

Report of:	Meeting	Date	Item no.
The Monitoring Officer (Michael Ryan)	Standards Committee	17 March 2016	6

## Complaints Procedures

### 1. Purpose of report

- 1.1 To enable the Committee to consider proposed changes to the process for dealing with Code of Conduct complaints.

### 2. Outcomes

- 2.1 Effective ethical standards arrangements.

### 3. Recommendation

- 3.1 That the proposed changes to the procedures for dealing with alleged breaches of the Councillors Code of Conduct, shown as track-changes in the attached document, be considered and endorsed.
- 3.2 That the new procedures to be followed at the pre-hearing stage and during any hearings by the Standards Committee, attached as Appendices 2 and 3 of the attached document, be approved.
- 3.3 That the Council be recommended to approve the proposed changes at its meeting on 14 April 2016 for inclusion in Part 5.02 of the Constitution.

### 4. Background

- 4.1 The Council's current process for the local consideration of complaints was introduced when the previous national regime and the Standards Board for England were abolished under the provisions of the Localism Act 2011. The process has now been reviewed in the light of experience in dealing with complaints received since the current arrangements were implemented in September 2012.

### 5. Key issues and proposals

- 5.1 The proposed changes to the Procedures are intended to make the process simpler and more explicit where deemed necessary. In particular stage 2 of the process has been streamlined and the option of the Monitoring Officer referring a complaint to the Standards Committee

for initial consideration has been deleted to avoid any possibility of a perception of predetermination if a hearing is subsequently held. Detailed procedures to be followed at the pre-hearing stage and at any hearings to be held under stage 3 have also been added. These are based on the procedures in place at Lancaster City Council and are similar to those at a number of other Councils in Lancashire.

<b>Financial and legal implications</b>	
Finance	None arising directly from this report.
Legal	

### **Other risks/implications: checklist**

If there are significant implications arising from this report on any issues marked with a ✓ below, the report author will have consulted with the appropriate specialist officers on those implications and addressed them in the body of the report. There are no significant implications arising directly from this report, for those issues marked with a x.

<b>risks/implications</b>	<b>✓ / x</b>
community safety	x
equality and diversity	x
sustainability	x
health and safety	x

<b>risks/implications</b>	<b>✓ / x</b>
asset management	x
climate change	x
data protection	x

report author	telephone no.	email	date
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<b>List of background papers:</b>		
name of document	date	where available for inspection
None	-	-

### **List of Attachments**

Revised procedures for dealing with alleged breaches of the Code of Conduct by Councillors

arm/rg/sta/cr/16/1703rs1

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

~~(Updated to reflect the new Code of Conduct for Wyre,  
adopted by the Council on 6 September 2012  
in compliance with the Localism Act 2011).~~

## **Explanatory Notes**

### **1. Introduction**

~~The New~~ arrangements governing standards of behaviour by local councillors ~~are established in, introduced under Section 28 of the Localism Act 2011, and specified in regulations made under the Act. were implemented from 1 July 2012.~~

~~The Localism Act abolished the previous nationally specified standards regime for local government and required each~~ The Council ~~is required by the Act~~ to approve ~~a its own~~ Code of Conduct ~~for Councillors~~ and agree ~~its own~~ procedures for dealing with ~~any~~ alleged breaches ~~of that Code of that Code of Conduct.~~

Parish and Town Councils, ~~as well as larger authorities within the Wyre area~~ are ~~also~~ required ~~either to adopt the Wyre Code or~~ to approve their own Code of Conduct. ~~but, a~~Any complaints about breaches of such Codes by Parish or Town Councillors ~~in the Wyre area~~ 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](http://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 form attached (Appendix 4) 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.

~~In the interests of fairness and national justice, the Any Councillor(s) who is the subject of the a complaint (the subject member) will normally be told informed by the Monitoring Officer who has complained about them and the details 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. Who will deal with the complaint?**

~~Your complaint will be dealt with, in the first instance, by the Council's Monitoring Officer. He will consult with an Independent Person, appointed by the Council for this purpose, under the provisions of the Localism Act.~~

~~Any investigation, under Stage 2 of this process, will be conducted by the Monitoring Officer or a person appointed by him.~~

~~The investigation report will be considered by the Council's Standards Committee.~~

~~If a hearing is held, under Stage 3 of the process, that too will be conducted by the Standards Committee.~~

~~The Independent Person will be able to attend any meetings held under stages 2 and 3 of the process.~~

#### **54. 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 as Appendix 1 to these notes.

The process is also described below:

##### Stage 1: Preliminary tests/initial consideration and conclusions

~~The Monitoring Officer will consider your complaint, in consultation with the Independent Person.~~

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 he will address, will include the following:

- ~~– Was the subject Member acting in their capacity as a Councillor at the time of the alleged misconduct?~~
- ~~– Is there a potential breach of the Code of Conduct?~~
- 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 Standards Committee;~~
- 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 involved in this process, either as a subject member, complainant, witness, Standards Committee member or in any other capacity, should reveal any information to the media or in public about a complaint which is currently being dealt with.

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. He/she will usually 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. The Standards Committee will consider the report.

~~It will reach a view on disputed facts and decide whether or not to accept the conclusion of the Investigating Officer on the alleged breach of the Code of Conduct.~~

~~The options available to the Committee at this stage include:~~

- ~~— to dismiss the complaint;~~
- ~~— to refer the complaint to the Monitoring Officer to seek an informal resolution;~~
- ~~— to hold a hearing of the 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.

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 at Appendix 2

~~The procedures to be followed at the hearing will be agreed in advance and explained to the participants.~~ are set out in Appendix 3.

~~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.~~

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 ~~of the following~~ sanctions listed in paragraph 20 of the Hearing Procedure (Appendix 3):

- ~~(1) to submit a formal report to the full Council on the nature of the breach (in effect “naming and shaming”);~~
- ~~(2) to recommend to the Member’s Group Leader (or in the case of an un-grouped member recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council, either for a specified period or until the next Annual Meeting of the Council, when seats on Committees will next be allocated;~~
- ~~(3) to recommend to the Leader of the Council that the Member be removed from the Cabinet, or relieved of particular Portfolio Holder responsibilities (in some circumstances this might be for a limited period of time);~~
- ~~(4) to instruct the Monitoring Officer to request the member to attend training;~~
- ~~(5) to recommend the Group Leader to remove the member from all outside appointments to which he/she has been appointed or nominated by the Council;~~
- ~~(6) to withdraw facilities provided to the Member by the Council, such as a computer and/or e-mail and internet access for a specified time;~~
- ~~(7) to exclude, for a specified period of time, the Member from the~~



~~Council's offices or other premises, with the exception of meeting rooms, as necessary for attending Council, Committee and Sub-Committee meetings;~~

## **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 ~~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.

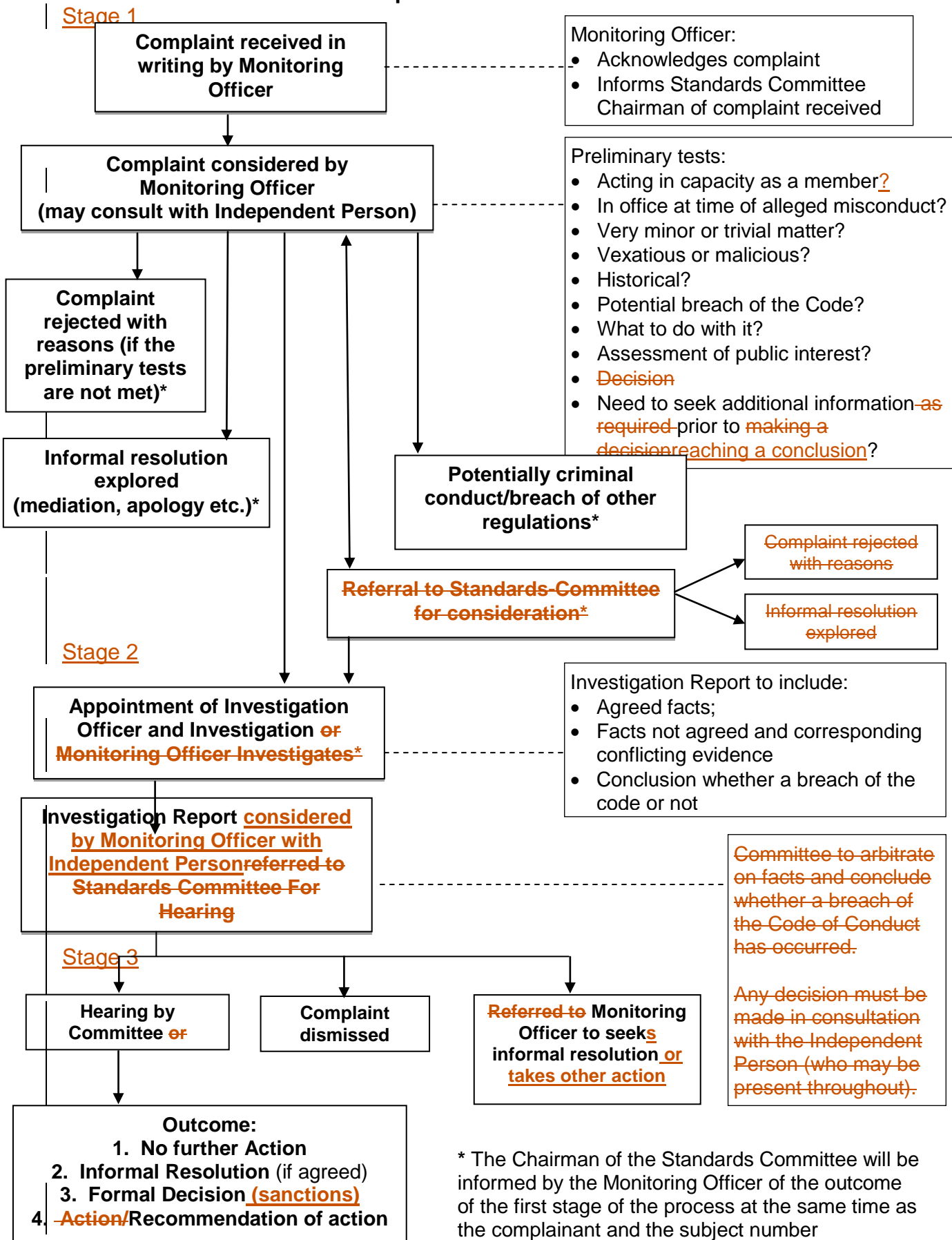
If you need any support in completing this form or, if you need any further clarification of the complaints process please contact the Monitoring Officer on 01253 887605 or the Democratic Services and Scrutiny Manager on 01253 887481.

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](mailto:monitoringofficer@wyre.gov.uk)

### Complaints Procedure Flowchart



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

**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

**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 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. The Committee will consider in private, with the Independent Person and the Monitoring Officer (or the Deputy Monitoring Officer), all the evidence which it has heard in order to establish its findings of fact, and to reach a conclusion as to 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 un-grouped 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 withdraw facilities provided to the subject member by the Council for a specified period of time
  - 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 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.

# COMPLAINT FORM: ALLEGED BREACHES OF THE COUNCILLORS CODE OF CONDUCT

## Your Details

1. Please provide us with your name and contact details:

Title (Mr/Mrs/Ms/Other): .....

First Name: .....

Last Name: .....

Address: .....

Daytime Telephone: .....

Evening Telephone: .....

Mobile Telephone: .....

Email Address: .....

(Please see attached notes explaining who this information will be given to).

2. Please tell us whether you are:

- A member of the public
- An elected or co-opted Councillor
- A Member of Parliament
- A Monitoring officer for another Council
- A Council employee
- Other (please specify)

3. Please state the name of the Councillor(s) you believe have breached the Code of Conduct and which Council they are a Member of:

<u>First Name</u>	<u>Last Name</u>	<u>Council Name</u>

(Please note that if your complaint relates to a Wyre Borough Councillor who is also a Lancashire County Councillor or a Member of a Parish or Town Council within the Wyre area, then the information on this form may be shared with that other Council).



4. Please explain in this section what the Councillor has done that you believe breaches the Code of Conduct. If you are complaining about more than one Councillor you should clearly explain what each individual person has done that you believe breaches the Code of Conduct.

It is important that you provide all the information you wish to have taken into account by the Monitoring Officer when he/she decides whether to take any action on your complaint. For example:

- You should state which specific provision(s) in the Code of Conduct which you think the Councillor has failed to comply with.
- 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 confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide any relevant background information.

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

- 5. If you do not want your name to be revealed to the Councillor you are complaining about, please say why here.

(Please see attached notes explaining how such requests will be considered).

Date: .....

Please send your completed form to:

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

Or email to: [monitoringofficer@wyre.gov.uk](mailto:monitoringofficer@wyre.gov.uk)