



Code of Conduct Review

Report of Helen Lynch, Head of Legal and Democratic Services and Monitoring Officer

Electoral division(s) affected:

Countywide

Purpose of the Report

- 1 To present proposals for the revision of the Council's Code of Conduct for Members.

Executive summary

- 2 On 4 March 2019, the Standards Committee considered the report by the Committee for Standards in Public Life (CSPL) on Local Government Ethical Standards. The report, which followed a period of consultation between January 2018 and May 2018, makes a number of best practice recommendations. The Standards Committee requested that the Member Code of Conduct was reviewed in light of the best practice recommendations.
- 3 This report summarises the 15 best practice recommendations following the CSPL consultation and makes recommendations where necessary to revise the Code of Conduct and associated documents to reflect the best practices.

Recommendation

- 4 That the Standards Committee resolve:
 - i. Consider and approve the proposed changes to the Member Code of Conduct, Local Assessment Procedure and Local Determination Procedure; and
 - ii. Recommend that the changes are considered by Constitutional Working Group prior to consideration by full Council.

Background

- 5 The current Code of Conduct for Members (the Code) was adopted by Durham County Council on 23 May 2018.
- 6 The Standards Committee on 4 March 2019 agreed to review the Code and consider revisions taking into account the best practice recommendations in the CSPL report on Local Government Ethical Standards.
- 7 The CSPL report identifies a series of recommendations, some requiring the introduction of primary legislation and others suggested best practice. The recommendations which will require changes to primary legislation will not be considered as part of this report as this is outside the scope of the existing legislation.

Best Practice Recommendations

- 8 The CSPL Report sets out 15 best practice recommendations, which are summarised below with an explanation of current practice and where appropriate proposed amendments to the Code. The proposed changes to the Code at Appendix 2 underlined and in red as well as proposed changes to the Local Assessment Procedure (Appendix 3) and the Local Determination Procedure (Appendix 4).
- 9 Recommendation 1
Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition.

The report sets out suggested wording for the prohibitions on bullying and harassment which is:

“You must not bully or harass any person (including specifically any council employee) and you must not intimidate or improperly influence, or attempt to intimidate or improperly influence, any person who is involved in any complaint about any alleged breach of the code of conduct.

Bullying may be characterised as: offensive, intimidating, malicious or insulting behaviour; or an abuse or misuse of power in a way that intends to undermine, humiliate, criticise unfairly or injure someone. Harassment may be characterised as unwanted conduct which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for an individual.

Proposed Amendment

It is proposed that the Code is updated to include prohibitions on bullying and harassment using the suggested wording and definition with examples of the behaviour which could be considered bullying.

10 Recommendation 2

Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation, and prohibiting trivial or malicious allegations by councillors.

Both of these points are covered by the Local Assessment Procedure and Local Determination Procedure for considering Member Code of Conduct complaints.

Proposed Amendment

It is proposed that:

- (i) the Code be updated to include reference to the Local Assessment Procedure and Local Determination Procedure which addresses this recommendation.
- (ii) the obligations within the Code include a requirement for Members to comply with a Code of Conduct investigation and the outcomes.
- (iii) the obligations within the Code include a provision for Members to not submit malicious or trivial complaints.

11 Recommendation 3

Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.

The Member Code of Conduct is reviewed annually taking into account the views of the Standards Committee, Constitutional Working Group and is subject to approval by Full Council.

For future reviews, the Standards Committee may consider whether a public consultation is appropriate. The views of neighbouring authorities can be shared via the Regional Monitoring Officers Group.

Proposed Amendment

It is proposed that the Code of Conduct will continue to be reviewed annually, where possible to coincide with the annual review of the Constitution.

12 Recommendation 4

An authority's code should be readily accessible to both councillors and the public, in a prominent position on a council's website and available in council premises.

The Code is available through the Durham County Council website which is available to all. The Code is available in a digital format within Council premises with a printed copy available on request. The position of the Code on the website is not easily accessible.

Proposed Amendment

It is proposed that the Standards Committee website page be retitled 'Councillor Code of Conduct and Standards Committee' so that this is more accessible to Members and the public.

13 Recommendation 5

Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.

The arrangements within Durham County Council already reflect best practice. The gifts and hospitality register is updated as and when Councillor declarations are made. The details of the register for each Councillor is updated on their Councillor page of the Durham County Council website which is open to the public. As good practice all County Councillors are reminded annually to review their declarations. The requirement to declare gifts and hospitality is also covered during Code of Conduct training.

14 Recommendation 6

Councils should publish a clear and straightforward public interest test against which allegations are filtered.

This currently exists within the Local Assessment Procedure and the Access to Information Procedure Rules.

15 Recommendation 7

Local authorities should have access to at least two Independent Persons.

The Council does have two Independent Persons to support to Standards Committee.

16 Recommendation 8

An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation, and should be given the option to review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious, or trivial.

The Monitoring Officer does consult the Independent Person on a more frequent basis than envisaged by the Localism Act 2011. Where the Independent Person is consulted, the comments/views of the Independent Person are recorded in the relevant decision notice. The Council in 2014 adopted a Protocol relating to the Independent Persons a copy of which is shown at Appendix 5.

17 Recommendation 9

Where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.

This practice is adopted within Durham County Council however further clarification could be provided in the Local Determination Procedure.

Proposed Amendment

It is proposed that the Local Determination Procedure at Section 1.16 details information to be included on the decision.

18 Recommendation 10

A local authority should have straightforward and accessible guidance on its website on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for investigations and outcomes.

Durham County Council has clear procedures for the Local Assessment of Complaints, which is available on the Council's website. The Local Determination Procedure sets out the procedure for hearings. It is provided to relevant parties at the appropriate time.

Proposed Amendment

It is proposed that the Local Determination Procedure is published on the Standards Committee page of the Durham County Council website.

19 Recommendation 11

Formal standards complaints about the conduct of a parish councillor towards a clerk should be made by the chair or by the parish council as a whole, rather than the clerk in all but exceptional circumstances.

The Council is unable to compel this practice at a local level however this can be referenced in the complaint form and Local Assessment Procedure.

Proposed Amendment

It is proposed that the Code of Conduct complaint form and Local Assessment Procedure be updated to encourage where a complaint is made relating to the conduct of a Town or Parish Councillor towards the Clerk that it would be preferred that the complaint is made by the Chair or the Council as a whole.

20 Recommendation 12

Monitoring Officers' roles should include providing advice, support and management of investigations and adjudications on alleged breaches to parish councils within the remit of the principal authority. They should be provided with adequate training, corporate support and resources to undertake this work.

This is currently adopted as is set out in the Constitution, Local Assessment and Local Determination Procedure as part of the definition of the role of the Monitoring Officer.

21 Recommendation 13

A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.

This is currently adopted in that the Monitoring Officer has a number of Officers to call upon and the option to seek external support to carry out an investigation. The views of the Independent Person may also be sought where there are potential conflicts. Arrangements are in place to ensure that different Officers consider each stage of complaint and advise the Standards Committee in the event of a hearing.

Proposed Amendments

It is proposed that the Local Assessment Procedure be updated to detail the practice in the event of a conflict of interest.

22 Recommendation 14

Councils should report on separate bodies they have set up or which they own as part of their annual governance statement, and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness and publish their board agendas and minutes and annual reports in an accessible place.

This practice is currently adopted as part of existing governance arrangements and is documented in the annual governance statement.

23 Recommendation 15

Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.

Members of the Corporate Management Team and the Monitoring Officer meet regularly with political group leaders. Meetings are also arranged to discuss specific conduct issues as appropriate

Background Papers

- CSPL report
 - Durham County Council Code of Conduct
 - Local Assessment Procedure
 - Local Determination Procedure
 - Independent Person Protocol
- <https://democracy.durham.gov.uk/documents/s38006/DCC%20IP%20procedure%20-%20final%203.pdf>

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Appendix 1: Implications

Legal Implications

The Council has a duty under s. 27 of the Localism Act 2011 to promote and maintain high standards of conduct by its members and to adopt a code of conduct that is consistent with the Nolan Principles. The majority of the recommendations made in the report will require legislative changes to take effect. However, the Council has the discretion to review and update its Code of Conduct to reflect some of the identified good practice prior to legislation being introduced.

Finance

There are no financial implications arising directly out of this report.

Consultation

The report and recommendations will be presented to Constitution Working Group for comment.

Equality and Diversity / Public Sector Equality Duty

Not applicable

Human Rights

Not applicable

Crime and Disorder

Not applicable.

Staffing

Not applicable

Accommodation

Not applicable

Risk

Not applicable.

Procurement

Not applicable

Appendix 2: Existing Code of Conduct showing proposed changes

**CODE OF CONDUCT
FOR MEMBERS**

Adopted by Durham County Council on [DATE]

CODE OF CONDUCT FOR MEMBERS

The County Council of Durham Code of Conduct for Members

1. The County Council of Durham ("the Council") has adopted the following code which has effect from [date] and will be reviewed annually. The Code which sets out the conduct that is expected of elected and co-opted members of the Council when they are acting in that capacity.
2. This means the code applies whenever you:
 - (a) conduct the business of the Council (including the business of your office as an elected councillor or co-opted member); or
 - (b) act, claim to act or give the impression you are acting as a representative of the Council.
3. 'Co-opted member' means any person who is a member of any committee or sub-committee of the Council with a right to vote but is not one of its elected members

Part 1 – General Conduct

4. Members and co-opted Members of Durham County Council ("the Council") are expected to undertake their duties as follows:
 - 4.1 Represent the community and work constructively with employees and partner organisations to ensure the area is a safer place to live, work and visit.
 - 4.2 Behave in a manner that is consistent with the following principles to achieve best value for residents and maintain public confidence in the Council:
 - (a) **Selflessness:** act solely in terms of the public interest and not act in such a way as to gain financial or other material benefits for themselves, their family or friends;
 - (b) **Integrity:** not placing themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties;
 - (c) **Objectivity:** make choices on merit, in carrying out public business, including when making public appointments, awarding contracts, or recommending individuals for rewards and benefits;

- (d) **Accountability:** be accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office;
- (e) **Openness:** be as open as possible about all the decisions and actions they take, and give reasons for decisions and restrict information only when the wider public interest or the law clearly demands;
- (f) **Honesty:** declare any private interests relating to their public duties and take steps to resolve any conflicts arising in a way that protects the public interest.
- (g) **Leadership:** promote and support these principles by leadership and example.

4.3 Act in accordance with the principles in paragraph 4.2 and, in particular:

- (a) Champion the needs of residents - the whole community and all constituents, including those who did not vote for them - and put the public interest first;
- (b) Deal with representations or enquiries from residents, members of our communities and visitors fairly, appropriately and impartially;
- (c) Not allow other pressures, including the financial interests of themselves or others connected to them, to deter them from pursuing the interests of the Council or the good governance of the Council in a proper manner;
- (d) Exercise independent judgement and not compromise their position by placing themselves under obligations to outside individuals or organisations who might seek to influence the way they perform their duties as a Member / Co-opted Member of the Council;
- (e) Listen to the interests of all parties, including relevant advice from statutory and other professional officers, take all relevant information into consideration, remain objective and make decisions on merit;
- (f) Be accountable for decisions and cooperate when scrutinised internally and externally, including by local residents;

- (g) Contribute to making the Authority's decision-making processes as open and transparent as possible to ensure residents understand the reasoning behind those decisions and are informed when holding the Authority to account but restricting access to information when the wider public interest or the law requires it;
- (h) Behave in accordance with all legal obligations, alongside any requirements contained within the Council's policies, protocols and procedures, including on the use of the Council's resources;
- (i) Value colleagues and staff and engage with them in an appropriate manner and one that underpins the mutual respect that is essential to good local government;
- (j) Always treat people with respect, including the organisations and public they engage with and work alongside;
- (k) Provide leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within this Authority;
- (l) Not disclose information given to them in confidence by anyone or information acquired, which they believe, or ought reasonably to be aware, is of a confidential nature, without express authority and/or unless the law requires it.
- (m) Not to bully or harass any person (including specifically any council employee) and you must not intimidate or improperly influence, or attempt to intimidate or improperly influence, any person who is involved in any complaint about any alleged breach of the code of conduct.

Bullying may be characterised as: offensive, intimidating, malicious or insulting behaviour; or an abuse or misuse of power in a way that intends to undermine, humiliate, criticise unfairly or injure someone.

Harassment may be characterised as unwanted conduct which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for an individual.

Bullying and/or harassment may take many forms, it could include but is not limited to age, disability, gender reassignment, race, religion, belief, sex and/or sexual orientation.

4.4 It is expected that Members will at all times comply requests as part of Code of Conduct investigations and any arising outcomes. Members will not submit malicious or trivial complaints.

4.5 Where it is alleged that a Member has failed to act in accordance with the Code, a complaint will be presented to the Monitoring Officer for consideration in accordance with the Local Assessment Procedure and where necessary the Local Determination Procedure.

Part 2 - Registration of interests

Register of Interests

5.1 Members must:

- (a) register and, where appropriate, disclose those disclosable pecuniary interests that they are obliged to declare under the Localism Act and associated regulations; and
- (b) register any body of which they are a member (or in a position of general control or management) to which you were appointed or nominated by the Council; and
- (c) register details of their membership of any organisation or body whose rules or requirements of membership could be regarded as suggesting a degree of loyalty to that organisation or body. This could arise by reason of an organisation having an obligation of secrecy about its rules, its membership or conduct and/or a commitment of allegiance or support to that organisation or body. Such organisations or bodies may or may not be charitable concerns and they may also have a local, regional, national or international aspect; and
- (d) register details of my membership of any trade union within the meaning of Section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992.

5.2 Registration of interests shall be completed by provision of details upon a signed prescribed form which is submitted to the Monitoring Officer at Durham County Council. Members must ensure they keep the register updated and acknowledge that its contents will be published on the Authority's website and will be open to the public to inspect.

6. Disclosable Pecuniary Interests Entered on the Register

If Members are present at a meeting of the Authority and:

- (a) they are aware that they have a disclosable pecuniary interest under paragraph 5.1(a) above in any matter to be considered or being considered at the meeting; and
- (b) the interest is entered in the Authority's register

they may not participate in any discussion or further discussion of an item of business or in any vote or further vote taken on that item which affects or relates to the subject matter in which they have such an interest; and they must leave the room where the meeting is held while any discussion and or voting takes place.

7. Disclosable Pecuniary Interests NOT Entered on the Register

7.1 If Members are present at a meeting of the Authority and:

- (a) aware that they have a disclosable pecuniary interest under paragraph 5.1(a) above in any matter to be considered or being considered at the meeting; and
- (b) the interest is not entered in the Authority's register,

they must disclose the interest to the meeting. Furthermore, they may not participate or further participate in any discussion of the matter at the meeting or participate in any vote or further vote taken on the matter at the meeting and must leave the room where the meeting is held while any discussion and or voting takes place.

7.2 If an interest referred to in 5.1(a) above is not entered on the Authority's register and is not the subject of a pending registration, Members must notify the Authority's Monitoring Officer of the interest within 28 days of the date of the disclosure.

7.3 Members with the power to discharge an Authority function acting alone will have a disclosable pecuniary interest in any matter to be dealt with or being dealt with by them in the course of discharging that function:

- (a) they may not take any steps, or any further steps, in relation to the matter (except for the purpose of enabling the matter to be dealt with otherwise than by them); **and**
- (b) if the interest is not entered on the Council's register and is not the subject of a pending registration, they must notify the Council's Monitoring Officer of the interest within 28 days of becoming aware of the interest.

8. Sensitive Interests

- 8.1 This applies to a situation where a Member considers that the disclosure of the details of your interest – including that of your spouse or partner – could lead to you, or a person connected with you, being subject to violence or intimidation.
- 8.2 In such circumstances you should share your concerns with the Council's Monitoring Officer. If the Monitoring Officer agrees with you, then the details of the interest will not be included in the Council's published Register of Interests, but the Register may state that you had registered an interest the details of which had been withheld under Section 32 of the Localism Act 2011.
- 8.3 If the Monitoring Officer has accepted that you have a sensitive interest under Section 32 of the Localism Act 2011, you should declare the existence of the interest at any meeting at which you are present but you need not declare the details of the interest.
- 8.4 If circumstances change and the information excluded from the Register on the grounds of sensitivity is no longer sensitive information, the Member must notify the Monitoring Officer within 28 days.

9. **Other Relevant Interests**

9.1 Members may have an Other Relevant Interest (which is not a disclosable pecuniary interest) in any matter to be considered or being considered at the meeting) where:

- (a) a decision in relation to that matter might reasonably be regarded as affecting the well-being or financial standing of them or a member of their family or a person with whom they have a close association, or an organisation or body under paragraph 5.1(b), 5.1(c) or 5.1(d) above, to a greater extent than it would affect the majority of the Council Tax payers, ratepayers or inhabitants of the ward or electoral area for which they have been elected or otherwise of the authority's administrative area; **and**
- (b) the interest is one that a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice their judgement of the public interest.

9.2 Members with an Other Relevant Interest as described in 9.1. above:

- (a) must make a verbal declaration of the existence and nature of that interest at or before the consideration of the item of business or as soon as the interest becomes apparent; **and**
- (b) must not participate in any discussion or further discussion of an item of business or in any vote or further vote taken on that item which affects or relates to the subject matter in which they have an Other Relevant Interest at any meeting at which they are present and will leave the room where the meeting is held while any discussion or voting takes place.

10. **Gifts and Hospitality**

10.1 Members must, within 28 days of receipt, notify the Monitoring Officer in writing of any gift, benefit or hospitality with a value in excess of £50 which they have been offered as a member from any person or body other than the Authority, whether the offer is accepted or declined.

10.2 The Monitoring Officer will place any notification received under paragraph 10.1 on a public register of gifts and hospitality.

10.3 The duty to notify the Monitoring Officer does not apply where the gift, benefit or hospitality has been approved by the Authority for this purpose.

Appendix 3: Existing Local Assessment Procedure showing proposed changes



PROCEDURE FOR LOCAL ASSESSMENT OF COMPLAINTS

October 2018

Definitions

| | |
|------------------------------|--|
| Code of Conduct | means the relevant Code or Codes of Conduct adopted by the Member's council or councils |
| Independent Person | the person appointed by the County Council under section 28(7) of the Localism Act 2011 whose views may, and sometimes must, be sought |
| Investigating Officer | means the person appointed by the Monitoring Officer to undertake an Investigation |
| Investigation | means an investigation undertaken by the Investigating Officer |
| Local Resolution | means an informal resolution of a complaint including the matters set out at paragraph 5 of this Procedure |
| Member | means the councillor of the County Council or Town/Parish Council who is the subject of a complaint under this Procedure |
| Monitoring Officer | The County Council's statutory officer who oversees the assessments and investigations of complaints against Members under the Code of Conduct |

1. Introduction

The Localism Act 2011 requires that the Council adopt arrangements for dealing with complaints of breach of the Code of Conduct by both County Council Members and Parish Council Members.

This document sets out the procedure that will apply when complaints are made about Members.

Where a complaint is justified, the Council's Monitoring Officer will seek to resolve it swiftly to the satisfaction of the complainant using Local Resolution whenever possible. Complaints will only be referred for investigation as a last resort in view of the disproportionate amount of time involved and the limited sanctions available to the Standards Committee..

Any person may make a written complaint to the Council's Monitoring Officer alleging that a councillor has acted in breach of the Code of Conduct for Members.

Any such complaint should be sent using the Complaint Form at Appendix 1 to **the Monitoring Officer, Durham County Council County Hall Durham DH1 5UL.**

This procedure should be read in conjunction with the Council's Local Determination Procedure, which applies to the process where an investigation has been completed.

2. Initial Notification of Complaint

- 2.1 Unless paragraph 2.2 applies, the Member who is the subject of the complaint shall, as soon as practicable after the complaint is received, be informed in writing by the Monitoring Officer of the complaint. The Member shall be sent a summary or a full copy of the complaint, and invited to comment upon it.
- 2.2 The Monitoring Officer shall identify which paragraphs of the Code of Conduct have allegedly been breached and (unless the complainant has requested and been granted confidentiality) the name of the complainant.
- 2.3 The Monitoring Officer may withhold the complainant's identity from the Member if s/he considers that disclosure would be against the public interest or might prejudice any future investigation, or where non-disclosure has been specifically requested by the complainant for what the Monitoring Officer considers are good reasons.
- 2.4 Where the Monitoring Officer does not agree to keep the complainant's identity confidential, the complainant shall be given the opportunity to seek to withdraw the complaint (or to ask for it to be considered anonymously under paragraph 2.6 below).
- 2.5 The Monitoring Officer, in consultation with the Independent Person, may apply the Habitual or Vexatious Complaints Policy at Appendix 2 to a complaint where appropriate.
- 2.6 Complaints made anonymously will warrant consideration only if sufficient information is provided to enable them to be considered. They will usually need to be accompanied by evidence indicating an exceptionally serious or significant matter.
- 2.7 The Monitoring Officer may reject complaints without notifying the Member where s/he considers that it is clear from the details of the complaint that the Member was not acting in his or her capacity as a Member at the time of the alleged failure to comply with the Code of Conduct.

- 2.8 Where a complaint made to the Monitoring Officer relates to the conduct of a Town or Parish Councillor towards the Clerk it is recommended in all cases unless exceptional circumstances can be shown that the complaint should be made by the Chair or the Council as a whole.

3. Initial Assessment

- 3.1 The Monitoring Officer, in consultation with the Independent Person where appropriate, will, as soon as reasonable, and normally within 20 working days of receipt of the complaint, consider and decide if any action should be taken on it. The Assessment Criteria contained in Appendix 3 will be applied. Assessment may in some circumstances be delayed if a police or other (for example, internal Audit) investigation is first warranted.

3.2 The Monitoring Officer will decide either:

- (a) That no action should be taken in respect of it; (b) To seek local resolution;
- (c) To refer the complaint for investigation; or
- (d) To refer the complaint to the Standards Committee.

- 3.3 Where the complaint is against a person who is no longer a Member of the Council, but is a member of another relevant authority, the Monitoring Officer may instead refer the complaint to the Monitoring Officer of that other relevant authority if s/he thinks it more appropriate to do so.

- 3.4 If witnesses to the circumstances giving rise to the complaint are named by the complainant or by the Member, they may be contacted at this stage for comment. The complainant's and the Member's identity may be disclosed to any such witnesses.

- 3.5 After making the decision, the Monitoring Officer will produce a written decision which will include the main points considered, the conclusion and the reasons for that conclusion.

The decision will be sent as soon as possible to the complainant and to the Member who is the subject of the complaint.

That decision will be available for inspection by the public on the Council's website for 6 years beginning with the date of the decision. However, the decision will not be made available for inspection until the Member who was the subject of the complaint has received a copy of the decision.

- 3.6 A copy of the decision will also be sent to the clerk of the relevant parish/town council where applicable.

4. No action to be taken in respect of the complaint

- 4.1 Where the Monitoring Officer decides that no further action is warranted in relation to the complaint, the complaint will be closed and there is no appeal process.

5. Local Resolution

- 5.1 The Monitoring Officer will establish whether a complaint is suitable to be resolved informally before or alternatively to taking a decision on whether the complaint merits formal investigation. This may involve:

- a) Exploring whether the Member is prepared to apologise for the act or omission complained of;
- b) Arranging for the Member who is the subject of the complaint to attend a training course;
- c) Arranging for that Member and the complainant to engage in a process of conciliation;
- d) Such other steps (not including an investigation), as appear appropriate to the Monitoring Officer.

6. Referral by Monitoring Officer for investigation

6.1 Where the Monitoring Officer refers the complaint for investigation, the procedure set out in paragraphs 6.4 to 6.10 below will apply.

6.2 The Monitoring Officer may reconsider the complaint at any time if:

- (a) As a result of new evidence or information presented by the Investigating Officer, s/he is of the opinion:
 - (i) The matter is materially more or less serious than may have seemed apparent when the s/he referred it for investigation and
 - (ii) The Monitoring Officer would have made a different decision had s/he been aware of that new evidence or information; **OR**

(b) The person who is the subject of the complaint has died; or is seriously ill; or has resigned from the Council, and the Monitoring Officer considers that in the circumstances it is no longer appropriate to continue with an investigation.

6.3 If a matter is referred back to the Monitoring Officer, s/he will reconsider and make one of the decisions set out in paragraph 3.2 above.

In forming an opinion for the purposes of paragraph 6.2(a) above, the Monitoring Officer may take account of:

- (a) The failure of any person to co-operate with an investigation; **OR**
- (b) An allegation that the Member concerned has engaged in a further breach of the Council's Code of Conduct or that of another relevant authority; **OR**
- (c) An allegation that another member has engaged in a related breach of the Council's Code of Conduct or that of another relevant authority.

6.4 Where the Monitoring Officer decides a complaint merits investigation s/he will appoint an Investigating Officer who may be a Council officer, an officer from another Council, or an external investigator.

6.5 The Investigating Officer will follow any guidance issued by the Monitoring Officer on the investigation of complaints. The Investigating Officer should aim to complete the investigation within 3 months of being appointed.

6.6 At the end of the investigation, the Investigating Officer may produce a draft report and send copies to the complainant and to the Member for comments on matters of fact. The Investigating Officer will take any such comments received during a period to be specified by the Investigating Officer into account before issuing the final report to the Monitoring Officer.

6.7 Where the Investigating Officer's report finds that the Member has not failed to comply with the Code of Conduct, the Monitoring Officer, in consultation with the

Independent Person, will review the Investigating Officer's report and if satisfied, will confirm the finding of no failure to comply with the Code of Conduct.

- 6.8 Where paragraph 6.7 applies, the Monitoring Officer will write to the complainant and the Member (and to parish clerk, if relevant) with a copy of the decision and the Investigating Officer's report.
- 6.9 If the Monitoring Officer is not satisfied that the investigation has been conducted thoroughly, the Investigating Officer may be asked to reconsider the report and the conclusions.
- 6.10 Where the Investigating Officer's report finds that the Member has failed to comply with the Code of Conduct, the Monitoring Officer will review the Investigating Officer's report and will then, having consulted the Independent Person, either send the matter for hearing before the Hearing Panel or seek Local Resolution in appropriate cases. Where such Local Resolution is not appropriate or possible the Investigating Officer's findings shall be reported to a Hearing Panel of the Standards Committee for local determination in accordance with the Local Determination Procedure.

8. **Withdrawing Complaints**

- 8.1 If a complainant requests to withdraw his/her complaint before the Monitoring Officer has made a decision on it, then the Monitoring Officer will decide whether to grant that request.

In making that decision s/he will take into account the following considerations:

- Does the public interest in taking some action on the complaint outweigh the complainant's desire to withdraw it?
- Is the complaint such that action can be taken on it, for example, an investigation without the complainant's participation?
- Is there an identifiable underlying reason for the request to withdraw the complaint? For example, is there information to suggest that the complainant may have been pressured by the member who is the subject of the complaint, or an associate of theirs, to withdraw the complaint?

9. **Conflict of Interest**

- 9.1 Where it appears to the Monitoring Officer that there is a conflict of interest which prevents the internal investigation of Code of Conduct complaint, the Monitoring Officer will consider whether external support to carry out an investigation.

Durham County Council

COMPLAINT FORM – Alleged Breach of Members’ Code of Conduct

Your details

1. Please provide us with your name and contact details

| | |
|---------------------------|--|
| Title: | |
| First name: | |
| Last name: | |
| Address: | |
| Daytime telephone: | |
| Evening telephone: | |
| Mobile telephone: | |
| Email address: | |

Your address and contact details will not usually be released unless necessary or to deal with your complaint.

However, we will tell the following people that you have made this complaint:

- the member(s) you are complaining about
- any other person whom we consider it necessary to inform to properly investigate your complaint.

We will tell them your name and give them a summary or a copy of your complaint. We will 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 6 of this form.

Any decision letter on a complaint will identify the complainant (i.e. you) and will be available for inspection by any member of the public for a period of 6 years following the decision.

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 (where a complaint relates to conduct of a Town or Parish Councillor towards the Clerk it is encouraged that the complaint is made by the Chair or the Council as a whole).

Making your complaint

3. Your complaint will initially be considered, usually within 20 working days, by the Council's Monitoring Officer, in consultation with the Independent Person if appropriate. The Monitoring Officer will decide whether any action should be taken on your complaint. You will be advised of that decision. If the decision is to take action, the Monitoring Officer can appoint an Investigating Officer to investigate the complaint.

If your complaint is investigated and a breach of the Code of Conduct is found, the result will be reported to a Hearing Panel of the Council's Standards Committee which will then decide if there has been a breach of the Members' Code of Conduct and, if so, what action to take.

4. Please provide us with the name of the member(s) you believe have breached the Code of Conduct and the name of the authority of which they are a member

| Title | First name | Last name | Council or authority name |
|-------|------------|-----------|---------------------------|
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5. Please explain in this section (or on separate sheets) what the member has done which 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 which you believe breaches the Code of Conduct.

It is important that you provide all the information you wish to have taken into account by the assessment sub-committee when it decides whether to take any action on your complaint. 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 what it was they said.
- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.
- You should explain 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.

You should consider the relevant Code of Conduct and identify which aspects of it you consider have been breached.

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

Only complete this next section if you are requesting that your identity or details of your complaint is kept confidential

6. In the interests of fairness and natural justice, we believe members who are complained about have a right to know who has made the complaint. We also believe they have a right to be provided with a summary or a copy of the complaint.

We will not withhold your identity, or a summary or the details of your complaint, unless you have exceptional reasons why we should do so.

If you think you have such reasons and want us to consider withholding your identity and/or any details of your complaint, either altogether or for some period of time, you

must cross out the statement in the box below giving your consent to such disclosure. You must also attach to this form a separate sheet which fully explains what information you want withheld and your reasons for your request to withhold it.

I understand and agree that my name and details of this complaint will be disclosed to the persons mentioned in paragraph 1 above.

If you do request confidentiality and this is not granted, we will usually allow you the option of withdrawing your complaint.

However, it is important to understand that in certain exceptional circumstances where the matter complained about is very serious, we may still proceed with an investigation or other action and disclose your name even if you have expressly asked us not to.

Additional Help

7. Complaints must be submitted in writing. This includes fax and email 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. You should initially contact the Council's Monitoring Officer (whose contact details are given below) who will try to arrange appropriate assistance for you.

.....
Signed

.....
Dated

This form once completed should be sent, along with any supporting documents, to:

**Helen Lynch
The Monitoring Officer
Durham County Council
County Hall
Durham
DH1 5UL**

Data Protection Act

Durham County Council complies with all relevant statutory obligations. Personal information processed by the Council will be handled in accordance with the Council's privacy statement, which can be accessed at www.durham.gov.uk/dataprivacy

Committee Services privacy notice provides more specific information on the data collected and how it is handled, a copy of which can be accessed www.durham.gov.uk/dataprivacy 'legal and democracy' section.

If you have any concerns about how your data is handled, please contact either the Data Protection Officer at DPO@durham.gov.uk or the Information Commissioner's Office casework@ico.org.uk.

Appendix 2

Habitual or Vexatious Complaints Policy

1. Introduction

- 1.1.1 This policy identifies situations where complainants, either individually or as part of a group, or a group of complainants, might be considered to be “habitual or vexatious” and ways of responding to these situations.
- 1.1.2 This policy is intended to assist in identifying and managing persons who seek to be disruptive to the Monitoring Officer through pursuing an unreasonable course of conduct.
- 1.2 In this policy:
- Habitual means: done repeatedly or as a habit.
Vexatious means: an complaint brought for the purpose of annoying another person and with no reasonable prospect of success.
- 1.4 Habitual or vexatious complaints can be a problem for officers and Members. The difficulty in handling such complaints is that they are time consuming and wasteful of resources in terms of officer and member time and displace scarce human resources that could otherwise be spent on council priorities. Whilst the Monitoring Officer endeavours to process all complaints under the local assessment procedure there are times when there is nothing further which can reasonably be done to assist or to rectify a real or perceived problem.

2. Habitual or Vexatious Complainants

- 2.1 For the purpose of this policy, the following definition of habitual or vexatious complainants will be used:
- The repeated and/or obsessive pursuit of:
- (i) Unreasonable complaints and/or unrealistic outcomes;
- and/or**
- (ii) Reasonable complaints in an unreasonable manner.
- 2.2 Prior to considering its implementation, the Monitoring Officer will send a summary of this policy to the complainant to give them prior notification of its possible implementation.
- 2.3 Where complaints continue and have been identified as habitual or vexatious in accordance with the criteria set out in Schedule A, the Monitoring Officer will consult with the Independent Person to seek agreement to treat the complaint as habitual or vexatious and for an appropriate course of action to be taken. Schedule B details the options available for dealing with habitual or vexatious complaints.
- 2.4 The Monitoring Officer will notify complainants in writing of the reasons why their complaint has been treated as habitual or vexatious and the action that will be taken. The Monitoring Officer will also notify the relevant Ward Member (if any) that a constituent has been designated as a habitual and vexatious complainant.

2.5 Once a complainant has been determined to be habitual or vexatious, their status will be kept under review after one year and monitored by the Monitoring Officer with reports being taken to Standards Committee as required. If a complainant subsequently demonstrates a more reasonable approach then their status will be reviewed.

Schedule A - Criteria for determining habitual or vexatious complainants

Complainants (and/or anyone acting on their behalf) may be deemed to be habitual or vexatious where previous or current contact with them shows that they meet **one** of the following criteria. Where complainants:

- 1) Persist in pursuing a complaint where the local assessment process has been fully and properly implemented and exhausted.
- 2) Persistently change the substance of a complaint or frequently raise new issues or seek to prolong contact by frequently raising further concerns or questions whilst the complaint is being addressed. (Care must be taken however not to disregard new issues which are significantly different from the original complaint as they need to be addressed as a separate complaint.)
- 3) Are repeatedly unwilling to accept documented evidence given as being factual or deny receipt of an adequate response in spite of correspondence specifically answering their questions or do not accept that facts can sometimes be difficult to verify after a long period of time has elapsed.
- 4) Repeatedly do not clearly identify the precise issues which they wish to complain about despite reasonable efforts of officers to help them specify their concerns and/or where the concerns identified do not fall within the remit of the local assessment process.
- 5) Regularly focus on a trivial matter to an extent which is out of proportion to its significance and continue to focus on this point. It is recognised that determining what a trivial matter is can be subjective and careful judgement will be used in applying this criterion.
- 6) Has threatened or used physical violence towards employees at any time. This will itself cause personal contact with the complainant and/or their representative to be discontinued and the complaint will, therefore, only be continued to be written communication. The Council must determine that any complainant who threatens or uses actual physical violence towards employees will be regarded as a vexatious complainant. The complainant will be informed of this in writing together with notification of how future contact with the Council is to be made.
- 7) Have in the course of addressing a complaint to the Monitoring Officer had an excessive number of contacts with the Council, placing unreasonable demands on officers. A contact may be made in person by telephone, letter, email or fax. Judgment will be used to determine excessive contact taking into account a specific circumstance of each individual case.
- 8) Have harassed or been verbally abusive on more than one occasion towards officers dealing with complaints. Officers recognise that complainants may sometimes act out of character in times of stress, anxiety or distress and will make reasonable allowances for this. Some complainants may have a mental health disability and there is a need to be sensitive in circumstances of that kind.
- 9) Are known or reasonably considered to have recorded meetings or face to face/telephone conversations without the prior knowledge or consent of the parties involved.

- 10) Make unreasonable demands on the Council and its employees and fail to accept these may be unreasonable, for example insist on an action being taken by Standards Committee which falls outside of its remit.
- 11) Make unreasonable complaints which impose a significant burden on the human resources of the Council and where the complaint:
 - Clearly does not have any serious purpose or value; or
 - Is designed to cause disruption or annoyance; or
 - Has the effect of harassing the Council; or
 - Can otherwise fairly be characterised as obsessive or manifestly unreasonable
- 12) Make repetitive complaints and allegations that ignore the replies the Council has supplied in previous correspondence

Schedule B - Options for dealing with habitual or vexatious complainants

The options below can be used singularly or in combination depending on the circumstances of the case and whether the complaint is ongoing or completed.

- 1) A letter to the complainant setting out responsibilities for the parties involved if the Monitoring Officer is going to assess the complaint. If terms are contravened, consideration will then be given to implementing other action as indicated below.
- 2) Decline any contact with the complainant, either in person, by telephone, by fax, by letter, by email or any combination of these provided that one form of contact is maintained. This may also mean that only one named officer will be nominated to maintain contact and the complainant is notified of this person.
- 3) Notify the complainant in writing, that the Council has responded fully to the points raised and has tried to resolve the complaint but there is nothing more to add and continuing contact on the matter will serve no useful purpose. The complainant will also be notified that the correspondence is at an end, advising the complainant that they are being treated as a habitual or vexatious complainant and as such the Council does not intend to engage in further correspondence dealing with the complaint.

Appendix 3

Assessment Criteria

The following criteria will be taken into account in deciding what action, if any, to take:

- 1. Has the complainant submitted enough information to satisfy the Monitoring Officer that the complaint should be referred for investigation?**

If not, the information provided is insufficient. The only outcome can be that no further action is taken on the complaint and a decision notice to that effect will be issued accordingly.

- 2. Is the complaint about someone who is no longer a Member of the Council, but is a Member of another authority? If so, does the Monitoring Officer wish to refer the complaint to the Monitoring Officer of that other authority?**

If yes, the complaint will be referred to the Monitoring Officer of that other authority to consider if he/she thinks it more appropriate to do so.

- 3. Has the complaint already been the subject of an investigation or other action relating to the Code of Conduct in the last 3 years? Similarly, has the complaint been the subject of an investigation by other regulatory authorities in the last 3 years?**

If yes, there may be nothing more to be gained by further action being taken.

- 4. Is the complaint about something which happened so long ago that there would be little benefit in taking action now?**

If yes, further action will not normally be warranted.

- 5. Does the complaint appear too trivial to justify the cost or inconvenience of investigation?**

If yes, investigation will not be warranted.

- 6. Does the complaint appear to be malicious, politically motivated or tit-for-tat?**

If yes, further action will not normally be warranted.

- 7. Is the complaint anonymous?**

If yes, no action will normally be taken, unless there are compelling reasons to suggest otherwise. For example, if it includes documentary evidence or photographic evidence indicating an exceptionally serious or significant matter.

- 8. Has the Member already apologised or offered a remedy?**

If yes, and the remedy appears adequate, then further action would not be warranted.

Appendix 4: Existing Local Determination Procedure showing proposed changes



LOCAL DETERMINATION PROCEDURE

[DATED]

Introduction

- 1.1 Under section 28 of the Localism Act 2011 an Authority must have arrangements in place to determine whether or not a Member (including a Co-opted Member) or a member of a Parish Council in its area has failed to follow the relevant Code of Conduct. These arrangements must determine how allegations are investigated and under which decisions on allegations can be made.
- 1.2 The Members' Code of Conduct adopted by the Authority defines the standards of conduct required of all Members of the Authority, including Co-opted Voting Members of the Authority's Standards Committee, when carrying out their duties. The Code represents the standards against which the public, fellow Members, the Monitoring Officer, Investigating Officer and the Authority's Standards Committee will judge a Member's conduct.
- 1.3 This Procedure provides a summary of the process for dealing with allegations of misconduct against Members where an investigation has been completed and the Investigating Officer has found a breach of the Code of Conduct.

Local Determination

- 1.4 Where an investigation finds evidence of a failure to comply with the Code of Conduct and local resolution is not appropriate or possible, the investigation findings will be reported to a Hearing Panel of the Standards Committee for local determination.
- 1.5 The purpose of the hearing is to decide whether or not a Member has failed to follow the Code of Conduct and, if so, to decide whether or not any sanction should be applied and what form any sanction should take.

Scheduling of Hearing

- 1.6 The Hearing Panel shall in the absence of good reason to the contrary hold a hearing in relation to an allegation within the period of three months beginning on the date of completion of the Investigating Officer's report.
- 1.7 The hearing shall not be held until at least fourteen days after the date on which the report was sent to the Member who is the subject of the allegation, unless the Member concerned agrees to the hearing being held earlier.

- 1.8 Except in complicated cases, the Hearing Panel would aim to complete a hearing in one sitting or in consecutive sittings of no more than one working day in total.

Appointment of Hearing Panel

- 1.9 The Hearing Panel will comprise three Members of the Standards Committee selected by the Monitoring Officer. A quorum of the Hearing Panel will be three Members. Any member who is the complainant or the subject of the complaint will not participate in the decision making process.

Hearing

- 1.10 The Hearing Panel will act in an inquisitorial manner, rather than an adversarial manner, seeking the truth in relation to the conduct of the Member on the balance of the information available to it. The Hearing Panel can commission further investigation or information where it needs to do so in order to come to a decision.
- 1.11 It is expected that the Hearing Panel will reach a decision by consensus. In the absence of a consensus, each Member of the Hearing Panel will have one vote and all matters/issues will be decided by a simple majority of votes cast.
- 1.12 Meetings of the Hearing Panel will be open to the public and press unless confidential information or exempt information (within the meaning of Schedule 12A to the Local Government Act 1972) is likely to be disclosed.

Findings

- 1.13 Following its consideration of the matter, the Hearing Panel can make one of the following findings:
- that the Member has not failed to follow the Code of Conduct; or
 - that the Member has failed to follow the Code of Conduct, but no action needs to be taken; or
 - that the Member has failed to follow the Code of Conduct and should be sanctioned.

Sanctions

- 1.14 If the Hearing Panel finds that a Member has failed to follow the Code of Conduct and that he/she should be sanctioned, it may take any one or a combination of the following actions:

- censure the Member (this is the only form of sanction available when dealing with a person who is no longer a Member);
- restriction to the access and use of resources of the Authority for a maximum period of six months, provided that any such restrictions imposed upon the Member: -
 - are reasonable and proportionate to the nature of the breach; and
 - do not unduly restrict the person's ability to perform the functions of a Member.
- a requirement to give a written apology;
- the removal of a member from a committee;
- a requirement to undergo training.

Notice of Findings

- 1.15 The Hearing Panel will announce its decision at the end of the hearing. As soon as practicable after the hearing, the Hearing Panel will give its full written decision to the relevant persons involved.
- 1.16 A summary of the decision and reasons for that decision will be published on the Council's website which will include a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.

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| SECTION 2 | DESCRIPTION OF TERMS |
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Members' Code of Conduct

- 2.1 The Members' Code of Conduct adopted by the Authority defines the standards of conduct required of all Members of the Authority when carrying out their duties.

Complainant(s)

- 2.2 The person(s) making the complaint that a Member has breached the Code of Conduct.

Member

- 2.3 The person against whom the complaint has been made.

Monitoring Officer

- 2.4 The person who oversees investigations into complaints made against Members under the Code of Conduct.

Authority

- 2.5 The Member's Council at the time of an allegation.

Legal Adviser to the Hearing Panel

- 2.6 The Monitoring Officer, or in their absence the Deputy Monitoring Officer.

Investigating Officer

- 2.7 The person appointed by the Monitoring Officer to undertake the investigation of an allegation.

Head of Legal and Democratic Services

- 2.8 The designated Proper Officer for the determination of "exempt information" as defined in Schedule 12A to the Local Government Act 1972.

Independent Person

- 2.9 The person who is appointed by the Authority under section 28(7) of the Localism Act 2011 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.

Administrative Officer

- 2.10 The Head of Legal and Democratic Services, or their Deputy, and other members of their staff will provide the necessary administrative support to the Hearing Panel.

"Days"

- 2.11 "Days" include working and weekend days but exclude the day of dispatch and public holidays.

Service Arrangements

- 2.12 Correspondence and documents for the Member concerned will either be served personally or by recorded delivery.

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| SECTION 3 | PRE-HEARING PROCESS |
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Notification to Member

3.1 Where a final report of an Investigating Officer which contains a finding of failure to comply with the Code of Conduct has been referred to a Hearing Panel for local determination, the Administrative Officer will write to the Member concerned to:

- (a) propose a date for a meeting of the Hearing Panel,
- (b) outline the hearing procedure,
- (c) outline the Member's rights.

In addition the Administrative Officer will ask the Member concerned to indicate within 14 days whether or not he/she:

- (a) disagrees with any of the findings of fact in the Investigating Officer's Report, including the reasons for any disagreement,
- (b) will attend the hearing in person,
- (c) wants to be represented at the hearing by a solicitor, barrister or any other person,
- (d) wants to give evidence to the Hearing Panel, either orally or in writing,
- (e) wants to call relevant witnesses to give evidence to the Hearing Panel, and if so, the Member must provide a summary of the evidence to be given by those witnesses,
- (f) wants any part of the hearing to be held in private, giving reasons under the relevant Article of the European Convention on Human rights or category of confidential or exempt information (see Appendices Two and Three)
- (g) wants any part of the Investigating Officer's report or other relevant documents to be withheld from the public, giving reasons under the relevant Article of the European Convention of Human Rights or category of confidential or "exempt information".

Members' Response

3.2 In his/her reply a Member must make clear all of his/her disagreements with the findings of fact in the Investigating Officer's report during this pre-hearing stage. This will allow the Chair of the

Hearing Panel, in consultation with the Monitoring Officer, to decide which witnesses will be needed. A Member will normally not be allowed to raise any new disagreements over findings of fact in the Investigating Officer's report at the Hearing Panel itself, unless there are good reasons for doing so, such as new evidence becoming available.

- 3.3 When the response of the Member concerned has been received, or, if no response is received, once the 14 day period for responding has elapsed, the Chair of the Hearing Panel in consultation with the Monitoring Officer will agree the date, time and place for the hearing.

Advance Notification of Hearing

- 3.4 At least 14 days before the hearing, the Administrative Officer will give notification of the date, time and venue set for the hearing to those involved. He will also inform the Member concerned of the membership of the Panel which will consider the matter.

Agenda for Hearing

- 3.5 At least 7 days before the day of the meeting of the Hearing Panel, the Administrative Officer will send the following papers to each Member of the Panel, to the Member concerned, to the Investigating Officer, to the Monitoring Officer and to the Independent Person:
- (a) the agenda for the meeting of the Hearing Panel;
 - (b) a copy of the Investigating Officer's report (unless already provided); and
 - (c) where relevant, a copy of any written statement in response to the Investigating Officer's report received from the Member and the Investigating Officer's reply to the Member's response.
- 3.6 The provision of any such papers referred to in paragraph 3.14 may be made conditional upon an appropriate undertaking of confidentiality until such time as they are made available to the press and public or the Hearing Panel agrees at the commencement of the hearing that the press and public shall not be excluded from the meeting.
- 3.7 Any additional documents intended to be relied on and/or referred to at the hearing must be provided to the Administrative Officer at least 3 days before the date of the Hearing.

Public Access to Hearing and Documents

- 3.8 There is a presumption that hearings will be held in public and that reports for the Hearing Panel will be available before and during the

hearing. However, there may be reasons, as detailed in **Appendix One**, which would prevent public access to the hearing (or part of the hearing) and documents (or parts of documents) to be considered by the Hearing Panel.

Confidentiality in advance of Hearing

- 3.9 Where the Head of Legal and Democratic Services considers that the Investigating Officer's report and/or Member's written statement in response to the Investigating Officer's report and/or the Investigating Officer's reply to that response is likely to disclose "exempt information", and in consequence that it is likely that the Hearing Panel will not be open to the public during consideration of these papers, he/she shall not provide copies of these papers to the press or public or permit inspection thereof by the press or public in advance of the meeting.
- 3.10 Where the Head of Legal and Democratic Services considers that the Investigating Officer's report and/or the Member's written statement in response and/or the Investigating Officer's reply to that response is likely to disclose "exempt information" falling within Schedule 12A to the Local Government Act 1972, he will not provide copies of such papers to, nor permit inspection by any Member of the Authority other than the Members of the Hearing Panel and the Member concerned in advance of the meeting.
- 3.11 "Exempt information" is defined in Schedule 12A of the Local Government Act 1972 as set out in **Appendix Two**.

SECTION 4 HEARING PROCEDURE

Legal Advice

- 4.1 The Hearing Panel may at any time seek legal advice from the Legal Adviser during the hearing or while the Hearing Panel considers the outcome. Such advice will on all occasions be given in the presence of the Investigating Officer and the Member.

Member Attendance or Representation

- 4.2 The Member may arrange to be represented or accompanied at the hearing at his/her own expense by a solicitor, counsel or another person.
- 4.3 If the Member does not attend the hearing, the Hearing Panel may consider the Investigating Officer's report and the Independent Person's views in the Member's absence. If the Hearing Panel is satisfied with the Member's reason for not being able to attend the

hearing, then it may arrange for the hearing to be held on another date.

- 4.4 Where the Hearing Panel proceeds in the absence of the Member, the procedure for the meeting shall be adapted as necessary, giving any representative of the Member who may be present such rights as would otherwise be accorded to the Member concerned.

Order of Business

4.5 The order of business at the meeting shall be as follows:

- (a) Disclosures of interest. The Chair will invite Members to declare any interest they may have in the matter.
- (b) Introduction of Members of the Hearing Panel, the Investigating Officer, the Monitoring Officer, the Member against whom a complaint has been made, any representative of the Member, any witnesses and, the Independent Person.
- (c) If the Member is not present, consideration as to whether to adjourn or to proceed in his/her absence.
- (d) Consideration as to whether the press and public should be excluded from the meeting. The Hearing Panel will take into account any representations from the Investigating Officer, the Member concerned or his/her representative and the Independent Person with reasons why the Panel should make such an exclusion.
- (e) A note of the issues which the Hearing Panel will have to consider in deciding whether or not to exclude the press and public is set out in **Appendix Three**.
- (f) The Hearing Panel will then make a determination on whether to exclude the press and public. Where the Panel decides not to exclude the press and public, the Administrative Officer will at this point provide copies of such relevant documentation to any members of the press and public who are present.
- (g) The Investigating Officer will present his/her own reports. The Investigating Officer will address only the issue of whether the Member has acted in breach of the Code of Conduct. The Investigating Officer may introduce any witnesses required to substantiate any matter. Members of the Hearing Panel and the Independent Person may question the Investigating Officer and any witness on any matter within their competence. The Hearing Panel may give the Member an opportunity to challenge any evidence put forward by any witness called by the Investigating Officer by the cross-examination of the witness

either directly by the Member (or their representative) or through the Chair.

- (h) **Presentation by Member.** The Member (or their representative) will address only the issue of whether he/she has acted in breach of the Code of Conduct. The Member (or their representative) may introduce witnesses required to substantiate any matter contained in his/her written statement (where relevant). Members of the Hearing Panel and the Independent Person may question the Member and any witness on their evidence. The Hearing Panel may give the Investigating Officer an opportunity to challenge any evidence put forward by any witness called by the Member (or their representative) by the cross-examination of the witness either directly by the Investigating Officer or through the Chair.
- (i) Where the hearing is dealing with an Investigating Officer's report and the Member seeks to dispute any matter in the report where he/she had not given notice of intention to dispute in his/her written statement, the Investigating Officer will draw this to the attention of the Hearing Panel. The Hearing Panel may then decide:
 - (i) not to admit such dispute but to proceed to a decision on the basis of the information contained in the report;
 - (ii) to admit the dispute, but invite the Investigating Officer to respond thereto, recalling any witness as necessary; or
 - (iii) to adjourn the meeting to enable the Investigating Officer to investigate and report on the dispute and/or to arrange for the attendance of appropriate witnesses as to the disputed information.
- (j) Members of the Hearing Panel have to satisfy themselves that they have sufficient information upon which to take that decision, and they may question the Investigating Officer, the Member concerned and any witnesses in order to obtain sufficient information to enable the Hearing Panel to come to a decision on the issue.
- (k) The Independent Person will be asked to provide their view about whether the Member has acted in breach of the Code of Conduct. The Independent Person may request an adjournment of the hearing if they require time to form their view before presenting it to the Hearing Panel.
- (l) The Hearing Panel will adjourn into another room with the Monitoring Officer, where it will consider in private session whether the Member has acted in breach of the Code of

Conduct. At any stage in its consideration they may return to ask any further questions of the Investigating Officer or the Member, or seek legal advice.

- (m) At the conclusion of its consideration, the Hearing Panel will return and the Chair will advise the Investigating Officer and the Member or his/her representative of its decision as to whether the Member has acted in breach of the Code of Conduct, and the reasons for that decision.
- (n) If the Hearing Panel concludes that the Member has acted in breach of the Code of Conduct, it will then hear representations from the Investigating Officer and then the Member or his/her representative as to whether the Hearing Panel should take any action against the Member and what form any action should take. Members of the Panel may ask questions of the Investigating Officer, the Member and the Independent Person and seek legal advice in order to satisfy themselves that they have the information upon which to take a proper decision.
- (o) The Hearing Panel will then adjourn into another room together with the with the Monitoring Officer where they will consider in private session whether to take any action in respect of the Member and what form any such action should take.

The sanctions available to the Hearing Panel are set out in **Appendix Four**. The Hearing Panel will then return and the Chair will advise the Member of its decision.

Non-Co-operation

- 4.6 Where the Investigating Officer states that any Member or Officer of the Authority has failed to co-operate wholly or in part with the procedure, the Hearing Panel will consider whether to make a formal complaint to the Standards Committee or to the relevant authority, respectively, about such failure to co-operate.

Costs

- 4.7 Where the Investigating Officer secures the attendance of any person to give evidence to the Hearing Panel, the Authority will reimburse any reasonable costs which the person may incur in so attending.

Additional Evidence

- 4.8 A Hearing Panel may at any stage prior to the conclusion of the hearing adjourn the hearing and require the Monitoring Officer to seek further information or undertake further investigation on any point specified by the Hearing Panel; but the Hearing Panel shall not

adjourn the hearing on more than one occasion under these provisions.

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| SECTION 5 NOTICE OF FINDINGS OF HEARING PANEL AND CONFIDENTIALITY OF INFORMATION |
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Report to Standards Committee

5.1 As soon as reasonably practicable after the Hearing Panel has made its determination in respect of an allegation, the Monitoring Officer will give written notice of that determination and the reasons for such determination to:

- (a) the Member who is the subject of that determination;
- (b) the Investigating Officer;
- (c) the Standards Committee;
- (d) the Independent Person;
- (e) the Standards Committee of any other local authority of which the Member is, or was at the time of the alleged misconduct, a Member; and
- (f) any person who made the allegation that gave rise to the investigation; and

subject to paragraph 5.2 below, arrange for a summary of the finding to be published on the Council's website.

5.2 Where the Hearing Panel determines that there has not been a breach of the Code of Conduct:

- (a) the notice under paragraph 6.1 will state that the Hearing Panel found that the Member concerned had not failed to comply with the Code of Conduct of the and will give its reasons for reaching that finding; and
- (b) if the Member concerned so requests, the Monitoring Officer will not publish a summary of the finding in any local newspaper.

5.3 Where the Hearing Panel determines that there has been a failure to comply with 6.1 the notice will:

- (a) state that the Hearing Panel found that the Member concerned had failed to comply with Code of Conduct of this or another Council but that no action needs to be taken in respect of that failure;

- (b) specify the details of the failure;
- (c) give reasons for the decision reached by Hearing Panel; and

5.4 Where the Hearing Panel determines that there has been a failure to comply with the Code of Conduct and that a sanction should be imposed, the notice under paragraph 6.1 will:

- (a) state that the Hearing Panel found that the Member concerned had failed to comply with the Code of Conduct of this or the Code of Conduct of another Council;
- (b) specify the details of the failure;
- (c) give reasons for the decision reached by the Hearing Panel;
- (d) specify the sanction imposed,

Confidentiality

5.5 No Member or Officer of the Authority shall disclose any information which he/she has obtained in the course of an investigation or in pursuance of this Procedure except in the circumstances set out below:

- (a) the disclosure is made for the purposes of enabling the Monitoring Officer or Investigating Officer to carry out his/her functions or the Hearing Panel to carry out its functions in relation to the matter;
- (b) the disclosure is made in connection with the investigation and consideration of an allegation of a breach of an authority's code of conduct;
- (c) the disclosure is made enabling a Standards Committee or sub-committee of a Standards Committee to perform any of its functions in connection with the investigation and consideration of an allegation of a breach of an authority's code of conduct;
- (d) the person to whom the information relates had consented to the disclosure;
- (e) the disclosure is made in pursuance of a statutory requirement for disclosure;
- (f) the information has previously been disclosed to the public with lawful authority;

- (g) the disclosure is for the purpose of criminal proceedings and the information in question was not obtained as a result of personal enquiries of the person subject to the criminal proceedings.**

PUBLIC ACCESS TO HEARINGS AND DOCUMENTS

Hearings will be held in public where possible to make sure that the hearing process is open and fair.

Confidential information and 'exempt information'

- 1 There are two circumstances in which hearings (or parts of hearings) can or should be held in private.
 - (a) A hearing must be held in private where this is necessary to prevent confidential information being revealed. Confidential information means information that has been provided by a Government department under the condition that it must not be revealed, as well as information that cannot be revealed under any legislation or by a court order.
 - (b) The law also gives the Hearing Panel the power to hold a private meeting to prevent 'exempt information' being revealed to the public. The categories of 'exempt information' are those set out in Schedule 12A to the *Local Government Act 1972* (see Appendix 2). However, regulations also provide for three additional categories of 'exempt information' in relation to the Hearing Panel.
 - (i) Information which is subject to any obligation of confidentiality.
 - (ii) Information which relates in any way to matters concerning national security.
- 2 The rules about confidential information are different from the rules about 'exempt information'. Hearing Panels must hold some parts of a meeting in private where confidential information is likely to be revealed. However, they have the discretion to decide whether or not to exclude the public if 'exempt information' may be revealed.

Deciding to withhold 'exempt information'

- 3 The Hearing Panel will carefully consider any decision to withhold exempt information from the public. The Hearing Panel will follow Article 6 of the European Convention on Human Rights, as there is an obligation to do so under Section 6(1) of the Human Rights Act 1998. The Hearing Panel has a duty to act fairly and in line with the rules of natural justice.
- 4 Article 6 favours public hearings, except in specific circumstances, for example, in the interests of national security or to protect the private lives of everyone involved.
- 5 If the Hearing Panel decides to exclude the public to prevent 'exempt information' being revealed, it will only exclude the public for part of the proceedings. For example, if a witness' evidence is likely to reveal 'exempt

information', the public will only have to be excluded while that witness is giving evidence.

- 6 If evidence is heard in private, the Chair of the Hearing Panel will warn those present not to mention that evidence during the public parts of the hearing, or outside the hearing. The Hearing Panel may also need to use appropriate initials to protect the identity of witnesses during the hearing and in any public documentation.

Access to documents

- 7 As a general principle, the agenda and reports to be discussed at a Hearing Panel will be available to the public before and during a hearing. The Investigating Officer's report will be one of the reports before the Hearing Panel.
- 8 However, the Head of Legal and Democratic Services has the power to prevent any part of a report being made public if it relates to a part of the meeting which, in his or her opinion, is likely to be held in private.
- 9 After a hearing, sections of the Hearing Panel's reports, which relate to parts of the hearing held in private, will not have to be made available for public inspection. The same principle applies to the minutes of any hearing.
- 10 When considering whether or not to exclude the public from a hearing, the Hearing Panel will also need to say which parts of the reports before the hearing are not to be made available for public inspection.
- 11 Copies of the agenda, reports and minutes of a hearing, as well as any background papers, will be available for public inspection for a specific period of up to six years after that hearing has taken place.

“EXEMPT INFORMATION”

Categories of exempt information under Schedule 12A of the Local Government Act 1972.

- 1 Information relating to any individual.
- 2 Information which is likely to reveal the identity of an individual.
- 3 Information relating to the financial or business affairs of any particular person (including the authority holding that information).
- 4 Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
- 5 Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- 6 Information which reveals that the authority proposes -
 - (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
 - (b) to make an order or direction under any enactment.
- 7 Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

Source: Appendix 2 is an extract from the Local Government Act 1972.

EXCLUSION OF PRESS AND PUBLIC

ISSUES FOR CONSIDERATION

- 1 At the meeting, the Hearing Panel will consider as a preliminary point whether to exclude the press and public from the meeting, or any part of the meeting.

- 2 The Hearing Panel must act in accordance with Article 6 of the European Convention on Human Rights, which gives a right to a fair and public hearing by an independent and impartial tribunal. Article 6 provides that judgement shall be pronounced publicly, but that the press and public may be excluded from all or part of the "trial" in the interests of:
 - (a) Morals
 - (b) public order
 - (c) national security in a democratic society
 - (d) where the interests of juveniles or the protection of the private life of the parties so require or
 - (e) in special circumstances where publicity would prejudice the interests of justice.

Accordingly, the presumption is in favour of a public hearing unless either the Member or Investigating Officer can demonstrate over-riding reasons within one of the five headings above for the press and public to be excluded.

- 3 Article 8 of the European Convention on Human Rights provides that everyone has the right to respect for their private and family life, home and correspondence. It provides that there shall be no interference by a public authority (such as the Hearing Panel) with the exercise of this right except such as is:
 - (a) in accordance with the law (such as the requirements for publication of the agenda, reports and background papers set out in Section 100A to 100K of the Local Government Act 1972), and
 - (b) necessary in a democratic society in the interests of:
 - (i) national security
 - (ii) public safety
 - (iii) the economic well-being of the country
 - (iv) the prevention of crime or disorder

- (v) the protection of health and morals (which would include the protection of standards of conduct in public life) or
- (vi) the protection of the rights and freedoms of others.

There is a clear public interest in promoting the probity of public authorities and public confidence, so that the presumption of a public hearing set out in Article 6 would appear to come within the exception set out in paragraph (b)(v) above, unless either the Investigating Officer or the Member demonstrates to the Hearing Panel's satisfaction that a public hearing is not necessary for that purpose and that the interest of protecting the privacy of the Member or of the should over-ride that public interest.

- 4 Where the Hearing Panel concludes that the interest of protecting the privacy of the Member or of the Authority should over-ride the public interest in a public hearing, the Hearing Panel remains bound by the provisions of the Local Government Act 1972, as primary legislation, so that it may only exclude press and public from all or part of the meeting if it is satisfied that admitting the press and public would be likely to lead to disclosure of exempt information. In that case, the Hearing Panel has a discretion under Section 100A(4) of the Local Government Act 1972, and would need to resolve whether or not to exclude the press and public.
- 5 Where the Hearing Panel does not resolve to exclude the press and public from the meeting, the Head of Legal and Democratic Services will then be required to provide copies of the agenda and reports to the press and public and other members of the Authority, and to permit inspection of any background papers.

SANCTIONS AVAILABLE TO THE HEARING PANEL

A Sanctions available in respect of a Member who has ceased to be a Member at the date of the Hearing Panel

- 1 Censure of the Member

B Sanctions available in respect of a Member who remains a Member at the date of the Hearing Panel

Any one, or a combination, of the following:

- 1 Censure of the Member;
- 2 Recommending to Full Council, or to the Town or Parish Council that the Member be removed from any or all Committees or Sub-Committees;
- 3 Recommending to Full Council, or to the Town or Parish Council, that the Member be removed from all outside appointments to which s/he has been appointed or nominated by the authority
- 4 Recommending to Full Council, or to the Town or Parish Council, that the Member's access and use of resources of the Authority be restricted for a maximum period of six months, provided that any such restrictions imposed upon the Member –
 - (a) are reasonable and proportionate to the nature of the breach; and
 - (b) do not unduly restrict the Member's ability to perform his functions and duties as a Member;
- 5 A requirement that the Member submit a written apology.
- 6 A requirement that that Member undertake training as specified by the Hearing Panel.
- 7 A requirement that that Member undertake conciliation as specified by the Hearing Panel.

**Appendix 5: Protocol relating to Durham County Council's
Independent Person**

Protocol relating to Durham County Council's Independent Person

The statutory role of an Independent Person appointed under Section 28(7) of the Localism Act 2011 is to help the Authority discharge its duty to promote and maintain high standards of conduct amongst Members and Co-opted Members.

This protocol has been established to clarify how the Independent Person (IP) will fulfil this role:

Considering allegations

1. Following notification of a complaint against them a Member of the Council may seek the views of the IP. A Member wishing to contact the IP should do so via the Senior Committee Services Officer who will arrange for the IP to contact them. The IP will then contact the member by telephone or arrange a meeting, if required.
2. The Senior Committee Services Officer will provide the IP with all relevant information concerning the complaint in advance of them discussing the complaint with the subject Member.
3. Where the IP has given views to the subject Member, those views shall be put in writing and made available to both the subject Member and the Monitoring Officer (MO).
4. The IP will need to agree in advance with the subject Member rules of confidentiality but it will be up to the IP to decide whether matters should remain confidential and, when confidential information is disclosed to the IP, there should be a written statement in the note of the meeting that confidential matters were discussed.
5. The IP will make a written note of the meeting which will be made available to the MO and the subject member.

Assessment

6. Once both the complainant and the subject Member have been given an opportunity to respond to the complaint, a file containing all relevant information will be collated for the MO. The MO will seek the views of the IP where appropriate before reaching a decision as to whether the complaint merits local resolution, investigation or should be referred to the Standards Committee.
7. When issuing the decision notice the MO will record when the IP has been consulted and that their views have been taken into account.
8. The MO in consultation with the IP may apply the habitual or vexatious complaints policy to a complainant where appropriate.
9. Where a matter has been referred to the Standards Committee for determination, the Standards Committee should seek the views of the IP before reaching its conclusions. The IP's views should be recorded in any decision notice and,

where those views do not reflect the final outcome, reasons must be given for any differences. However, it must be clear that it is the Standards Committee and not the IP who is the decision-maker in relation to allegations of breach of the Code of Conduct.

10. The IP may be requested by the MO or the Standards Committee to assist in mediation or conciliation in order to resolve complaints where that is considered the most appropriate course of action.

11. The IP may be requested by the MO or the Standards Committee to assist in any training on conduct issues as appropriate.

Relationship with the Standards Committee

12. The IP is not a member of the Standards Committee and therefore is not part of the formal business of the meeting and cannot vote on any matters put to the meeting. They may be invited to observe confidential matters with the agreement of the Chair.

13. The IP shall be entitled to request items to be added to the agenda with the agreement of the Chair.

Other Matters

14. The IP has the right to raise any concerns about standards issues or implementation of the local assessment process with the Council's MO.

15. The Authority, through its Standards Committee and MO, is responsible for ensuring that the Authority meets its duty to promote and maintain high standards. However, the IP has the right to be consulted on any proposed changes to the Code of Conduct or procedures for handling allegations.

16. The IP has the right of access to any confidential information required to carry out their role. Access to such information and its storage shall be agreed with the MO.

17. The MO will meet with the IP to review relevant matters, as required.