



Essex County Council



ECC & Essex Fire Authority Joint Standards Committee

14:00	Monday, 21 December 2015	Committee Room 6, County Hall, Chelmsford, Essex
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Quorum: 3

Membership

Councillor J Pike
Councillor A Bayley
Councillor M Coxshall
Councillor S Barker
Councillor A Durcan
Councillor T Cutmore
Councillor C Guglielmi
Councillor T Higgins
Councillor R Hirst
Councillor M McEwen
Councillor J Moyies
Councillor P Newton
Councillor C Pond

Chairman

**For information about the meeting please ask for:
Andy Gribben, Council and Member Support Officer
03330134565/ andy.gribben@essex.gov.uk**

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Part 1

(During consideration of these items the meeting is likely to be open to the press and public)

	Pages
1	Apologies for Absence
2	Declarations of Interest To note any declarations of interest to be made by Members in accordance with the Members' Code of Conduct
3	Appointment of Vice-Chairman To appoint a Vice-Chairman of the Committee
4	minutes 080814 5 - 8
5	Dispensation 9 - 14
6	Investigation and Hearings Procedure 15 - 36 To consider a report (SC/002/15 and appendix) by the Monitoring Officer

Exempt Items

(During consideration of these items the meeting is not likely to be open to the press and public)

To consider whether the press and public should be excluded from the meeting during consideration of an agenda item on the grounds that it involves the likely disclosure of exempt information as specified in Part I of Schedule 12A of the Local Government Act 1972 or it being confidential for the purposes of Section 100A(2) of that Act.

In each case, Members are asked to decide whether, in all the circumstances, the public interest in maintaining the exemption (and discussing the matter in private) outweighs the public interest in disclosing the information.

**MINUTES OF A MEETING OF THE ESSEX COUNTY COUNCIL AND ESSEX FIRE
AUTHORITY JOINT STANDARDS COMMITTEE HELD AT COUNTY HALL,
CHELMSFORD, ON 8 AUGUST 2014 AT 10:00 AM**

1. Present

Cllr J W Pike (Chairman)
Cllr S Barker
Cllr A J Bayley
Cllr K Bobbin

Cllr T Cutmore
Cllr C C Pond
Cllr J Spence

The Chairman welcomed the new members to the meeting.

The following officers were present in support throughout the meeting:
Terry Osborne (Monitoring Officer), Paul Turner (Solicitor) and Andy Gribben
(Council and Member Support Officer);

2. Apologies and Substitution Notices

Apologies for absence were received from Essex County Councillors B Archibald and T Higgins; Essex Fire Authority representatives Councillors C Guglielmi (ECC) T Kelly (Thurrock Unitary) and P Wexham (Southend-on-Sea) and from the Independent Members Mr N Hodson and Mr J Swan.

3. Declarations of Interest

Councillor Pond declared that he was the Chairman of Epping Forest Parishes' Joint Standards Committee.

4. Minutes

The minutes of the meeting held on 15 January 2013 were approved as a correct record subject to a correction of a typographic error in the Resolution to Paragraph 6 to amend 'Disposable Pecuniary Interest' to 'Disclosable Pecuniary Interest'.

5. Standards at Essex County Council – Annual Review

The Committee considered a report by the Monitoring Officer (SC/001/14) providing members with an annual update of conduct issues at Essex County Council.

The members were reminded that following the publication of the set of principles determined by the Nolan Committee in 2001 the Local Government Act 2000 introduced the mandatory code enforced by a local system and centred on Standards Committees which at that point had to include independent persons.

Essex County Council in addition to a Standards Committee also introduced a local code of conduct.

The Localism Act 2011 whilst requiring local authorities to have a code of conduct no longer includes a requirement to have a Standards Committee. Essex County Council nevertheless has retained its Standards Committee and has continued to appoint two independent members; Mr Hodson and Mr Swan.

There has been very little business for the ECC Standards Committee or for the independent persons to undertake of late. We have had a number of complaints but none have reached the formal stage.

Review of Code of Conduct

The Monitoring Officer suggested to members of the committee that there should be a 'light touch' review of the Code of Conduct and this matter was addressed elsewhere in the agenda of this meeting.

Training

Members noted the table in the report that showed the numbers of members who had undertaken the online corporate governance training.

In response to questions members of the committee were informed that:

- The numbers shown related to current members,
- There are no sanctions that can be imposed on members for non-completion as the courses, for them, were not obligatory,
- There was no need to undertake the training at Essex County Council if an equivalent training opportunity had been undertaken by a (twin-hatted) member at a District, and
- There was an online record of such member training and development on the Committee Management Information System (CMIS) although this was almost certainly in need of some updating.

Members agreed that at the time of election they had been left in no doubt that there was an expectation that the training would be undertaken.

It was agreed that the Member Development Group should be asked to consider the reintroduction of online Member Annual Reports as a means of conveying the commitment and time members spent on training and development.

It was also noted that the work of many members was contributing to the gaining of the Accredited Charter Mark for training and development.

Allegations Received

There had been four allegations made that had been dealt with informally by the Monitoring Officer. These were detailed in the report.

In response to a question concerning one of the complaints members were informed that if informal negotiations undertaken by the Monitoring Officer had failed to resolve the matter involving a dispute between ECC members then the matter would have been brought before the Standards Committee. Other routes

to resolution could have been an apology by one or both members, the identification of necessary training or the involvement of the party whips or Leader of the Council.

Resolved:

That the report be noted.

6. Proposed Review of Code of Conduct

The Committee considered a report by the Monitoring Officer (SC/002/14) that proposed a review of the Codes of Conduct adopted by Essex County Council and Essex Fire Authority.

The Monitoring Officer explained the background to the adoption of the Codes of Conduct as detailed in the report.

With reference to the previous report members noted that there had been no allegations that have resulted in formal proceedings and the Monitoring Officer suggested that this was a measure of how useful the codes have been. However, she also felt that there might be benefits if the codes were to be made more accessible and simpler to understand, particularly as on occasions they were used by members of the public.

A review would be consistent with the ongoing drive towards making public documents more readable using, where possible, plain English.

In response to questions members were informed that there remained some differences between the Codes of Conduct that had been adopted by various authorities in Essex but the Monitoring Officers of the local authorities met regularly to discuss points of both similarity and variance.

Members agreed that the Monitoring Officer should in the first instance work with officers to simplify the Code of Conduct and bring a revised code to an informal meeting of members, drawn from members of the Standards Committee, before seeking the views of other members.

The Chairman stressed that initially this would be an informal meeting of some of the members of the committee who would work closely with the Monitoring Officer on a 'light touch' review. Councillor Cutmore volunteered to become involved and other members were invited by the Chairman to consider what contribution they could make to this informal group and contact the Monitoring Officer.

At the request of members the review would be enlarged to encompass the Development and Regulation Committee Protocol.

Resolved:

That a review of the Code of Conduct and the Development and Regulation Committee Protocol be undertaken by the Monitoring Officer, officers and a small group of members of the Standards Committee.

7. Work Programme

The Committee considered a report by the Monitoring Officer (SC/003/14).

There was some discussion by members about the need for members to have DBS checks. The view was expressed that perhaps all members should be required to undertake the checks, although it was acknowledged that the duties of some members brought them more than others into contact with vulnerable groups.

Resolved:

That agenda for future meetings of the Standards Committee would not have a Work Programme as a standard item of business but the Chairman of the committee, members and the Monitoring Officer would all ensure that relevant business was placed on the forthcoming agenda.

8. Date of next meeting

The date of the next meeting would be advised.

There being no further business the meeting closed at 10:48 am.

Chairman

Report to Joint Standards Committee	Ref: SC/001/15
Date of meeting: 21 December 2015	County Divisions affected by the decision: All Divisions
Title of report: Application for a Dispensation: Cllr Graham Barker	
Report by: Terry Osborne – Monitoring Officer	
Enquiries to Paul Turner- Corporate Lawyer and Deputy Monitoring Officer 03330 134591 email paul.turner2@essex.gov.uk	

1. Purpose of report

- 1.1 To consider an application for a dispensation from Cllr G Barker, a co-opted member of Essex County Council's Health Overview and Scrutiny Committee.

2. Recommendations

- 2.1 Grants a dispensation to Cllr Graham Barker which:
- (a) allows him to participate in matters at the Council's Health Overview and Scrutiny Committee (or any of its Sub-Committees) notwithstanding his work as a locum GP; and
 - (b) Does not apply if the matter being considered has a greater effect on GP practices where Cllr Barker has worked within the last two years than it does on GP practices in the relevant CCG area.
- 2.2 Agrees that the dispensation should last for a period of 4 years.
- 2.3 Agrees that the Monitoring Officer should write to Cllr Barker to let him know the outcome of this application.

3. Background and proposal

- 3.1 Local authorities have always had rules to manage potential conflicts between the private interests of a councillor and their public duties. The rules change regularly but they always seek to prevent councillors from acting as a councillor where this conflicts with their public role. It has always been

accepted that there are some limited circumstances where councillors should be able to participate and even vote notwithstanding the fact that they could be perceived as having a conflict.

- 3.2 At present Members are required not to participate in meetings and must leave the room if they have a declarable pecuniary interest. Failure to declare a pecuniary interest is a criminal offence which can be prosecuted by the Crown Prosecution Service.
- 3.3 Unlike the previous code of conduct, the law of pecuniary interests does not provide for automatic exemptions. Instead, there is a system of dispensations. Essex County Council has delegated the power to grant dispensations to the Joint Standards Committee.
- 3.4 The law about dispensations is contained in section 33 of the Localism Act 2011. It says that the Council may, on a written request made to the proper officer of the authority by a member or co-opted member of the authority, grant a dispensation.
- 3.5 The Council can only grant a dispensation if, after having had regard to all relevant circumstances, the authority—
 - (a) Considers that without the dispensation the number of persons prohibited by from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business.

This criterion would apply where it would be difficult to take the decision because of the number of councillors affected by the particular interest.

- (b) Considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business,

This would apply where a number of members of a particular political group have a conflict.

- (c) Considers that granting the dispensation is in the interests of persons living in the authority's area.

This is a very broad exemption which allows dispensations to be granted in the interest of the county.

- (d) If it is an authority operating executive arrangements, the Council considers that without the dispensation each member of the authority's executive would be prohibited by section 31(4) from participating in any particular business to be transacted by the authority's executive, or

This has limited application and would apply only where only a conflict of interests particularly affected members of the Executive.

- (e) Considers that it is otherwise appropriate to grant a dispensation.

As with (c) above, this is a provision giving the council a broad discretion which authorises the grant of dispensations in a very wide range of circumstances.

3.6 Any dispensation must say:

- (a) How long it lasts. A dispensation cannot last for longer than four years.
- (b) What it covers (eg which interest it relates to and whether it applies in all circumstances or only some of the time)
- (c) Whether it covers
 - a. participation in discussion
 - b. voting; or
 - c. both

- 3.7 It should be noted that the power to grant a dispensation arises only where a member has requested that dispensation.

The Application

- 3.8 Cllr Graham Barker is a member of Uttlesford District Council. He has been nominated to be a district council member of the County Council's Health Overview and Scrutiny Committee. The Committee does not make decisions about health services, but it does have the power to review and scrutinise decisions made about NHS services. Where the Committee makes recommendations to a particular body, that body must formally consider the recommendations and respond. District Council members cannot vote but matters before the Committee are seldom put to a formal vote which means that all members can be influential.
- 3.9 Cllr Barker works regularly a locum GP. He has told us that he works for different GP practices on a 'casual' basis and he has worked at GPs funded by both Mid Essex CCG and North East Essex CCG.
- 3.10 The work of the Committee includes considering services provided by GPs. As someone who either carries on business as a GP or who is an irregular employee of a GP he is likely to have a disclosable pecuniary interest in the scrutiny of some matters relating to GPs.
- 3.11 Accordingly, Cllr Barker has applied for a dispensation. His application form is at appendix 1. He seeks a dispensation that would allow him to speak on any matter at the Committee even if it affects his position as a locum GP.
- 3.12 Cllr Barker has applied for a dispensation on the basis either that the dispensation is in the interests of persons living in the authority's area or that it is otherwise appropriate to grant a dispensation.

- 3.13 Cllr Barker states in his application that he believes that it would be unduly restrictive if he was unable to participate in matters relating to GPs and it would also prevents him from representing the residents of Uttlesford and the wider population of Essex, depriving the Committee of a view of the NHS that hasn't been filtered by those presenting to them.
- 3.14 Whilst any third party view of the NHS will have been filtered by the views of those presenting them, the Standards Committee may consider that Cllr Barker's role as a locum GP and the limited powers of this Committee may make it appropriate to grant the dispensation requested. Furthermore the fact that Cllr Barker may on occasion be able to provide an informed alternative point of view which is helpful to the Committee could mean that the dispensation is in the interests of the residents of Essex.
- 3.15 It would not however be appropriate to allow Cllr Barker to participate as a member of the committee in any matter which particularly affected GP practices where he has worked as he has a more direct interest in these practices as this could undermine the effectiveness of the scrutiny of such matters and Cllr Barker would have a significant interest in such matters. It is considered that this would be unlikely to arise in practice, but given the wide remit of the Health Overview and Scrutiny Committee, this cannot be ruled out.

4. Financial Implications

- 4.1 There are no financial implications to the grant of dispensations which can be dealt with inside existing resources.

5. Legal Implications

- 5.1 The legal implications are set out elsewhere in this report.

6. Staffing and other resource implications

- 6.1 This report has no staffing implications.

7. Equality and Diversity implications

- 7.1 In making this decision the Council must have regard to the public sector equality duty under section 149 of the Equalities Act 2010. The Council is required to have due regard to the need to:
- (a) Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.

- (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.

This includes having regard to the need to:

- (i) remove or minimise disadvantages suffered by particular equality groups;
 - (ii) take steps to meet the needs of the needs of particular equality groups;
 - (iii) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

7.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

7.3 The equality duty is a relevant factor in making this decision but does not impose a duty to achieve the outcomes in section 149. This equality duty is only one factor that needs to be considered, and may be balanced against other relevant factors.

7.4 It is not anticipated that this decision will have any adverse impact on anyone; based on their race or culture, age, sexual orientation, impairment, gender, caring role, re-assigned gender, pregnancy/maternity/paternity, marital status or civil partnership, religion/belief or socio-economic and/or health inequalities.

**Essex County Council
Application for a Dispensation**

Name of Applicant:	Graham Barker
Role of Applicant at ECC:	<input checked="" type="checkbox"/> Member of ECC <input type="checkbox"/> Co-optee onto an ECC body (please state which body) Co-opted Member of Health Overview and Scrutiny Committee
Contact details (if not a member of ECC)	Telephone: Email: cllrbarker@uttlesford.gov.uk
What interest does this application relate to? (eg 'my interest as a Director of Colchester United FC')	My work as a locum general practitioner at various surgeries in the Mid Essex CCG area and the North East Essex CCG Area
When do you want the dispensation to apply? (eg 'in all circumstances' or 'when discussing highways issues near the stadium' or 'for consideration of planning application 123/234/FUL')	At all times
Grounds (please tick all that apply).	<input checked="" type="checkbox"/> That so many members of the decision-making body have disclosable pecuniary interests in a matter that it would 'impede the transaction of the business'. <input checked="" type="checkbox"/> That, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter. <input type="checkbox"/> That the dispensation is in the interests of persons living in the authority's area. <input checked="" type="checkbox"/> That, without a dispensation, no member of the Cabinet would be able to participate on this matter. <input type="checkbox"/> That it is otherwise appropriate to grant a dispensation.
Why do you believe that the grounds the dispensation should be granted? Explain why the grounds above are met.	I believe that any topic involving general practice, including services provide by acute Hospital Trusts, particularly Colchester and Broomfield, Mental Health and Social Services across Essex could be construed as being in some way related to my DPI. This is (a) unduly restrictive and effectively prevents my representing the residents of Uttlesford and the wider population of Essex, and (b) deprives HOSC of a view of the NHS that hasn't been filtered by those presenting to them.
Length of dispensation sought. (The law allows a dispensation to be granted for up to 4 years).	Four years

Applicants should note that this application will normally be considered by the Essex County Council and Essex Fire Authority Joint Standards Committee and that this application may be published.

I apply for a dispensation on the above terms.

Signed [Authorised by Email from Cllr Barker] Date 19 September 2015

Report to Joint Standards Committee	Ref: SC/002/15
Date of meeting: 21 December 2015	County Divisions affected by the decision: All Divisions
Title of report: Investigation and Hearings Procedure	
Report by: Terry Osborne – ECC Monitoring Officer	
Enquiries to Paul Turner- Corporate Lawyer and Deputy Monitoring Officer 03330 134591 email paul.turner2@essex.gov.uk	

1. Purpose of report

- 1.1 To provide members of the committee with a note of the procedure that will be adopted by the Monitoring Officer and/or the Standards Committee when investigating and/or hearing allegations of breaches of the code of conduct against members of the Council. a similar may in future be adopted for handling complaints against members of the Fire Authority.

2. Recommendations

- 2.1 Note and endorse the new procedure in the form appended to this report.

3. Background and proposal

- 3.1 The Joint Standards Committee is responsible for considering whether members of ECC or the Essex Fire Authority are in breach of the respective Codes of Conduct for Members of those authorities.
- 3.2 Up until 2012 the Council, the Council was required to follow the national standards framework and had previously adopted a lengthy and detailed guide to hearings and investigations held under that regime. However, the national mandatory code of conduct, the Standards Board and the majority of the statutory framework were all abolished between 2012 and 2013. A lighter touch regime could then be adopted by local authorities.

- 3.3 A new code of conduct for members was adopted by ECC in October 2012, along with the following broad arrangements for dealing with complaints made under the new system:
- a. the Monitoring Officer be appointed as the Proper Officer to receive and manage the determination of complaints of failure by Members to comply with the Code of Conduct and to advise the Standards Committee and Sub-Committee thereon.
 - b. the Monitoring Officer be authorised to investigate complaints against councillors or to arrange for such an investigation to be carried out or to seek a decision from the Standards Committee on whether to investigate.
 - c. The Monitoring Officer be given delegated power to determine that no further action be taken following a finding that there has been no breach of the Code, subject to consulting the Independent Person.
 - d. That Council can appoint and delegate to a Hearing Sub-Committee its powers to take decisions in respect of a member who is found on hearing to have failed to comply with the Code of Conduct
- 3.4 These arrangements are successfully operating at a high level, but we do not have detailed guidance about how matters will be investigated or about how hearings will be held.
- 3.5 Accordingly a new procedure has been prepared, which is attached as appendix 1. Members are asked to endorse this new procedure.
- 3.6 Members will note that, briefly:
- The Monitoring Officer will decide whether the complaint is one which should be investigated under the code of conduct. If not, the complainant will be informed of that decision and the complaint will be referred on to the appropriate person or body if possible. In complex or difficult cases the Standards Committee may be asked to make the decision on whether or not to investigate.
 - If the complaint is one that should be investigated under the code of conduct then an investigation will be carried out by the Monitoring Officer or a person appointed by her.
 - If upon conclusion of the investigation the Monitoring Officer determines that there has been no breach then, subject to consulting the Independent Person, the Monitoring Officer can decide to take no further action.
 - If upon conclusion of the investigation the Monitoring Officer determines that there has been a breach then the findings will be reported to the Standards Committee who will appoint a sub-committee to hold a hearing into the matter. The procedure for that hearing is also set out in the appendix. The appendix also sets out the possible sanctions that could be applied if the committee so determine.

4. Financial Implications

- 4.1 There are no financial implications to the approval of this policy. There may be costs if an external investigator is appointed.

5. Legal Implications

- 5.1 The procedure follows the necessary statutory requirements and good practice.

6. Staffing and other resource implications

- 6.1 This report has no staffing implications.

7. Equality and Diversity implications

- 7.1 In making this decision the Council must have regard to the public sector equality duty under section 149 of the Equalities Act 2010. The Council is required to have due regard to the need to:
- (a) Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
- 7.2 There is no disadvantageous impact anticipated on people; based on their race or culture, age, sexual orientation, impairment, gender, caring role, re-assigned gender, pregnancy/maternity/paternity, marital status or civil partnership, religion/belief or socio-economic and/or health inequalities. The procedure makes it clear that adjustments will be carried out if a person's disability affects their ability to participate in an investigation or hearing.

8. List of Appendices

Appendix 1 – draft Investigations and Hearings Procedure.

9. List of Background Papers

- The ECC member Code of Conduct
- The previous procedure adopted by the Committee for dealing with complaints governed by the Local Government Act 2000.

JOINT ESSEX COUNTY COUNCIL

AND

ESSEX FIRE AUTHORITY

STANDARDS COMMITTEE

PROCEDURE FOR THE

INVESTIGATION AND HEARING OF COMPLAINTS AGAINST

MEMBERS OF ESSEX COUNTY COUNCIL

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2 Initial Assessment

3 Investigations

Annex 1 – Procedure to be followed by the Standards Committee when deciding whether or not a complaint should be investigated.

Annex 2 – Procedure to be followed by the Hearings Sub-committee when holding a hearing.

Annex 3 – Guidance on appropriate sanctions

CHAPTER ONE

1 INTRODUCTION

- 1.1 The Localism Act 2011 requires Essex County Council to have a code of conduct for members and to establish processes for considering allegations that a councillor has not complied with the code.
- 1.2 This document sets out the process to be followed when an allegation is made.
- 1.3 Any reference to the Monitoring Officer includes a reference to a person authorised to act on behalf of the Monitoring Officer

2 INITIAL ASSESSMENT

- 2.1 The Monitoring Officer will decide whether a complaint is within the scope of the procedure, which involves consideration as to whether:
 - 2.1.1 the person complained about is a member of the authority;
 - 2.1.2 the member was in office at the time of the alleged conduct
 - 2.1.3 the Code of Conduct was in force at the time of the alleged misconduct;
 - 2.1.4 if proven, the alleged misconduct would constitute a breach of the Code of Conduct in force at the time of the alleged misconduct.
- 2.2 Complaints will not be accepted if the complaint is not, in fact, a complaint under the Code of Conduct. This may apply if, for example, the complaint is, in reality, a complaint about Council services or about a decision taken by the Councillor concerned which the complainant simply disagrees with.
- 2.3 If the complaint is not considered to be within the scope of the procedure the Monitoring Officer will write to the complainant and give a provisional view and invite representations from the complainant. A final decision will be made by the Monitoring Officer after considering any response from the complainant and the complainant. The relevant member will be informed accordingly.
- 2.4 If the Monitoring Officer considers that the complaint is one which falls within the scope of the procedure then, subject to paragraph 2.6, he or she shall, having regard to the assessment criteria set out in annexe 1, decide whether the complaint should be investigated.
- 2.5 If he or she determines that the complaint should not be investigated then the Monitoring Officer will write to the complainant and give a provisional view and invite representations from the complainant. A final decision will be made by the Monitoring Officer after considering any response from the complainant and the complainant and the relevant member will be informed accordingly.

- 2.6 The Monitoring Officer may refer the matter to the Standards Committee to decide whether a complaint should be investigated. This may happen, for example, if it is unclear whether a case should be investigated or where he or she feels unable to act for some reason. If this matter is referred to the Standards Committee for decide then the procedure in Annex 1 shall apply.
- 2.7 In any case where no further action is taken, the Monitoring Officer may wish to have an informal discussion with the member concerned to advise on reducing the risk of complaints in future.

3 INVESTIGATIONS

- 3.1 Where a complaint is to be investigated, the Monitoring Officer has delegated power to investigate.
- 4.1 The Monitoring Officer will either carry out the investigation personally or he or she may appoint another officer to carry out the investigation. In this document Investigator refers to the person who is carrying out the investigation.
- 4.2 The Monitoring Officer must inform the following of the decision to refer the matter for investigation:
- the councillor concerned;
 - the complainant; and
 - the standards committee of any other authority concerned (if any).
- 4.3 Investigators must always be aware of the obligations under the Data Protection Act 1998, the Human Rights Act 1998 and other relevant legislation, when carrying out an investigation or other action.
- 4.4 When conducting an investigation, the Investigator may make inquiries of any person he or she thinks necessary. However, there is no legal obligation for that person to respond.
- 4.5 The investigation must be undertaken fairly. In particular:
- (a) The member concerned must be given enough information to enable them to respond to the allegation.
 - (b) Information supplied by any person should be recorded in writing, in the form of a statement if appropriate.
 - (c) Further information should be sought from the complainant if necessary to consider a relevant point made by a complaint.
- 4.6 On completion of an investigation, the Investigator must produce a draft report which will normally include draft findings.
- 4.7 The draft report must be sent to the councillor concerned and the complainant, on a confidential basis, giving them 14 days in which to comment.

- 4.8 The Investigator must then produce a final report which sets out whether the Investigator has found there to be one or more breaches of the code of conduct. If it was not possible to make a finding, then the Investigator should make that clear in their report.
- 4.9 The Investigator must send their final report to:
- (a) The Complainant.
 - (b) The Councillor concerned.
 - (c) An Independent Person appointed by the Council under the Localism Act 2011.
 - (d) The Monitoring Officer (if the Monitoring Officer has not investigated personally).
- 4.10 The Independent Person shall be given seven days to provide advice on the draft report, or such longer period as is reasonable in the circumstances.
- 4.11 The Monitoring Officer will consider the report of the Investigator and the advice of the Independent Person and shall reach a view on whether he or she feels there has been a breach of the code of conduct. If necessary, the Monitoring Officer may ask for further investigations to be conducted before reaching a view. If the further investigations result in more information being available or a change in the conclusion of the report then the Independent Person shall be consulted again.
- 4.12 If the Monitoring Officer concludes that there has been a breach of the code of conduct then he or she will refer the matter to a Hearings Sub-Committee to be heard.
- 4.14 If the Monitoring Officer concludes that there has not been a breach of the code of conduct then he or she may either:
- (a) Close the complaint without referring the matter to the Hearings Sub-Committee; or
 - (b) Refer the matter to the Hearings Sub-Committee for a hearing.
- 4.15 In any case where the Monitoring Officer does not refer the matter to the Hearings Sub-Committee, he or she may still wish to have an informal discussion with the member concerned to advise on reducing the possibility of complaints in future.
- 4.15 If the decision is that the matter should proceed to a Hearing then the process in Annex 2 should be followed.

Annex 1 – Procedure to be followed by the Standards Committee when it considers whether a complaint should be investigated

- 1.1 The Committee will normally meet within 20 working days of receipt of the complaint.
- 1.2 The meeting will normally be held in private but subject to the usual Access to Information Rules.
- 1.3 At the start of the meeting the Chairman shall invite the Monitoring Officer to explain the role of the committee and the decisions they are able to make.
- 1.4 The committee are required to decide whether, with respect to each allegation:
 - (a) the Monitoring Officer should investigate it; or
 - (b) the Monitoring Officer should take any other steps in relation to the member concerned, for example, mediation, apology, training or an alternative measure to address the issue that has arisen; or
 - (c) no action should be taken.
- 1.5 The committee shall take into account the following criteria ('the Assessment Criteria') in making its decision whether or not to investigate a complaint:
 - (a) is the matter serious enough, if proven, to justify an investigation;
 - (b) is the alleged misconduct part of a continuing pattern of less serious misconduct which is unreasonably disrupting the business of the authority and in respect of which there is no other avenue left to deal with it;
 - (c) how much time has passed since the alleged conduct occurred;
 - (d) if the complaint is anonymous, does it contain documentary or photographic evidence indicating an exceptionally serious or significant matter;
 - (e) does it appear that the complaint is malicious, relatively minor, politically motivated or tit-for-tat;
 - (f) has the same or a substantially similar complaint has already been the subject of an investigation by this Authority or public body and there is nothing further to be gained by hearing the matter again;
 - (g) does it appears that the complaint is really about the dissatisfaction with a Council decision; and
 - (h) Is there likely to be enough information available to justify an investigation?
- 1.6 The Monitoring Officer will prepare a written summary of the Committee's decision.

- 1.7 The decision notice will be sent to the relevant parties within 5 working days and will be made available for public inspection, unless it is not in the public interest to do so or is likely to prejudice any subsequent investigation.

Annex 2 – Hearings Sub-Committee Procedure

1. Before the Hearing

Date of Hearing

- 1.1 A meeting of the Hearing Sub-Committee will be convened by ECC's Head of Democratic Services in consultation with the Chairman or the Standards Committee. The Monitoring Officer shall then, in consultation with the Chairman of the Sub-Committee, arrange the date, time and place for the Hearing. The Hearing shall normally take place within 3 months after the final report was sent to the Monitoring Officer. When setting the dates, the Monitoring Officer will consult with all relevant parties if possible, and will in any event notify all parties of the date, time and place of the Hearing as soon as possible.
- 1.2 Any objection to the proposed Hearing date must be notified in writing to the Monitoring Officer as soon as possible. The Monitoring Officer will act reasonably in considering any requests for an alternative Hearing date but is not obliged to re-schedule the Hearing, having particular regard to the requirement to convene a Hearing within three months. The Monitoring Officer will consult with the Chairman before re-scheduling the meeting.

Notice of procedure

- 1.3 Once the Hearing date has been set, the Monitoring Officer will send a copy of this Procedure Note and a note of any proposed departures from the procedure in it to the Member and to the Complainant and to the members of the Sub-Committee.

Pre-Hearing Questionnaire

- 1.4 Prior to the Hearing, the Monitoring Officer may ask the Member to complete a Pre-Hearing Questionnaire in respect of the findings in the report and other issues relevant to the Hearing. If a Questionnaire is sent it will ask some or all of the following questions:
- 1.5 Do you agree with the Investigator's findings of fact?
- 1.6 Do you agree you have breached the code of conduct as set out? If so, would you be willing to make an apology to the complainant? Would you be willing to undergo training if necessary in order to avoid a further breach occurring in future?
- 1.7 If there is found to be a breach, is there anything you would like to be taken into account by the Sub-committee when it considers whether a sanction should be imposed and what that sanction might be?
- 1.8 Will you be attending the Hearing or do you intend to submit only written representations;

- 1.9 Will you be represented by a solicitor or barrister or other person at the Hearing? If so, please confirm who and whether that person is connected to the matter in any way;
- 1.10 Do you wish to call any witnesses? If so, please provide the name and contact details for those witnesses and a brief description of the evidence each witness will give;
- 1.11 Do you intend to ask the Sub-Committee to consider any documentary or other written evidence not already provided? If so, please provide copies when responding to this questionnaire?
- 1.12 Do you wish to have any documents withheld from the public and, if so, please give your reasons for this request?
- 1.13 Would you like the Hearing to be held in private or public and, if so, please outline your reasons for the request? (Meetings will normally be held in public, but the Sub-Committee will consider the Member's request to hold it in private.);
- 1.14 Do you have any comments or questions on the procedure to be followed?
- 1.15 Do either you, or your witnesses or representative have any special access requirements or other special requirements?
- 1.16 The Member will be asked to respond to the Questionnaire within 14 days from the date the Questionnaire was sent.

The Investigator

- 1.17 The Monitoring Officer shall ask the Investigator to comment on:
- the response to the Questionnaire provided by the Member (if any) and whether the Investigator is able to accept any of the points raised in it.
 - whether the Investigator would like to call any witnesses and, if so, to provide the name and contact details for those witnesses and a brief description of the evidence they will give if different to the summary of their evidence in the Investigator's report.
 - whether the Investigator will be asking the Sub-Committee to consider any documentary or other written evidence not already provided (other than the report of the investigation) and, if so, to provide copies.
 - whether he or she thinks the Hearing should be held in private and, if so, the reasons why.
 - whether he or she would wish to have any documents withheld from the public and, if so, why.
 - any comments or questions on the proposed procedure.

- Whether the Investigator or any witnesses the Investigator intends to call have any special access requirements or other special requirements

Pre-Hearing Summary

1.18 The Monitoring Officer will write to the relevant parties prior to the Hearing date with a Pre-Hearing Summary setting out:

- the name of the Authority
- the name of the Member
- the name of the Complainant (unless in the Monitoring Officer considers that there are special circumstances which mean that the name of the Complainant should not be revealed)
- the name of the Investigator
- the name of the Chairman of the Sub-committee that will hear the matter
- the date, time and place of the Hearing
- a summary of the allegation
- the findings of fact of the Investigator
- the findings of fact which are not agreed by the Member, if any, the reasons for that disagreement and the comments from the Investigator on those reasons
- a list of persons expected to attend the meeting, including any witnesses who have been invited to attend
- whether the Sub-committee is likely to be asked to limit the number of witnesses who may be called
- whether the person named by the Member as his or her representative (if not a solicitor or barrister) is likely to be permitted to act as the Member's representative
- a list of documents to be considered by the Sub-Committee, including any written representations which the Member has asked to be placed before the Sub-committee (copies of the documents will be enclosed if possible but in any event will be sent to the parties prior to the Hearing)
- a list of any documents that have been or will be withheld from the public
- whether the Hearing is likely to take place in private

- whether there are anticipated to be any departures from the procedure set out in this Procedure Note which have not already been notified to the Parties.

Disputes on the Pre-Hearing Summary

- 1.19 If, having received the Pre-Hearing Summary, the Member and/or the complainant disagrees with any part of it he or she shall forthwith give notice of the disputed issues to the Monitoring Officer and should then seek to resolve the disputed issues through the Monitoring Officer prior to the Hearing. If necessary, the Member or the complainant can contact the Monitoring Officer to arrange a convenient time to meet the Monitoring Officer to discuss the issues. Any unresolved issues will be dealt with as a preliminary matter at the Hearing. Failure to notify the Monitoring Officer of any issues of dispute or any failure to attempt to resolve those issues with the Monitoring Officer prior to the Hearing may mean that the Sub-committee may decline to listen to the Member or the complainant on the disputed issues at the Hearing.

2 At the Hearing

- 2.1 The Sub-committee's quorum is three. Substitute Sub-committee members may be appointed where the original member cannot attend a scheduled Hearing. Sub-committee decisions will be made by simple majority with the Chairman having a casting vote in the case of equality.
- 2.2 The standard of proof to be applied is the balance of probabilities in any findings against the Member.
- 2.3 The Sub-committee may take advice from the Monitoring Officer at any time during the Hearing or while they are considering the outcome. This advice may be taken in private.
- 2.4 The Member may be represented or accompanied by a solicitor, counsel or, with the permission of the Sub-committee, another person.

Commencement of the Hearing

- 2.5 Seats will be reserved for the relevant parties and their witnesses. A separate seat will be provided for a witness when giving evidence.

Delay at start of Hearing

- 2.6 The Hearing shall commence on the date and at the time stipulated in the notice convening the meeting but the start may be delayed by the Chairman for a reasonable period if, having had regard to the advice of the officers present and any representations received from or on behalf of the parties he or she considers such delay to be reasonable in the circumstances. The Chairman will take into account the effect the delay may have on the likelihood of the Hearing being concluded in the one session.

Absent Member

- 2.7 If the Member is not present at the time the Hearing is due to start, the Chairman will ask the Monitoring Officer whether the Member has provided any reasons for his or her non-attendance. If the Sub-committee is satisfied with such reasons, it shall adjourn to another date. If the Sub-committee is satisfied that the Member received adequate notice of the Hearing and either no reasons for the Member's non-attendance were given or the Sub-committee considers the reasons given to be inadequate, then the Sub-Committee shall decide whether to proceed with the Hearing in his or her absence or adjourn to another date.

Chairman to deal with preliminary matters

- 2.8 At the start of the Hearing, the Chairman will deal with the following preliminary matters:
- Introductions of all persons present.
 - Declarations of interest.
 - Whether the parties have received a note of the procedure to be followed at the Hearing.
 - An explanation of the procedure to be followed (the Chairman may invite the Monitoring Officer to explain the procedure) and whether the procedure that will be followed is different to the procedure described in this Procedure Note (again, the Chairman may invite the Monitoring Officer to address this issue). Any questions on the procedure will also be dealt with.
 - Whether there are any outstanding issues or disagreements on the Pre-Hearing Summary and whether they have already been raised by the Member with the Monitoring Officer prior to the Hearing and whether there was any attempt at resolving them.

2.9 The Committee will then determine:

- whether the Member is entitled to be represented by the person nominated by him or her (if not a barrister or solicitor).
- whether all or any part of the Hearing should be conducted in private
- whether, acting reasonably, a limit should be placed on the number of witnesses which the Member or the Investigator will be entitled to call and if so, how many. This may be, for example, if the Sub-committee considers that witnesses will simply repeat earlier evidence or if their evidence is not relevant.

Explanation of Pre-Hearing Summary

- 2.10 The Chairman will ask the Monitoring Officer to present the Pre-Hearing Summary. As a copy would have already been sent to the parties this requirement can be dispensed with if the Sub-committee agrees.

Written Representations

- 2.11 In the event that the Member or the Investigator has submitted written representations prior to the Hearing, then they shall stand as read.

Findings of Fact

- 2.12 The Chairman will ask the Monitoring Officer to explain the findings of fact and those in respect of which the Member has given notice of dispute, if any.
- 2.13 If there is no dispute on the findings of fact the Chairman will, subject to the following paragraphs, move on to address whether there has been a breach of the Code of Conduct and in so doing will move onto the next stage in the process.
- 2.14 If there are any disputes on the findings of fact which have been notified to the Monitoring Officer, the Chairman will invite the Member or his or her representative to briefly outline the findings of fact which he or she disagrees with.
- 2.14 Except in exceptional circumstances, and except with the permission of the Sub-committee, the Member will not be entitled to raise any disputes on any findings of fact other than those in respect of which notice has already been given to the Monitoring Officer in response to the Questionnaire. If the Sub-committee do give permission then it may be necessary to adjourn the hearing.
- 2.15 Once the Member or his or her representative has briefly outlined the findings of fact with which the Member disagrees, the Investigator will be invited to make submissions to support the relevant finding(s) of fact in the report which are disagreed and may, with the Sub-committee's permission, call any necessary supporting witnesses to give evidence.
- 2.16 The Chairman may give the Member an opportunity to challenge any evidence put forward by any witness called by the Investigator. All challenges will be put through the Chairman of the Sub-Committee.
- 2.17 The Chairman will then give the Member an opportunity to make submissions to support his or her version of the facts and, with the Chairman's permission, to call witnesses to give relevant evidence.
- 2.18 The Chairman may give the Investigator an opportunity to challenge any of the evidence put forward by the Member or witnesses called by the Member or his representative. All challenges will be put through the Chairman of the Sub-Committee
- 2.19 At any time the members of the Sub-Committee and the Monitoring Officer may, with the permission of the Chairman, question any of the people involved or any of the witnesses.

Deliberations on Findings of Fact

- 3.1 The Sub-Committee will retire to deliberate in private with assistance from the Monitoring Officer or other officer in order to decide on the findings of fact.
- 3.2 The Sub-Committee will then reconvene and the Chairman will announce the Sub-committee's findings of fact.

Deliberations on whether there was a Breach of the Code of Conduct

- 4.1 Once the Chairman has announced the findings of fact, the Sub-Committee will go on to consider whether or not, based on the facts, the Member has breached the Code of Conduct.
- 4.2 The Chairman will invite the Member to make submissions on the reasons why, if any, he or she does not consider there to have been a breach of the Code of Conduct.
- 4.3 The Chairman will then invite the Investigator to respond to the Member's submission, and to identify which sections of the code, they consider that the Member has breached.
- 4.4 Members of the Sub-committee and the Monitoring Officer may at any time, but with permission of the Chairman, question anyone involved on any point raised in their submissions.
- 4.5 The Chairman will then invite the Member to make any final relevant points.
- 4.6 The Sub-committee will then retire to consider the submissions in private with assistance from the Monitoring Officer.
- 4.7 Once the Sub-committee has made its decision, the Sub-Committee will reconvene and the Chairman will announce the Sub-Committee's decision as to whether or not the Member has breached the Code of Conduct.
- 4.8 In reaching its decision the Sub-committee shall make one of the following findings:
 - (a) that the Member had not failed to comply with the Code of Conduct;
 - (b) that the Member had failed to comply with the Code of Conduct but that no action needs to be taken in respect of the matters which were considered by the Sub-Committee;
 - (c) that the Member had failed to comply with the Code of Conduct and that a sanction should be imposed.

Finding of No Breach of Code or No Further Action

- 4.9 If the Sub-committee finds no evidence of any breach of the Code of Conduct or if it finds that there is a breach but no further action is required to be taken, then no further action shall be taken save that the Chairman may set out any recommendations which the Sub-Committee considers should be made to the authority or to all or any of its members with a view to promoting high standards of conduct. The Chairman will seek the views of the Member, the

Investigator and the Monitoring Officer before the Sub-committee makes any such recommendations.

- 4.10 Where there is a finding that the Member has not failed to comply with the code of conduct, the Chairman will if the Member is present ask him whether he wishes the decision of the Sub-committee to be published in the local paper and, if not, then no notice shall be published.

Deliberations following Finding of Breach of Code

- 4.11 If the Sub-committee finds that the Member did breach the Code of Conduct, the Chairman will invite the Monitoring Officer to explain to those present what sanctions are available to the Sub-committee. The Monitoring Officer may where appropriate describe what sanctions have been imposed by Sub-committees at previous Hearings and any sanctions imposed specifically in relation to the Member concerned. The sanctions which are available to the Sub-committee are set out below.

The sanctions (all or any of the following):

- (a) Censuring or reprimanding the member or recommending the Council to do so;
- (b) Reporting its findings to Council;
- (c) Recommending to the Member that he or she make an apology to the complainant if they have not already done so.
- (d) Recommending to the appropriate person or body that the member be removed from any or all Committees or Sub-Committees of the Council or the Cabinet;
- (e) Requesting the Monitoring Officer to arrange training for the member;
- (f) Recommending to the appropriate person or body that the member be removed from all outside appointments to which the member has been appointed or nominated by the Authority;
- (g) Withdrawing facilities provided to the member by the Council e.g. photocopying facilities if that facility was previously abused by the member concerned;
- (h) Excluding the member from the Councils offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.
- (i) recommending to the appropriate person or body that a Member's membership of one or more committees or other bodies should be

suspended such time as he or she submits a written apology in a form specified by the Sub-Committee;

- (j) a recommending to the appropriate person or body that a Member's membership of one or more committees or other bodies should be suspended for a period up to a maximum of six months or until such time as he or she undertakes such training or conciliation as the Sub-Committee may specify;

'the appropriate person' includes, where relevant, the Leader of the Member's political group.

- 4.12 The Chairman may invite the Investigator to make any submissions that they wish to make about the sanction that he or she considers would be reasonable to impose and the date when it should take effect.
- 4.13 The Chairman will invite the Member to respond to the comments from the Investigator (if any) and to make submissions on the sanction to be imposed, the time when it should run from and any mitigating circumstances he or she believes may exist.
- 4.14 The Sub-Committee shall then retire once more to decide in private with assistance from the Monitoring Officer or Legal Adviser:-
 - i whether to impose a sanction
 - ii where a sanction is to be imposed -
 - (a) what that sanction should be; and
 - (b) when that sanction should commence, how long it should be for, whether the sanction should be suspended and, if so, in what circumstances; and
 - iii. any recommendations the Sub-committee considers it should make to the authority or any other person or body.
- 4.15 In determining the sanction to be imposed, the Sub-committee should consider all relevant information, including the factors listed in the following section of this guidance.
- 4.16 A sanction will normally commence forthwith but the Sub-Committee can direct or recommend that it commence on any date within a period of six months after the imposition of the sanction. For example, if there are no meetings which the Member would otherwise attend in the next few months the imposition of an immediate sanction would in practice have little impact and it may therefore be appropriate for the Sub-Committee to delay the imposition of the sanction.

Written decision of Findings

- 4.17 The Monitoring Officer shall in conjunction with the Chairman prepare a short written notice of the decision and the reasons for that decision and he or she shall send a copy to the Member, the Complainant and the members of the Sub-committee as soon as possible after the close of the Hearing. In the case of a suspended sanction, it will include an explanation of the steps which need to be taken by the Member if he or she is to avoid the sanction coming into effect.
- 4.18 Within two weeks after the close of the Hearing, the Monitoring Officer shall prepare a full written decision of the Sub-committee and shall send it to the following people:
- the Member
 - the Investigator.
 - the members of the Sub-committee
 - the Standards Committee of any other authority involved
 - the person(s) who made the allegation.
- 4.19 Where the Sub-committee finds that there has not been a failure to comply with the Code of Conduct then the full report shall state that fact and shall state the reasons for that finding.
- 4.20 Where the Sub-committee finds that there has been a failure to comply with the Code of Conduct but that no action needs to be taken in respect of that failure then the full report shall state that fact and shall also state the details of the failure and the reasons for the Sub-committee's finding.
- 4.21 Where the Sub-committee finds that there has been a failure to comply with the Code of Conduct then the full report shall state that fact and shall also state the details of the failure, the reasons for the Sub-committee's finding and the sanction to be imposed. 4.22 The Monitoring Officer shall arrange for the decision to be published on the Council's website unless there has been no breach, in which case the decision shall only be published by the Monitoring Officer if the Member concerned wishes the decision to be published..

Annex 3

Guidance on Appropriate Sanctions

1. When deciding what sanction to impose, the Sub-committee should make sure that it is reasonable and in proportion to the Member's behaviour. Before deciding what penalty to set, the Sub-committee should consider the following issues:
 - What were the consequences of the failure to follow the Code of Conduct for the Member, the Council and others?
 - How serious was the incident?
 - Did the Member know (or should reasonably have known) that he or she was failing to follow the Code of Conduct?
 - Did the Member get advice from officers before the incident? Was that advice acted upon in good faith?
 - Has there been a breach of trust?
 - Has there been financial impropriety (for example, improper expense claims or procedural irregularities)?
 - Does the Member accept he or she was at fault?
 - Did the Member apologise to the relevant people?
 - Did the Member agree to attend conciliation or training?
 - Has the Member previously been warned or reprimanded for similar misconduct and/or been found to be in breach of the Code on a previous occasion?
 - Is the Member likely to do the same thing again?
 - Are there any other factors that need to be considered?
 - Are there any cost implications for the Council e.g. the cost of arranging training or conciliation?
 - What is fair, reasonable and proportionate in all the circumstances?