

AGENDA ITEM 4(b)

PROCEDURES FOR DEALING WITH ALLEGED BREACHES OF THE CODE OF CONDUCT BY COUNCILLORS

Explanatory Notes

1. Introduction

The arrangements governing standards of behaviour by local councillors are established in Section 28 of the Localism Act 2011, and specified in regulations made under the Act. .

The Council is required by the Act to approve a Code of Conduct for Councillors and agree procedures for dealing with any alleged breaches of that Code.

Parish and Town Councils within the Wyre area are also required either to adopt the Wyre Code or to approve their own Code of Conduct. Any complaints about breaches of such Codes by Parish or Town Councillors have to be submitted to Wyre Borough Council's Monitoring Officer and, will be dealt with under the procedures set out in these notes.

2. What is the Code of Conduct?

Part 1 of the Code specifies that Councillors must have regard to the following general principles and obligations when acting as a Councillor:

- selflessness
- integrity
- objectivity
- accountability
- openness
- honesty
- leadership

Part 2 of the Code specifies arrangements for the registration and declaration of financial and other interests which must be followed by Councillors.

A full copy of the Wyre Code of Conduct is included in Part 5 of the Council's Constitution, which can be seen on the Council's web-site, wyre.gov.uk .

Alternatively, you can obtain a copy from:

Democratic Services
Wyre Borough Council
Civic Centre
Breck Road
Poulton-le-Fylde
Lancashire
FY6 7PU

3. How to make a complaint

If you wish to make a complaint, please submit it to the Council's Monitoring Officer, in writing or by e-mail, using the attached form, or setting out the information requested in the form. Please make clear, in particular, which of the requirements of the Code of Conduct you think the Councillor(s) has breached.

Anonymous complaints will not be considered.

Any Councillor who is the subject of a complaint (the subject member) will be informed by the Monitoring Officer of the complaint either during or at the conclusion of stage 1 of this process. The Monitoring Officer will normally tell the subject member the name of the complainant and the details of the complaint, unless he/she considers that there are special reasons for keeping that information confidential.

4. How will your complaint be dealt with?

A flowchart which shows, in diagrammatic form, how your complaint will be dealt with and by whom, is attached to these notes.

The process is also described below:

Stage 1: Preliminary tests/initial consideration and conclusions

Your complaint will be dealt with, in the first instance, by the Council's Monitoring Officer. The Council is required by the Local Government and Housing Act 1989 to designate a senior officer to undertake this role, which has various responsibilities relating to complaints. He/she will consult with one of the Independent Persons, appointed by the Council for this purpose, under the provisions of the Localism Act.

The preliminary questions addressed will include the following:

- Was the subject Member acting in their capacity as a Councillor at the time of the alleged misconduct?
- Is the complaint very minor or trivial?
- Is the complaint vexatious or malicious?
- Is the complaint about or related to historical issues?
- Is any additional information needed before deciding what initial action to take?
- Is there a potential breach of the Code of Conduct?
- Is it in the public interest to investigate or take action on the complaint?

The options available to the Monitoring Officer, at this stage in the process, are:

- To reject the complaint or to decide to take no action – in which case he/she will state the reason for doing so;

- To seek an informal resolution (including, for example, an apology, or mediation);
- To seek further information, usually from the complainant, to clarify the particulars of the complaint;
- To investigate, or appoint another officer or an external person to investigate the complaint under stage 2 of this process;
- To refer the complaint to the Police or other investigatory body (e.g. the Department of Work and Pensions), if a criminal offence has, potentially, taken place.

If the Monitoring Officer's attempts to reach an informal resolution are unsuccessful, he/she can reconsider the complaint and pursue any of the other options available under stage 1 of this process.

The Chairman of the Standards Committee will be informed when a complaint is received, but will not be involved in the first stage of the process.

The Monitoring Officer will submit a summary report to each scheduled meeting of the Standards Committee, listing any complaints received since the previous meeting of the Committee and summarising the current position on complaints being dealt with under this process. Information about the names of individuals or specific details of complaints will not generally be made available at this stage in the process.

No Councillor should reveal any information to the media or in public about a complaint which is currently being dealt with or is not upheld.

Stage 2: Formal Investigation and report

Any investigation, under Stage 2 of this process, will be conducted either by the Monitoring Officer or a person appointed by him/her. (If the Monitoring Officer himself/herself conducts the investigation he/she will not be able to act as the advisor to the Standards Committee at any subsequent hearing relating to that complaint)

The investigating officer will examine any available evidence of the alleged Breach and will interview the complainant, the subject member and, if appropriate, any witnesses. He/she will prepare a report setting out:

- Established/agreed facts;
- Facts which are not agreed and corresponding conflicting evidence;
- His/her conclusion on whether or not there has been a breach of the Code of Conduct.

If the conclusion of the investigation is that there has been no breach of the Code of Conduct, the Monitoring Officer will inform the complainant and the subject member of that finding and tell them either that no further action is to be taken or, if applicable, that he/she intends to take some other action outside of the complaints process. The Monitoring Officer will inform the Standards Committee of the outcome of the investigation in his/her next summary report to the Standards Committee.

If the conclusion of the investigation is that there has been a breach of the Code of Conduct, the Monitoring Officer can still seek to resolve the issue without a hearing, for example, by the subject member admitting the breach and apologising. However, if the Monitoring Officer cannot reach a suitable resolution or he/she considers such an approach to be inappropriate, he/she will arrange a hearing of the Standards Committee.

Stage 3 – (Standards Committee Hearing)

If a hearing is held, under Stage 3 of this process, it will be conducted by the Standards Committee, usually at a special meeting convened for the purpose.

The purpose of a hearing will be to reach a final decision on whether or not a Councillor has breached the Code of Conduct and, if so, to decide whether or not any available sanction should be applied.

If a complaint has reached this stage, the hearing will normally be held in public, in order to promote public confidence and ensure fairness and transparency. The Committee will, however, be able to resolve to exclude the public and press whilst any confidential or exempt information is considered and will usually do so when reaching its decision.

Arrangements for the hearing will be made in accordance with the pre-hearing procedure attached as Annex A.

The procedures to be followed at the hearing are set out in Appendix 3.

The decisions available to the Committee are:

- to take no further action
- to reach an informal resolution between the complainant and the subject member (if agreed by both parties)
- if it finds that there has been a breach of the Code, to impose one or more sanctions listed in paragraph 20 of the Hearing Procedure attached as Annex B.

5. Appeals

There is no right of appeal available either to a complainant or a subject member against conclusions reached or actions taken by the Monitoring Officer or decisions made by the Standards Committee at any stage in this process.

6. Additional help and contact details

In line with the requirements of the Equality Act 2010, 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 or, if you need any further clarification of the complaints process please contact the Monitoring Officer on 01253 887605 or the Democratic Services and Scrutiny Manager on 01253 887481.

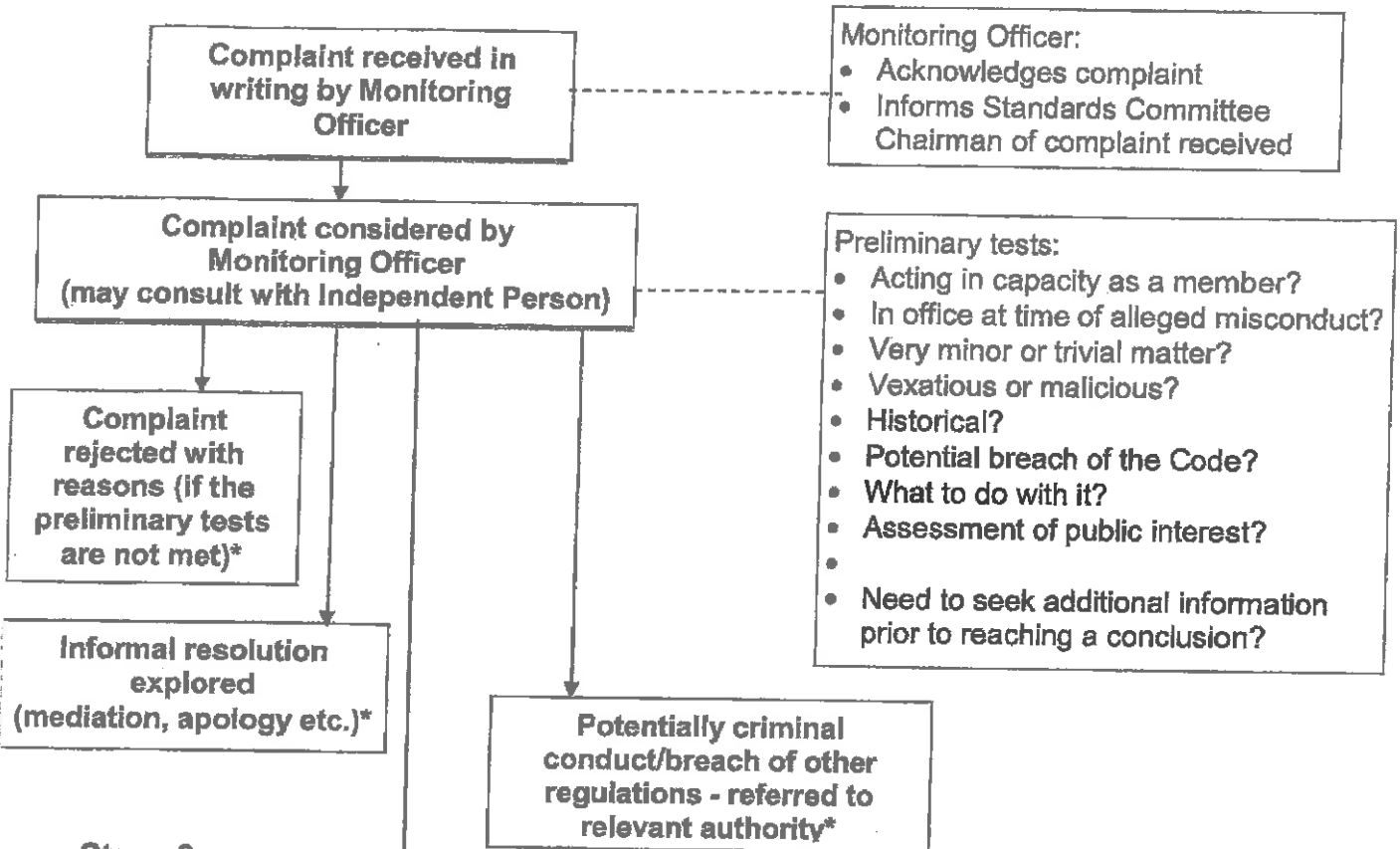
When you have completed the attached form, please send it to:

The Monitoring Officer
Wyre Borough Council
Civic Centre
Breck Road
Poulton-le-Fylde
Lancashire
FY6 7PU

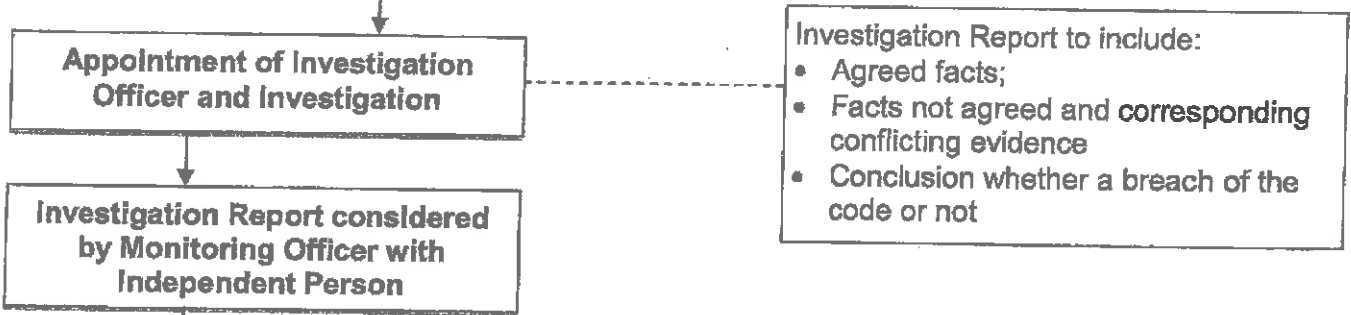
Or email to: monitoringofficer@wyre.gov.uk

Complaints Procedure Flowchart

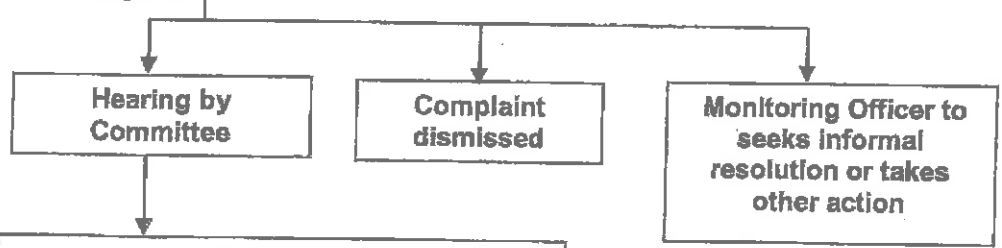
Stage 1



Stage 2



Stage 3



Outcome:
 1. No further Action
 2. Informal Resolution (if agreed)
 3. Formal Decision (sanctions)
 4. Recommendation of action

* The Chairman of the Standards Committee will be informed by the Monitoring Officer of the outcome of the first stage of the process at the same time as the complainant and the subject number

The Monitoring Officer will submit summary information on each complaint to each scheduled meeting of the standards Committee.

ANNEX A

**STANDARDS COMMITTEE
PRE-HEARING PROCEDURE**

1. Where an investigation report has found that there has been a breach of the Code of Conduct, and the matter cannot otherwise be resolved by local resolution, for example by the Subject Member admitting the breach and apologising, a hearing will be arranged. The hearing will generally be a meeting of the Committee convened specifically for that purpose.
2. A copy of the investigation report will be sent to the Subject Member, the complainant, the clerk to the town/parish council if the complaint relates to the Subject Member's conduct as a parish councillor, and to the Independent Person.
3. The Subject Member will be asked for a written response within ten working days. The response should set out the Subject Member's reply to the Investigating Officer's report and state whether he/she disagrees with any of the findings of fact in the report, giving the reasons for any disagreement. The response must also state if he/she:
 - wishes to be represented or accompanied by another person;
 - wishes to give evidence to the Committee, either orally or in writing;
 - wishes to call relevant witnesses to give evidence to the Committee;
 - wishes any part of the hearing to be held in private;
 - wishes any part of the Investigating Officer's report or other relevant documents to be withheld from the public.

The Subject Member may seek the views of the Independent Person who has not been involved in the consideration of the earlier stages in the complaints process.

4. The Subject Member will be informed that if, at the hearing by the Committee, he/she seeks to dispute any matter contained in the Investigating Officer's report without having previously notified the intention to do so, the Committee may refuse to allow the disputed matters to be raised unless satisfied that there are good reasons why they have not been raised beforehand.
5. Upon receipt of the Member's response, the Investigating Officer will be invited to comment on it within ten working days, and to say whether or not he/she:
 - wishes to call relevant witnesses to give evidence or submit written or other evidence to the Committee
 - wishes any part of the hearing to be held in private
 - wishes any part of the report or other relevant documents to be withheld from the public
6. Upon receipt of the Investigating Officer's response, the person advising the Committee at the hearing (either the Monitoring Officer or if he/she has carried out the investigation, the Deputy Monitoring Officer) will consider the responses of the Subject Member and the Investigating Officer and set a date for the hearing in consultation with the chairman of the Committee.

7. The Subject Member and the Investigating Officer will be entitled to request that any witnesses they want should be called. However, the Chairman of the Committee may limit the number of witnesses to be called, if he/she believes the number requested is unreasonable and that some witnesses will simply be repeating the evidence of earlier witnesses, or else not providing evidence that will assist the Committee to reach its decision.
8. Nothing in this procedure shall limit the Chairman of the hearing from requesting the attendance of any additional witnesses whose evidence he/she considers would assist the Committee to reach its decision.
9. The Monitoring Officer, in consultation with the Chairman and the Independent Person, will:
 - confirm a date, time and place for the hearing
 - confirm the main facts of the case that are agreed
 - confirm the main facts that are not agreed
 - provide copies of any written evidence to the relevant parties
 - confirm which witnesses will be called by the parties
 - provide the parties with copies of the proposed procedure for the hearing, specifying which parts of the matter, if any, may be considered in private

ANNEX B

**STANDARDS COMMITTEE
HEARING PROCEDURE**

1. The Hearing Committee will decide, on a balance of probabilities, on the evidence presented to it, whether the complaint is upheld.
2. All matters will be decided by a simple majority of votes cast. If there are equal numbers, the Chairman shall have a second and casting vote.
3. The Independent Person will attend the hearing in an advisory, non-voting capacity.
4. The meeting will be open to the press and public unless confidential or exempt information is likely to be disclosed and a resolution is passed to exclude them.
5. The Procedure for the hearing shall be as follows, but the Chairman may agree to vary this procedure in any particular instance where he/she is of the opinion that such variation is necessary in the interests of fairness.
6. The Subject Member may be represented or accompanied during the meeting with the permission of the Committee. It is the responsibility of the Subject Member to arrange any representation.
7. The Committee may take advice from the Monitoring Officer/Deputy Monitoring Officer (provided that they have not conducted the investigation) at any time during the hearing or during its deliberations. The substance of any advice given to the Committee will be shared with the Subject Member and Investigating Officer if they are present at the hearing.
8. At the start of the hearing, the Chairman will introduce each of the members of the Committee, the Independent Person, the Subject Member (if present), the Investigating Officer (if present) and any other officers present, and shall then explain the procedure which the Committee will follow in the conduct of the hearing.
9. The Committee shall then confirm that it is quorate, and deal with any disclosures of interests.
10. If the Subject Member is not present at the start of the hearing:
 - The Chairman will ask the Monitoring Officer/Deputy Monitoring Officer whether the Subject Member has indicated his/her intention not to attend the hearing.
 - The Committee will then consider any reasons which the Subject Member has provided for not attending the hearing and will decide whether it is satisfied that there is sufficient reason for such failure to attend.
 - If the Committee is satisfied with such reasons, it will adjourn the hearing to another date.
 - If the Committee is not satisfied with such reasons, or if the Subject Member has not given any such reasons, the Committee will decide whether to consider the matter and make a determination in the absence of the Subject Member, or to adjourn the hearing to another date.

11. After the preliminary procedures, the Committee will consider whether or not there are any significant disagreements about the facts contained in the Investigating Officer's report.
12. If there is disagreement, the Investigating Officer will present the evidence which is relevant to the facts in dispute. With the permission of the Committee, witnesses can be called to give relevant evidence. The Subject Member, the Committee members and the Independent Person may ask questions of the Investigating Officer or any witness.
13. The Subject Member or his/her representative will then present the evidence that is relevant to the facts in dispute. With the permission of the Committee, witnesses can be called to give relevant evidence. The Investigating Officer, the Committee members, the Independent Person and the Monitoring Officer/Deputy Monitoring Officer, may ask questions of the Subject Member or any witnesses.
14. If the Subject Member disagrees with any relevant fact in the report without having given prior notice, he or she must give good reasons for not mentioning it before the hearing. After considering the Subject Member's explanation, the Committee may continue with the hearing, relying on the information in the report, may allow the Subject member to make representations about the issue and invite the Investigating Officer to respond and call any witnesses as necessary, or may postpone the hearing to arrange for appropriate witnesses to be present.
15. Having usually considered the evidence submitted in public the Committee will consider in private, with the Independent Person and the Monitoring Officer (or the Deputy Monitoring Officer), its findings of fact, and its conclusion on whether there has been a failure to comply with the Code of Conduct. Depending on the complexity of the case, this may be done in two stages, with the Committee first hearing evidence and making findings of fact, and then hearing representations as to whether, on those facts, there has been a failure to comply with the Code of Conduct and making a finding on that issue.
16. At any stage in the consideration of the matter, the Committee may return to ask further questions of the Investigating Officer or the Subject Member or seek further information. The other party will be given an opportunity to comment upon the questions asked or the responses made.
17. At the conclusion of the Committee's deliberations, the Chairman will advise the Subject Member and the Investigating Officer of their findings.
18. If the Committee concludes that the Subject Member has failed to comply with the Code of Conduct, the Chairman will invite representations from the Investigating Officer and the Subject Member as to what action, if any, it should take, and will take advice also from the Independent Person. The Committee may ask questions of the Subject Member and the Investigating Officer. The Subject Member will be invited to make any final relevant points.
19. The Committee shall then consider in private, with the Independent Person and the Monitoring Officer or Deputy Monitoring Officer) whether to impose a sanction, and, if so, what sanction to impose and when that sanction should take effect.

20. The sanctions open to the Committee are:
- to censure the subject member
 - to report its findings to full Council
 - to recommend the subject member's Group Leader (or in the case of an ungrouped member to recommend to the Council) the removal of the Subject Member from any or all Committees
 - if the subject member is a member of the Cabinet, to recommend the Leader of the Council to remove them from the Cabinet or to relieve them of particular Portfolio Holder responsibilities (in some circumstances this might be for a limited period of time)
 - to recommend to the subject members Group Leader that he/she be removed from some or all outside appointments to which he/she has been appointed by the Council
 - to instruct the Monitoring Officer to request the subject member to attend training
 - to withdraw any equipment or privileges provided to the subject member by the Council for a specified period of time as deemed appropriate by the Committee
 - to exclude the subject member from the Council's offices with the exception of meeting rooms as necessary for attending Council, Committee or Task Group meetings, for a specified period of time.
21. If the finding relates to the Subject Member's conduct in his/her capacity as a town/parish councillor, the Committee will report its findings to the town/parish council, and may make recommendations to the town/parish council on the imposition of sanctions.
22. In deciding to impose a sanction, the Committee will consider all the relevant circumstances.
23. The Chairman will announce the decision of the Committee. Written notice of the findings of the Committee will be given as soon as is reasonably practicable to the Subject Member. If the complaint was against the Subject Member as a town/parish councillor, written notice of the findings of the Committee will also be sent to the Town/Parish Clerk.
24. The Committee may consider making any recommendations to the authority concerned with a view to promoting higher standards of conduct among its members.
25. The decision of the Committee, whether or not there has been a finding of breach of the Code of Conduct, will be made public.