



## PROCEDURE FOR THE ASSESSMENT AND DETERMINATION OF ALLEGATIONS OF BREACHES OF THE MEMBERS' CODE OF CONDUCT

### 1. Introduction

- 1.1 It is a requirement of the Localism Act 2011 that all Councils, including local councils whether Town, Parish or City, must adopt a Code of Conduct which deals with the conduct expected of its elected and co-opted members when they are acting in their official capacity. The Code of Conduct is also required to include appropriate provisions relating to the registration and disclosure of pecuniary and other interests.
- 1.2 There is no national regulator since the abolition of Standards for England in 2012. However, the Council of the Isles of Scilly is responsible for administering its own Code of Conduct. This Council is required to have in place arrangements under which allegations can be investigated and decisions on allegations can be made.
- 1.3 The Council is required to appoint at least one Independent Person whose views may be sought by the Council, usually through the Monitoring Officer, or by subject members. The Council must seek the views of an Independent Person before making a decision on an allegation that has been referred for investigation. There is no right for the complainant to seek the views of the Independent Person and no such contact will be tolerated. We have appointed a small number of Independent Persons.
- 1.4 The Independent Persons do not represent and nor are they advisors to the subject member or the Council. They must remain completely impartial and objective and they cannot take sides. Their only role is to assess complaints and form a view on them.
- 1.5 The 2011 Act provides that an allegation is "*a written allegation*
  - (a) *that a member or co-opted member of the authority has failed to comply with the authority's code of conduct, or*
  - (b) *that a member or co-opted member of a parish council for which the authority is the principal authority has failed to comply with the parish council's code of conduct.*"
- 1.6 This document sets out the procedure for submitting a complaint alleging that the Code of Conduct has been breached and the procedures that will be followed in dealing with such complaints. It also sets out the criteria for assessing a complaint and when a request may be made for the decision taken on a complaint to be reviewed.
- 1.7 All allegations will be dealt with objectively, fairly and consistently. We will also have regard to what is in the public interest and our fiduciary duty to the tax payers.
- 1.8 Within this procedure references to the "Monitoring Officer" include his or her duly

appointed representative(s).

- 1.9 In this procedure the term 'subject member' means the member against whom the allegation has been made.
- 1.10 The Finance, Audit and Scrutiny Committee will convene from time to time to review the handling of complaints, reviews and decisions made with a view to identifying trends or any improvements in this procedure and the application of it that may be desirable.

## **2. Submitting a complaint**

- 2.1 All complaints must be submitted in writing and this includes fax and electronic submissions. We will assist you if you have a disability that prevents you from making or makes it difficult for you to submit your complaint in writing. We can also help if English is not your first language.
- 2.2 Complainants are encouraged to use our complaints form which we can send out as a hard copy or which is available in electronic format from our web site. Further information and the complaint form are available at **[insert link to SC web page]**.
- 2.3 If a verbal complaint is made we will ask that the complaint is confirmed in writing. If you are unable to make a written complaint we will offer to transpose your complaint onto a complaint form with an accompanying written statement (if required) which you will then be asked to sign or otherwise indicate to our satisfaction that you wish to make a complaint in those terms. If you are unwilling to sign the documentation or otherwise indicate to our satisfaction that you wish to make a complaint in those terms we will not take any further action on the complaint unless the Monitoring Officer is satisfied that the circumstances justify a departure from this position. If you make a verbal complaint and simply decline to confirm the complaint in writing for reasons which we do not consider to be justifiable we will take no further action on the complaint.
- 2.4 Anonymous complaints will be rejected. This does not include complaints where the complainant requests confidentiality and which is dealt with further in section 7 below and on the complaint form.
- 2.5 Some complaints against a member will represent a complaint against the Council but will fall outside the scope of this procedure. If that happens the complaint will be forwarded to the relevant officer(s) in the Council and the complainant will be advised of the action taken.
- 2.6 To submit complaints electronically please use the on-line form at the link in paragraph 2.2 above or e-mail

To submit complaints by fax please send them to 01720 424017

All other submissions must be sent or delivered to:

The Monitoring Officer  
 % Sue Pritchard  
 Council of the Isles of Scilly, Town Hall  
 St Mary's, Isles of Scilly TR21 0LW

### **3. Processing and determination of complaints**

- 3.1 When a complaint is received we will acknowledge receipt within 3 working days.
- 3.2 The Monitoring Officer will, upon receipt, consider if the alleged behaviour falls within the Code of Conduct and therefore this procedure. This will normally be done within 10 working days.
- 3.3 If, as a result of this initial consideration the allegation is about a matter which falls outside of the Code of Conduct or is considered to be within one of the criteria set out below the complaint will not usually progress beyond this initial stage.
- If the complaint is the same or substantially the same as a complaint previously dealt with;
  - If the period since the alleged behaviour is so significant that it is considered to be inequitable, unreasonable or otherwise not in the public interest to pursue;
  - If the complaint is trivial;
  - If the complaint discloses such a minor or technical breach of the Code that it is not in the public interest to pursue;
  - If 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 to merit further consideration;
  - If the complaint is covered by the Council's persistent and vexatious complaints policy and is not considered to disclose sufficiently serious potential breaches of the Code to merit further consideration;
  - If the member against whom the allegation has been made has remedied or made reasonable endeavours to remedy the matter and the complaint does not disclose sufficiently serious potential breaches of the Code to merit further consideration;
  - If the complaint is about a person who is no longer a member of a relevant council and there are no overriding public interest reasons to merit further consideration
- 3.4 If the complaint is not progressed the Monitoring Officer will notify the complainant in writing with the reasons. He will also write to the subject member with details of the complaint, the decision made and the reasons for the decision.
- 3.5 Unless confidentiality has been requested, and the Monitoring Officer considers that request to be justified, the name of the complainant will be disclosed to the subject member. Where confidentiality is granted this will be confirmed to the subject member together with the reasons for granting it but not so as to enable the complainant to be identified.
- 3.6 Where the Monitoring Officer determines that the allegation falls within the scope of this procedure an assessment of the complaint will be undertaken by the Monitoring Officer (the "Initial Assessment"). The Monitoring Officer may convene a panel, consisting of three Members of the Finance, Audit and Scrutiny Committee, to assist in the Initial Assessment. The Monitoring Officer, and where appointed the panel, will

seek the views of the nominated Independent Person during this process in accordance with the provisions of the Localism Act 2011.

- 3.7 Notwithstanding paragraph 3.2, the Council will in appropriate circumstances pass to the police or Director of Public Prosecutions any allegations it receives which disclose behaviour that may constitute a criminal offence, whether under the ethical standards provisions of the Localism Act or otherwise.
- 3.8 Where an Initial Assessment of the complaint is to be carried out, the following steps will be followed.

Step	Action
1	<p>The Monitoring Officer will write to the subject member with;</p> <ul style="list-style-type: none"> <li>a) details of the complaint;</li> <li>b) the identity of the complainant unless any confidentiality request has been agreed;</li> <li>c) the name and contact details of the nominated Independent Person who the subject member may contact to seek their views;</li> <li>d) where confidentiality has been granted that will be confirmed to the subject member together with the reasons for granting it but not so as to enable the complainant to be identified; and</li> <li>e) confirmation of the subject members right to provide a written response to the complaint to the Monitoring Officer.</li> </ul>
2	<p>Where the subject member wishes to provide a written response to the complaint, this must be received by the Monitoring Officer within 10 working days of the notification specified at paragraph 1. Any response should be restricted to two sides of A4 together with copies of supporting documents.</p>
3	<p>The subject member should notify the Monitoring Officer if;</p> <ul style="list-style-type: none"> <li>a) they do not wish to provide a written response to the complaint; or</li> <li>b) they require an extension to the time limit for providing a written response.</li> </ul> <p>Any request for an extension of time will be considered by the Monitoring Officer on its merits.</p>
4	<p>The Monitoring Officer will carry out the Initial Assessment in the context of any written submissions and supporting documentation provided by the subject member in accordance with the Assessment Criteria set out at Annex 1 and prepare a report detailing the findings of the Initial Assessment.</p>
5	<p>The report detailing the findings of the Initial Assessment will be reviewed by a panel of the Finance, Audit and Scrutiny Committee consisting of either the Chairman or Vice Chairman and two other Members before a final decision notice is issued.</p>
6	<p>Upon completion of the Initial Assessment the Monitoring Officer may make the following recommendation in relation to the complaint:</p>

	<ul style="list-style-type: none"> <li>(i) make no finding as to whether there has been a breach of the Code and take no further action;</li> <li>(ii) find no breach of the Code;</li> <li>(iii) find a breach of the Code without an investigation and impose a sanction;</li> <li>(iv) find a breach of the Code without an investigation but impose no sanction (ie. Because the breach is minor or trivial);</li> <li>(v) require the complaint to be investigated to determine whether there has been a breach of the Code and the seriousness of the breach;</li> <li>(vi) conclude that the circumstances of the complaint indicate that an offence under Chapter 7 of Part 1 of the Localism Act 2011 may have been committed and that the complaint ought to be investigated, by the police where appropriate, to determine whether a prosecution should be brought.</li> </ul>
<p><b>7</b></p>	<p>The outcome of the Initial Assessment of the complaint will be notified in writing to the complainant, within 28 working days of the complaint being accepted by the Monitoring Officer.</p>

3.9 Following completion of the Initial Assessment, if a decision is reached that the complaint is to be investigated pursuant to paragraph 3.8 (6)(v) the Monitoring Officer will, or arrange for:

- a) an Investigation as may be appropriate to be undertaken; and
- b) request that a panel of the Finance, Audit and Scrutiny Committee assess the complaint at a hearing following completion of the investigation.

3.10 Any investigation carried out pursuant to paragraph 3.9 will be carried out within 28 working days of the 'Initial Assessment' decision notice. In the event it is not possible to complete the Investigation within this period then the Monitoring Officer will notify the subject member and complainant.

**Review of Initial Assessment**

3.11 The complainant and the subject member have 15 working days from the date of notification of the Initial Assessment decision, to make a written request to the Monitoring Officer that the decision be reviewed ("Review Request").

3.12 In either case the party requesting the review must provide new evidential reasons to support the request for review and provide new supporting documentation that is relevant but which was not previously provided. The following limitations on review requests apply:

- (i) the **complainant** may only request a review where the finding is either of paragraphs (i) and (iii) in Step 6 above;
- (ii) the **subject member** may only request a review where the finding is in accordance with paragraph (iv) in Step 6 above;

(iii) No right of review arises in the event an investigation and hearing by a panel of Members is undertaken in accordance with paragraph 3.9 above, the decision of that panel being final.

3.13 Where a Review Request is received the Monitoring Officer will acknowledge receipt within 3 working days and notify the other interested parties of the Review Request.

3.14 Within 7 working days of receipt of the Review Request the Monitoring Officer will convene a panel of three Members of the Finance, Audit and Scrutiny Committee to determine whether the Review Request discloses sufficient grounds to proceed with the review.

3.15 Should the Review Request disclose sufficient new grounds to proceed with the review the following steps will be undertaken:

Step	Action
1	The Monitoring Officer will write to the complainant or subject member as appropriate with: <ul style="list-style-type: none"> <li>a) details of the review request;</li> <li>b) confirmation as to whether or not the review request is accepted;</li> <li>c) the name and contact details of the Nominated Independent Person for the review who the subject member may contact to seek their views; and</li> <li>d) the complainants or subject members right, as appropriate, to provide a written response to the request.</li> </ul>
2	Where the complainant or subject member wish to provide a written response to the review request, this must be received by the Monitoring Officer within 10 working days of the notification specified at paragraph 1. Any response should be restricted to two sides of A4 together with copies of supporting documents.
3	The complainant or subject member should notify the Monitoring Officer if <ul style="list-style-type: none"> <li>a) they do not wish to provide a written response to the review; or</li> <li>b) they require an extension to the time limit for providing a written response.</li> </ul> Any request for an extension of time will be considered by the Monitoring Officer on its merits.
4	The Monitoring Officer will review the complaint in the context of any written submissions and supporting documentation provided in accordance with the Assessment Criteria set out at Annex 1 and prepare a report setting out findings. This report will be reviewed by a panel of Members consisting of the Chairman or Vice Chairman and two other Members of the Finance, Audit and Scrutiny Committee. The options available to the Monitoring Officer upon determination of the review are in accordance with paragraph 3.8 (6) above.
5	The outcome of the review will be notified in writing to the complainant and

	the subject member within 28 working days of receipt of the Review Request.
<b>6</b>	No further right of review will arise.

3.17 The Monitoring Officer will contact the complainant and the subject member in the event that it is not possible to meet any time limit imposed by this procedure and explain the reason why.

**4. What happens following assessment or review of complaints?**

4.1 Where, following completion of the Initial Assessment, Investigation, or Review, a breach of the Code of Conduct has been established, the Monitoring Officer will undertake the process set out at Annex 2 to determine the sanction that is appropriate in all the circumstances.

4.2 If potential criminal offences are identified and the complaint referred for investigation with a view to prosecution the appropriate procedures of the police or Council will be followed so as to protect the integrity of the investigation.

4.3 A report setting out all complaints, investigations and requests for reviews received and what action was taken regarding them will be forwarded to the Finance, Audit and Scrutiny Committee at each meeting for consideration and comment.

4.4 Any investigations and hearings following investigation are outside of the scope of this procedure and will be subject to separate procedural rules

**5. General rules concerning assessments and reviews – public access to meetings and information**

5.1 The Initial Assessment, Investigation and Review of complaints will be conducted in private session and information relating thereto will be considered exempt under the appropriate paragraphs of Schedule 12A to the Local Government Act 1972, subject to the application of the public interest test, as appropriate, and the determination of the Monitoring Officer.

5.2 Data protection requirements will be complied with and may prevent the public disclosure of information relating to complaints.

5.3 On completion of the Initial Assessment, Investigation or consideration of the review a written summary of the decision will be published in the form of a decision notice. Once this has been sent to the subject member and the complainant the decision notice will be available for public inspection at the Council’s offices for 6 years from the date of the assessment or review and a copy will be placed on the Council’s web site.

**6. Complainant confidentiality**

6.1 The subject member will, in normal circumstances, be told from the outset who has complained about them. If a complainant asks for their identity to be withheld their request will be considered by the Monitoring Officer prior to the member being notified that a complaint has been made.

6.2 Each request for confidentiality will be considered on its merits and in determining such

a request the following will be considered:

- (i) Whether the complainant reasonably believes that they, or those 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 those 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; and
- (iv) 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.

6.3 If it is not considered appropriate to grant a request for confidentiality the complainant will be offered the opportunity to withdraw the complaint rather than proceed with it but this is subject to paragraph 7.

## **7. Withdrawal of complaints**

7.1 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 identifiable underlying reason for the request to withdraw the complaint such as whether there is information to suggest that the complainant may have been pressured into withdrawing the complaint.

7.2 Even if a request to withdraw a complaint is granted, the Monitoring Officer may still refer the circumstances for assessment and investigation under the appropriate procedures if those circumstances merit such action in the opinion of the Monitoring Officer such as if they disclose potentially significant probity issues, possible criminal offences or safeguarding issues.

## **8. Conflicts of interest**

8.1 If any officer has any personal or professional conflict of interest in relation to a complaint, they must have no involvement or no further involvement in dealing with that complaint other than such reasonable steps as are necessary to ensure that the complaint is dealt with by someone other than them. Any conflicts identified during the course of a matter will be managed appropriately by the Monitoring Officer.

8.2 An officer who has previously advised a subject member or has given advice to the complainant about the issues giving rise to a complaint must seek advice from their line manager as to whether they can properly be involved in the conduct of a related complaint. Public perception and the public interest will be considered.

8.3 If any Independent Person has any personal or professional conflict of interest in relation to a complaint, they must have no involvement or no further involvement in dealing with that complaint other than such reasonable steps as are necessary to

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ensure that the complaint is dealt with by someone other than them. Where this occurs another Independent Person will be appointed and the appropriate person(s) notified.

**9. Records retention**

- 9.1 the Council of the Isles of Scilly will store all records of complaints in electronic format in a secure environment on a computer network. Records will be stored in accordance with the the Council's records management policy and procedures. We may also choose to store hard copies of some or all documents and information.

## Annex 1

### Assessment Criteria

#### 1. Introduction

- 1.1 All complaints and review requests will be considered on their merits and according to the facts.
- 1.2 The Monitoring Officer or nominee will seek the views of the Independent Person.
- 1.3 These assessment criteria, which are subject to regular review by the Finance, Audit and Scrutiny Committee, will be used as guidance in the consideration and determination of complaints and reviews. However, the Monitoring Officer or other decision maker, including a panel of Members of the Finance, Audit and Scrutiny Committee when it is not the Monitoring Officer, are entitled to depart from these criteria when they consider it appropriate to do so.
- 1.4 Due to the wide variety of complaints received by the Council avoiding the perception of inconsistency, even in assessing complaints, is no easy task. For example two complaints may be about the same aspect of the Code but differ considerably in terms of the facts, how serious they are and there may be huge differences in the relevance and amount of detail regarding the complaint. For these reasons the assessment criteria can only be a guide.

#### 2. The Assessment Criteria

##### Overriding criteria

These three tests will be applied during the Initial Assessment of a complaint:

- Is the complaint about one or more named members of a relevant authority?
- Was the subject member in office at the time of the alleged conduct?
- If proven, would the complaint disclose a breach of the Code of Conduct?

##### No finding of whether there is a breach of the Code

If on the facts it is not possible to determine whether there has been or may have been a breach of the Code and the alleged conduct does not merit an investigation, having regard to the public interest, this is the appropriate finding to make.

##### No finding of whether there is a breach of the Code but action other than an investigation is appropriate

If on the facts it is not possible to determine whether there has been or may have been a breach of the Code, the alleged conduct does not merit an investigation, having regard to the public interest, but the allegation and any response from the subject member disclose an underlying issue that action such as mediation or training on the Code or council procedures might assist with, this is the appropriate finding to make. The 'Referral for other action' information below needs to be considered in these circumstances.

### Finding of no breach of the Code

If the facts available demonstrate on the balance of probabilities that there has been no breach of the Code, this is the appropriate finding to make. If there is no breach of the Code a sanction cannot be imposed but other action such as mediation or training might still be considered.

### Finding of a breach of the Code without an investigation

A finding that the Code of Conduct has been breached without the need for an investigation will usually be appropriate in the following circumstances:

- It can clearly be shown that from the information that has been provided by the subject member and the complainant that a breach of the Code has occurred
- The subject member has admitted to the breach of the Code, whether or not they have offered to remedy the breach
- It can be shown that an investigation is unlikely to be able to establish any further independent relevant evidence regarding the complaint or that the cost of obtaining any further evidence would not be justified having regard to the public interest and that on the evidence supplied a breach of the Code can be shown

A breach of the Code without investigation can only be found if the complaint satisfies the first three initial tests and that it can be clearly shown, on the balance of probabilities, that a breach of the Code of Conduct has occurred.

### Finding of a breach but no Further Action

If a breach of the Code is found but it is trivial, a technical breach or otherwise of limited effect it may be appropriate to take no further action.

### Referral for other action

A complaint may be referred for other action in the circumstances listed below. Other action may be appropriate whether a breach is found or not. However, in general, other action may be used where the complaint discloses a more general rather than a specific problem concerning the member's conduct.

Referring a matter for other action effectively closes the door on a review of the decision as the matter cannot subsequently be referred for investigation if the complainant is dissatisfied with the outcome of the other action. As such, other action should be exercised only where appropriate. If necessary the assessment of a complaint can be deferred while further information is obtained and other action is being considered. In addition, the subject member and the complainant can be contacted to see if they will accept other action as a way of resolving the complaint, such as by way of an apology.

The following should be considered in determining whether it is appropriate to refer a complaint for other action:

- Does taking further action provide an opportunity to resolve the issue and to prevent any similar issues arising in the future and promote good governance?

- Does the complaint present a potentially less serious breach of the Code than would require the matter to be referred for investigation and is any benefit to be gained from referring the matter for investigation?
- Is the subject member a member of an authority which appears to have a poor understanding of the Code and relevant procedures?
- Is the council of which the subject member is a member suffering from a widespread breakdown in internal relationships and trust where a course of action other than an investigation of a complaint may be more appropriate and beneficial to that council?

#### Referral for Investigation

A complaint should usually be referred for investigation in the following circumstances:

- The complaint has passed all three of the initial tests
- The subject member has denied the allegations but the information presented indicates that there may be a breach of the Code
- On the information provided the potential breach of the Code of Conduct is sufficiently serious that an investigation should be undertaken to be discount or substantiate the complaint and to determine what sanction, if any, is appropriate

#### Potential offences under the Localism Act 2011

If it is considered that the allegation concerned may disclose an offence under the Localism Act it should be referred to the police or other appropriate person(s) for further consideration as to whether there should be an investigation with a view to prosecution. No prosecution can be brought without the consent of the Director of Public Prosecutions.

If it transpires that no offence was committed, whether following trial or otherwise, the complaint ought to be reintroduced to this procedure for determination of any breach of the code and any appropriate sanction.

## Annex 2

### Procedure where a breach of the Code is found

1. On completion of the Initial Assessment, Investigation or Review Request and a determination has been made that the subject member is in breach of the code of conduct, the final decision notice, or investigation report, will be sent to the nominated Independent Person.
2. The decision notice, and or investigation report will be reviewed by the Monitoring Officer, or a nominated representative and the Independent Person. The Monitoring Officer must seek the views of the Independent Person in considering any sanction to be imposed against the subject member.
3. The Monitoring Officer will write to the subject member and the complainant with an indicative finding and, if appropriate, provide an indication of what will be required to address any breach found.
4. The subject member and the complainant are given 10 days to respond to the Monitoring Officers indicative findings.
5. The Monitoring Officer will then consider, taking into account the views of the Independent Person and the comments made by the subject member and the complainant in determining whether or not to impose a sanction against the subject member.
6. The Monitoring Officer will prepare a recommendation based on the indicative findings that will be referred to a panel of the Finance, Audit and Scrutiny Committee, consisting of three members of the Committee together with the nominated Independent Person, who will be asked to give their views on the matter to the Monitoring Officer. The panel will consider;
  - a) the investigation report
  - b) the Independent Persons views;
  - c) the Monitoring Officers indicative findings;
  - d) the representations of the subject member and complainant;
  - e) any such other information as may be relevant.
8. The views of the panel will be provided to the Monitoring Officer who will make a final determination of the matter or refer the matter to a hearing.

### Annex 3

#### **Action that may be taken or recommended following a finding that the Code of Conduct has been breached by a Member following Initial Assessment, Investigation or Review**

1. That there is a breach of the Code of Conduct but it is recommended that no further action needs to be taken.
2. That it is recommended that the subject member be removed from any or all Committees, or Sub-Committees of the Authority.
3. That training on the Code of Conduct be arranged for the subject member.
4. That it is recommended to that the subject member be removed from all outside appointments to which they have been appointed or nominated by the Authority.
5. That the subject member be required to meet with the Monitoring Officer to discuss the conduct and how the breach can be avoided in the future.
6. That the subject member be requested to apologise.
7. Mediation.
8. Censure.
9. That it is recommended that all members of the Authority receive training on the Code of Conduct.