

June 2022



Process for Dealing with a Complaint that a Councillor or Co-opted Councillor has Breached the Code of Conduct



1. The Monitoring Officer is appointed the proper officer to receive all complaints that a Councillor has breached the Code of Conduct and all complaints should be sent to:

The Monitoring Officer

Eastleigh Borough Council

Eastleigh House Upper Market Street Eastleigh

Hampshire

SO50 9YN

Or email:

Joanne.Cassar@eastleigh.gov.uk

Introduction

2. The system of regulation of standards of councillor conduct in England is governed by the Localism Act 2011. Local authorities must have a **Code of Conduct for Councillors**, which must be consistent with the "Seven Principles of Public Life". Councillors are accountable and all must adopt the behaviours and responsibilities associated with the role.
3. Anyone who considers that a Borough or Parish Councillor may have breached the Code of Conduct may make a complaint to the Monitoring Officer.

Process

4. A complaint should be submitted ideally using the form attached in Annex 1. When a complaint is received the Monitoring Officer will acknowledge receipt and set out the process to be taken to assess the complaint with an agreed timescale.
5. The Monitoring Officer may also notify the Councillor whom is the subject of the complaint, that a complaint has been received and invite their comments on it usually within 10 working days. In deciding whether or not to notify the subject member they would need to weigh up different factors. For example, would telling the subject member risk that the complainant may be intimidated or evidence destroyed, or if the complaint seems to fall outside of the jurisdiction of the Code is there any need to hear from the councillor? However, the presumption would normally be to invite the subject member to comment as this can help the Monitoring Officer to decide whether a matter can be dealt with informally without the need for a formal investigation.
6. If the Monitoring Officer does tell the subject member about the complaint, they will need to be satisfied that they have the legal power to disclose the information they choose to reveal. Additionally, the impact of the Data Protection Act 2018 and UK General Data Protection Regulation (GDPR) should be considered to ensure that any personal data is processed fairly and lawfully at every stage of the process. Reasonable expectations of privacy need to be balanced against the public interest.
7. Once a complaint has received it will be checked to ensure that it:
 - a. Can be dealt with by the Council (within its legal jurisdiction) (or is it a criminal offence which should be referred to the Police);
 - b. Is a complaint about a Councillor of Eastleigh Borough Council or a Councillor of one of the parish or town councils in the Borough;
 - c. Does relate to a section(s) of the relevant Code of Conduct.

8. If a complaint does not comply with any of the above the Monitoring Officer will write to the complainant to advise why the complaint cannot be dealt with under the Council's procedure for complaints that a Councillor has breached the Code of Conduct.
9. If the complaint satisfies the criteria above it will be considered by the Monitoring Officer using the following initial assessment of complaints as a guide:
 - a. Does the complaint contain sufficient evidence to demonstrate a potential breach of the Code?;
 - b. Are there alternative, more appropriate, remedies that should be explored first?;
 - c. Where the complaint is by one councillor against another, a greater allowance for robust political debate (but not personal abuse) may be given, bearing in mind the right to freedom of expression;
 - d. Is the complaint in the view of the authority malicious, politically motivated, or 'tit for tat'?
 - e. Whether an investigation would not be in the public interest or the matter, even if proven, would not be serious enough to warrant any sanction (see guidance on hearings);
 - f. Whether a substantially similar complaint has previously been considered and no new material evidence has been submitted within the current administration;
 - g. Whether a substantially similar complaint has been submitted and accepted;
 - h. Does the complaint relate to conduct in the distant past? This would include consideration or any reason why there had been a delay in making the complaint;
 - i. Was the behaviour that is the subject of the complaint already dealt with? For example, through an apology at the relevant meeting;
 - j. Does the complaint actually relate to dissatisfaction with a local authority decision rather than the specific conduct of an individual?;
 - k. Is it about someone who is no longer a councillor or who is seriously ill?
10. The Monitoring Officer may decide to contact the complainant and the subject of the complaint to try to resolve the complaint informally.
11. The Monitoring Officer should aim to complete their initial assessment of the allegation within 15 working days of receiving the complaint.
12. The Monitoring Officer may reach one of the three following decisions on an allegation:
 - No further action should be taken on the allegation;
 - The matter should be dealt with through a process of informal resolution in the first instance or;
 - The matter should be referred for formal investigation.
13. If, at this stage, the Monitoring Officer decides that no action be taken or that it be referred to another authority, notification, in writing, will be given to the complainant, the subject of the complaint and any other relevant authority (including the town or parish council if the subject of the complaint is a town or parish councillor) if appropriate. There is no right of appeal against a decision not to take any further action.

14. If, the Monitoring Officer decides that they should seek to resolve the matter informally as a more proportionate way of dealing with relatively minor allegations, one-off incidents or underlying disagreements between individuals they will seek the views of the Independent Person before taking such a course of action. The Monitoring Officer must balance the interest of resolving the matter quickly and satisfactorily against the interest in the complainant having their complaint upheld or the Councillor's desire to clear their name.
15. Complaints should not be referred for informal resolution when the Monitoring Officer believes an investigation is in the public interest, for example because of the seriousness of the allegations or because it demonstrates a pattern of behaviour. In addition, an allegation which challenges the Councillor's honesty or integrity may be better dealt with as a formal investigation because of the potential reputational issues.
16. It may be appropriate to seek an informal resolution part way through a formal investigation rather than completing the investigation if it becomes clear the matter could be resolved amicably. In this case the view of the Independent Person must be sought before halting or pausing a formal investigation.
17. When informal resolution has been completed, the Monitoring Officer will notify the Councillor, the complainant, the relevant Independent Person and the town or parish council if relevant.
18. If, after considering the complaint, and any other relevant matters, the Monitoring Officer decides that the complaint merits formal investigation they must make the necessary arrangements for this to be carried out. They will write to the complainant, the subject of the complaint and the parish or town council if relevant advising that an investigation will take place. Councillors are required to cooperate with any Code of Conduct investigation and respect the impartiality of officers and the Independent Person.
19. The Monitoring Officer function (including the Deputy Monitoring Officer) will review every complaint received and may, at their discretion, consult one of the Independent Persons in line with the Protocol for the Independent Person (annex 2). In carrying out an investigation all complaints will be assessed on a case by case basis and relevant guidance and professional advice will be taken into account. The subject of the complaint (Councillor) has a right to consult with the Independent Person.
20. When a matter is referred for formal investigation or other action, it does not mean that a decision has been made about the validity of the allegation. It simply means that the Council believes the alleged conduct, if proven, may amount to a failure to comply with the Code of Conduct and that some action should be taken in response to the complaint.
21. Once the Monitoring Officer has completed their formal investigation they will produce a written summary of their findings. This will include whether they agree that the Code of Conduct has been breached or not. Where the Monitoring Officer finds that the Code has been breached they may or may not take action or refer the matter to a sub-Committee of the Administration Committee for a decision on appropriate action. Action that can be taken includes:
 - reporting findings to Council and/or to the relevant Parish/Town Council;
 - Referring the matter to the Councillor's Group Leader;
 - making recommendations to the relevant Group Leader to remove the Councillor from Committees of the Council;
 - making recommendations to the Leader of the Council that the Councillor be removed from the Cabinet, or from particular Portfolio responsibilities;
 - recommending further training for the Councillor;
 - The Councillor being required to meet with the Monitoring Officer and/or other Chief Officers;
 - recommending to the Council or relevant Committee or relevant Parish/Town Council that the Member be removed from outside bodies;

- withdrawing facilities provided by the Council or recommending that the relevant Parish/Town Council withdraw facilities such as a computer and/or internet access; and/ or;
 - excluding the Councillor from the Council's offices or other premises or recommending that the Parish/Town Council exclude the Councillor from the parish/town council office or other premises (except for meeting rooms for attendance at meetings);
 - such other action as is considered appropriate by the Monitoring Officer and Independent Person(s).
22. Once a formal investigation has been completed and a decision made to take no action or suitable action a decision notice this will be published on the Council's website, unless there are reasons within legislation to keep the information confidential. If the decision is that there has been no breach then the identity of the Councillor will not be disclosed. This decision notice will be published for 90 days. Where a Councillor has breached the Code of Conduct the identity of the Councillor will be disclosed. The decision notice will be published for the duration of the term of office for the Councillor. The Monitoring Officer will also write to the complainant, the subject of the complaint and the parish or town council if relevant providing details of the outcome.
23. There is no ability to appeal against a decision made by the Monitoring Officer, the Administration Committee or its sub-committee. Further action may be pursued, where relevant, with the Ombudsman or by way of judicial review.
24. The Monitoring Officer will produce an annual report for consideration by the Administration Committee providing details of all complaints received (excluding any details deemed confidential in law) and action taken, this will include complaints not actioned, those informally resolved and those formally investigated. The Administration Committee can request interim reports or details of a specific complaint at any time.
25. If, at any stage, there is insufficient detail for the Monitoring Officer to effectively deal with the complaint, they can go back to the complainant or approach the subject of the complaint or other parties to request further information.
26. If, at any stage, the Monitoring Officer feels it is inappropriate for them to deal with a complaint they can refer it to the Deputy Monitoring Officer, Chief Executive or a sub-committee of the Administration Committee for consideration.
27. The Monitoring Officer may authorise any officer of the Council or other appropriate person to carry out investigations on their behalf.
28. The Council and the subject of a complaint may at any stage seek the views of the Council's Independent Person about the complaint.

ADMINISTRATION SUB-COMMITTEE

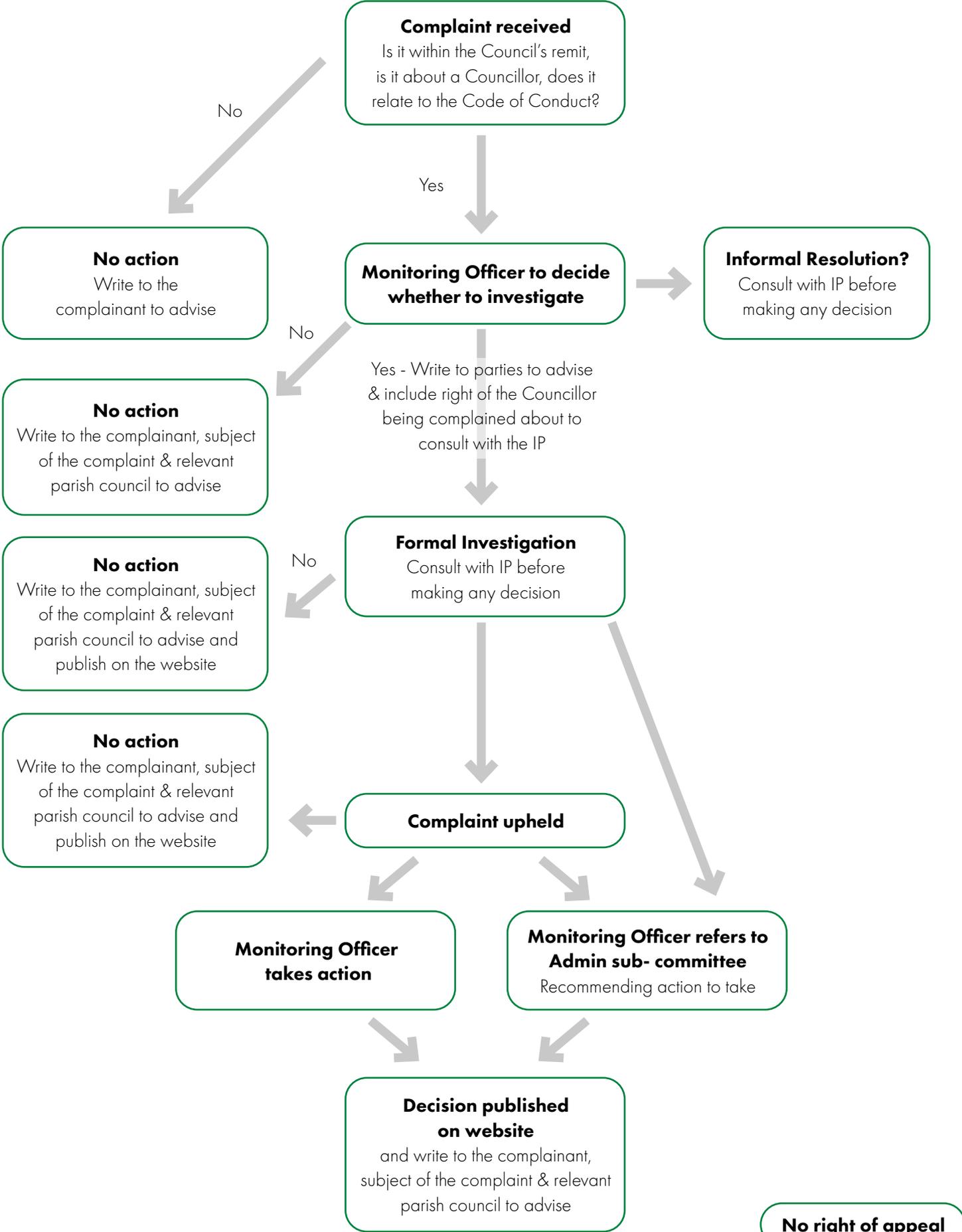
29. Where the Monitoring Officer refers a matter to a sub-committee of the Administration Committee that sub-committee will be made up of three Members of the Administration Committee, excluding group leaders and, where possible, including at least one Councillor who is from a different political party to the Councillor who is the subject of the complaint. One Councillor will be elected chair of the sub-committee.
30. The meeting of the sub-committee will be attended by the Monitoring Officer or their representative, the Independent Person, the subject of the complaint, the complainant and any other person relevant to the complaint. The subject of the complaint and the complainant may make written submissions to the sub-committee prior to the meeting and they may make representations at the meeting of the sub-committee where it is felt that this would add to any written submissions. Written and oral submissions must relate directly to the complaint being dealt with. The cost of attendance/making representations must be borne by the party concerned.

Procedure:

31. At a meeting of the sub-committee of the Administration Committee the following procedure will be followed:
- a. The complainant may address the sub-committee and call witnesses (if any).
 - b. The subject of the complaint may ask the complainant and witnesses questions.
 - c. The sub-committee and Independent Person can ask the complainant and witnesses questions.
 - d. The subject of the complaint can address the Panel and call witnesses (if any).
 - e. The complainant can ask the subject of the complaint and witnesses questions.
 - f. The sub-committee and Independent Person can ask the subject of the complaint and witnesses questions.
 - g. The complainant can make a closing statement.
 - h. The subject of the complaint can make a closing statement.
 - i. All those present except the sub-committee, the Independent Person, the Monitoring Officer or their representative and clerk will leave to room while the Councillors of the sub-committee makes its decision. The sub-committee's decision will be announced orally as soon as possible.
 - j. A written report of the meeting and decision, with reasons, will be prepared, usually within 5 working days. A copy will be sent to all those present and to the Clerk of the Parish/Town Council if the complaint was about a Parish/Town Councillor. The written report will be available for public inspection.

NOTE: In this procedure note where it states 'Monitoring Officer' in their absence this includes the Deputy Monitoring Officer; where it states Councillor this includes all Councillors or Co-opted Members of Eastleigh Borough Council and of any of the town and parish councils in the Borough; where it refers to the Code of Conduct it means the relevant Code of Conduct for the authority that the Councillor or Co-opted Councillor belongs.

Complaint Flow Chart



ANNEX 1

BREACH OF THE CODE OF CONDUCT - COMPLAINT FORM

Making your Complaint

Alleged breaches of the Code of Conduct Complaints must be submitted in writing, ideally on this form. This includes fax and electronic submissions. However, in line with the requirements of the Disability Discrimination Act 2000, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing. We can also help if English is not your first language. If you need any support in completing this form, please let us know as soon as possible.

Joanne Cassar

Executive Head of Governance and Monitoring Officer

Eastleigh Borough Council

Eastleigh House, Upper Market Street

Eastleigh, SO50 9YN

Phone: 023 8068 8015

Email: joanne.cassar@eastleigh.gov.uk <mailto:richard.ward@eastleigh.gov.uk>

Your details

1. Please provide us with your name and contact details

Title:

First name:

Last name:

Address:

Daytime telephone:

Mobile telephone:

Email address:

Your address and contact details will not usually be released unless it is necessary to do so because of the nature of the complaint.

However, we may tell the following people, as appropriate, that you have made this complaint:

- the member(s) you are complaining about
- the monitoring officer of the authority
- the parish or town clerk (if applicable)

We may tell them your name and give them a summary of your complaint. We may give them full details of your complaint where necessary or appropriate to be able to deal with it. If you have serious concerns about your name and a summary, or details of your complaint being released, please complete section 5 of this form.

2. Please tell us which complainant type best describes you:

- Member of the public
- An elected or co-opted member of an authority
- Member of Parliament Local authority monitoring officer
- Other council officer or authority employee
- Parish Council representative Other ()

What you need to do

3. Please provide us with the name of the member(s) you believe have breached the Code of Conduct and the name of their authority:

Title	First Name	Last Name	Council or Authority name

4. Please explain in this section (or on separate sheets) what the member has done that you believe breaches the Code of Conduct. If you are complaining about more than one member you should clearly explain what each individual person has done that you believe breaches the Code of Conduct.

It is important that you provide all the information you wish to have taken into account. For example:

- You should be specific wherever possible about exactly what you are alleging the member said or did. For instance, instead of writing that the member insulted you, you should state/quote what was said.
- You should provide the date/times of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide any relevant background information or firm evidence to support your complaint.

Please provide us with the details of your complaint. Continue on a separate sheet if there is not enough space on this form.

Signed:

Date:

Only complete this next section if you are requesting that your identity is kept confidential

5. In the interests of fairness and natural justice, members who are complained about have a right to know who has made the complaint. They also have a right to be provided with a summary of the complaint. We are unlikely to withhold your identity or the details of your complaint unless you can provide an appropriate reason.

Please note that requests for confidentiality or requests for suppression of complaint details will not automatically be granted. The Monitoring Officer will consider the request alongside the substance of your complaint. We will then contact you with the decision. If your request for confidentiality is not granted, other than in exceptional circumstances which are set out in the next paragraph, we will allow you the option of withdrawing your complaint.

It is important to understand that there can be exceptional circumstances where the matter complained about appears to be so serious that an investigation or other action will be initiated as you have disclosed, even if you have expressly asked us not to do so.

Please provide us with details of why you believe we should withhold your name and/or the details of your complaint:

ANNEX 2

Protocol for the Independent Person – Eastleigh Borough Council

Introduction

1. The purpose of this Protocol is to set out the principal ways in which the Council, the Monitoring Officer and the Independent Person(s) will interact in relation to the assessment of an allegation that a Councillor of Eastleigh Borough Council or a Councillor of a Parish Council within the Borough, has failed to comply with the Council's Code of Conduct.
2. Any reference in this Protocol to the Independent Person applies to however many Independent Persons the Council has and Independent Persons could also include an Independent Person from a neighbouring authority.
3. The Localism Act 2011 requires the Council to appoint at least one Independent Person to assist, where necessary, the Monitoring Officer, as a consultee, during the pre-investigation, investigation, pre-hearing and hearing process.
4. The Borough Council's Administration Committee has appointed two Independent Persons (IP):
IP 1 – appointed 21 October 2013 – 20 October 2022 (extension to appointment of 3 years agreed by the Administration Committee 21 October 2019)
IP2 – appointed November 2020- November 2023
5. The role of the Independent Person is set down in legislation (section 28(7) of the Localism Act 2011) - 'Arrangements put in place by the Council must include provision for the appointment by the authority of at least one independent person, whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate, and in any other such circumstances it considers appropriate'.
6. The Independent Person will be considered an office-holder of the Council in accordance with the duty under s28(7) of the Localism Act 2011 and will therefore be entitled to be covered by the Council's indemnity insurance provided they act reasonably and within the terms of this Protocol.
7. The Council has adopted a Code of Conduct for Councillors and has agreed arrangements for dealing with any allegation that a Borough Councillor or a Member of Parish Council within the Borough, has failed to comply with the Council's Code of Conduct.

Role of Independent Person

8. The purpose of the Independent Person's role is to enable the public to have confidence in how the Borough Council deals with allegations of misconduct.
9. In carrying out the role, the Independent Person will ensure they will be available for consultation at various points in the arrangements for dealing with complaints concerning Borough Councillors and or Parish Councillors.
10. If the Independent Person has or has had a personal relationship with the complainant or the Councillor who is the subject of the complaint, they should advise the Monitoring Officer at the earliest opportunity and the Monitoring Officer will consider making a request to use the services of an Independent Person from another authority.
11. The Independent Person shall provide an objective and impartial opinion which the Monitoring Officer will consider in making the decision.
12. Where a complaint is referred to a sub-committee of the Administration Committee, the Independent Person must attend. After all the evidence has been presented the Committee will seek the views of the Independent Person before determining whether the Councillor breached the Code of Conduct. The Independent Person does not take part in the decision-making process of the Committee nor do they vote upon whether the complaint is upheld.
13. The sub-committee may seek the views of the Independent Person upon any sanction to be imposed.
14. Where the Independent Person is not available to deal with a particular matter or where the Independent Person has a

potential conflict of interest, the Council shall appoint another Independent Person who shall act in the particular matter. Such Independent Person may be an Independent Person appointed by another Authority to act as their Independent Person.

15. The Independent Person will be paid an allowance of £600 per year.

Relationship with the Administration Committee

16. The Monitoring Officer is the principal advisor to the Administration Committee supported by the Deputy Monitoring Officer(s) and Officers within Democratic Services.
17. The Independent Person is not a member of the Administration Committee and therefore is not part of the formal business of the meeting and cannot vote on any matters put to the meeting.

Right of access to documentation

18. The Independent Person shall have a right of access to such files and other documents as are necessary to fulfil their duties and obligations as set out in this protocol, their role description and the arrangements adopted from time to time by the Council for dealing with Code of Conduct complaints. The Independent Person shall not have a right to undertake a roving commission. Normally access to files and other documents will be through the Monitoring Officer, Deputy Monitoring Officer or other officer appointed on their behalf.

Duty to declare interest

19. The Independent Person shall promptly disclose in writing any actual or potential conflict of interest that they may have in a matter which has been referred to them.

Register of Members' Interests and the Seven Principles of Public Life

20. The Independent Person is not a Councillor, so they are not required to notify and register any interests in the Register of Members' interests. The Independent Person is however required to abide by the **Seven Principles of Public Life** ('the Nolan Principles').

Protecting the independence of the Independent Person

21. No Councillor or Officer shall do anything which does or is likely to compromise the independence of the Independent Person or to otherwise inappropriately interfere in the discharge of the Independent Person's lawful duties.

Miscellaneous

22. The Monitoring Officer will ensure that the Independent Person is kept up to date with changes to the Code of Conduct, procedures for handling allegations, in legislation, national guidance and/or good practice.
23. A further role of the Independent Person arises from the Local Authorities (Standing Orders) (England) Regulations 2001 (as amended). By amending regulations in 2015, there is a prescribed statutory process for disciplining or dismissing an authority's Head of Paid Service, Monitoring Officer or Chief Finance Officer. A decision to discipline or dismiss must be taken by Full Council which must consider, amongst other things, advice, views or recommendations from an independent panel. That panel must include at least two Independent Persons appointed under Section 28(7) of the Localism Act 2011 by the Council or by another local authority.
24. The Independent Person(s) together with the Monitoring Officer and Deputy Monitoring Officers will meet at least once a year to discuss Councillor behaviour in a general context.
25. This Protocol will be kept under review by the Monitoring Officer and amended where necessary, considering legislation, guidance, good practice etc.