or council procedures to help them avoid similar breaches in the future; (ii) training on the Code of Conduct or council procedures for the whole council where it appears from the information available that there is an underlying problem within their council that such training may help by; (iii) asking for an apology to be given; and (iv) suggesting to the member's political group or council that their membership of committees is reviewed, where there is a link to the conduct that has resulted in a finding of breach of the Code.
Failure to give effect to other action	<p>As it is not possible for either the Council or any other body to compel a member to participate in or undertake any form of remedial action, any refusal to do so on the part of any member is difficult to address. A further complaint for failure to comply could be considered which may or may not result in a further finding or recommendation. However, the benefit of</p>

	<p>so doing has to be weighed up with the amount of public resource that has to go into that and whether there will ultimately be any effect on the behaviour of the member in question.</p> <p>.</p>
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8 What happens following the assessment or review of a complaint?

- 8.1 Once a decision notice has been issued, any sanction or other action should be implemented as soon as possible.
- 8.2 If the matter was referred for investigation, an officer will be appointed by the Monitoring Officer to undertake the investigation and after the conclusion of the investigation a report will be presented to the Monitoring Officer for consideration.
- 8.3 Following receipt of the investigation report the Monitoring Officer will then follow the procedures as is set out at 5.1 Para 7 above.

9 Access to complaint information

- 9.1 The assessment and review of complaints will be conducted in private by the Monitoring Officer or his representative. Information received as part of this complaints process will be treated as information provided in confidence.
- 9.2 Data protection and Freedom of Information requirements will be complied with which will mean that complaint information will not normally be disclosed to the press or public.

10 Withdrawal of complaints

- 10.1 Requests to withdraw complaints will normally be granted but in considering such a request from the Complainant the Monitoring Officer will consider the

following factors:

- (i) Whether the public interest in taking action on the complaint outweighs the Complainant's desire to withdraw it;
- (ii) Whether the complaint is such that action can or should be taken on it without the Complainant's participation; and
- (iii) Whether there appears to be an identified underlying reason for the request to withdraw the complaint, such as information to suggest that the Complainant may have been improperly pressured into withdrawing the complaint.

10.2 Even if a request to withdraw a complaint is granted, the Monitoring Officer may still refer it for assessment under these procedures or refer it to the appropriate professionals or body if, in the opinion of the Monitoring Officer, such action is reasonable and proportionate. This may be appropriate, for example, if the complaint discloses potentially significant probity issues, possible criminal offences or safeguarding issues.

11 Records retention

11.1 The Council of the Isles of Scilly will store all records of complaints in electronic format in a secure environment on a computer network for a period of three years (paper records are held for a period of one year). Records will be stored in accordance with the Council's records management policy and procedures and information relating to complaint will be stored for the current year + 6.

12 Glossary

Balance of Probabilities	This is when reasonable person in possession of all the facts and viewing them objectively, would consider that it is more likely than not that the event did or did not occur.
Code of Conduct	All councils must adopt a Code of Conduct. The Code of Conduct:

	<ul style="list-style-type: none"> • sets out the conduct expected of a council's elected and co-opted members when they are acting in their official capacity; • is also required to include appropriate provisions relating to the registration and disclosure of prescribed pecuniary and other interests.
Complainant	Any person making a complaint.
Complaint	<p>The Localism Act 2011 provides that an allegation (or complaint) is:</p> <p><i>"a written allegation that a member or co-opted member of the authority has failed to comply with the authority's code of conduct."</i></p>
Independent Person	<p>The Localism Act 2011 requires principal councils to appoint at least one Independent Person. Their function is to provide their views on allegations in accordance with the provisions of the Act. The Council has appointed 2 Independent Persons and they are allocated complaints on a rota basis.</p> <p>The Independent Person does not represent and is not an advisor to the Subject Member or the Council. They must remain completely impartial and objective and they cannot take sides. There is no right for a Complainant to seek the views of the Independent Person. Independent Persons do not make formal decisions on complaints.</p> <p>The Council must seek the views of an Independent Person before making a decision on an allegation that has been referred for investigation. The views of the Independent Person may be sought:</p> <ul style="list-style-type: none"> (i) by the Council in relation to an allegation which has not been referred for investigation; and (ii) by a member, or co-opted member, of the Council or a local council in the Council's area if that person's behaviour is the subject of an allegation.

	<p>The Council seeks the views of the Independent Person through the Monitoring Officer or his representative. The Monitoring Officer is not bound by the views of the Independent Person.</p>
Legislation	<p>The Localism Act 2011 is the Act under which the Council of the Isles of Scilly derives its duties and powers in relation to promoting and maintaining high standards of conduct and dealing with allegations of breaches of the Members' Code of Conduct.</p>
Monitoring Officer	<p>A statutory appointment and the responsibilities are much wider than the ethical standards regime. In relation to the Code of Conduct his role is to ensure the promotion and maintenance of high standards of conduct, including in relation to the assessment, review and, if a complaint is referred for investigation, the determination of complaints. His officers also provide training to local councils on the Code of Conduct.</p> <p>Reference in this document to the Monitoring Officer includes any officer appointed or nominated by him as his representative.</p>
Subject Member	<p>The person against whom a complaint has been made. This includes:</p> <ul style="list-style-type: none"> (i) councillors who have been elected to office following a formal election; (ii) councillors who have taken office by co-option because there were not enough candidates for a formal election to be held; and (iii) those who are co-opted to committees, such as any lay members.