

## **ARRANGEMENTS FOR DEALING WITH COMPLAINTS ABOUT THE CODE OF CONDUCT FOR MEMBERS**

### **A. Introduction**

- A1 These Arrangements ('the Arrangements') set out the process which will be followed in the determination of allegations that a Herefordshire Council member, or a town/parish member or co-opted member within the Council's area, has or may have failed to comply with the adopted Code of Conduct for members at the time of the alleged breach. The purpose of the Arrangements is to ensure that every effort is made to deal with the complaint as smoothly as possible and to ensure that complaints are dealt with in accordance with the relevant legislation and within the agreed timescales. All allegations will be dealt with objectively, fairly and consistently. The Monitoring Officer will also have regard to what is in the public interest and the Council's fiduciary duty to the taxpayers.
- A2 The Arrangements consist of 4 stages. Depending on its nature, a complaint can be resolved informally at any stage up to Stage 3. Stage 4 will involve circumstances in which a meeting of Standards Panel will be called.
- A3 The Arrangements refer to the following terms:
- Monitoring Officer or "MO" also refers to the Monitoring Officer's duly appointed representative(s). The Council's Monitoring Officer (the Director of Law & Governance) is responsible for managing the member complaints process on behalf of the Council.
  - Complainant - the person making the complaint is referred to as the complainant.
  - Subject Member - the member being complained about is referred to as the subject member.
  - Action – this describes the matter to be considered or action to be taken at each stage of the process.
  - Decision Maker – this is the individual or panel required to make a decision or perform an action. This will also state with whom the decision maker will consult (if required).
  - Guidance – this includes guidance in this document under each stage of the process, the general guidance at Appendix I, and the further guidance from the Local Government Association ("LGA"), which Herefordshire Council adopted as the process for dealing with complaints against members, under the Code of Conduct, in May 2022.
  - Independent Persons – The Council has to appoint Independent Persons under S28 Localism Act 2011, to work with the Monitoring Officer to support them with Code of

Conduct complaints and standards issues. Independent Persons are people who are neither councillors nor officers of the Council.

- Standards Panel - Council has agreed that the arrangements for determining breaches of the Code of Conduct for members will include, where the matter cannot be resolved by the Monitoring Officer, consideration of the complaint by the Standards Panel: [Committee details - Standards Panel - Herefordshire Council](#).

A4 A flowchart summarising the procedure that will be followed under these Arrangements is attached.

## Stage 1 – Complaint Received

<b>Action:</b>	To determine whether the Complaint has been properly received.
<b>Decision Maker</b>	Monitoring Officer
<b>Guidance</b>	

- 1a. All complaints must be submitted in writing, preferably by electronic submission.

The electronic form is available here: [Complaint about a councillor's conduct - Your details - Section 1 - MyHerefordshire](#); the form should be sent by email to: [Code-of-Conduct@herefordshire.gov.uk](mailto:Code-of-Conduct@herefordshire.gov.uk); or by post to: The Monitoring Officer, Herefordshire Council, Plough Lane, PO Box 4, Hereford HR4 0XH.

- 1b. A complaint is considered to have been received when the MO has sufficient information to complete the initial assessment stage of the complaint (Stage 2 below). Completion of the online form in full will normally mean the MO does have sufficient information to receive the complaint.
- 1c. Once the MO has received a complaint they will acknowledge it to the Complainant within five (5) working days of receipt.
- 1d. Where the MO considers there is not sufficient information in respect to identifying a possible breach of the Code of Conduct or where the facts underlying the breach are not evident, then the MO will request further information. The MO may make further requests where the information is not sufficient.
- 1e. If the complaint contains insufficient evidence to demonstrate a potential breach of the Code, then the MO will advise the complainant that there is insufficient evidence to make a decision and, unless or until further information is received, the Council will take no further action on the complaint. The complainant will be given a further 10 days to submit any additional evidence they want to present. Where information is not provided by the date specified then the MO will reject the complaint.

## Stage 2 - Acceptance of Complaint

<b>Action:</b>	To determine whether the Council will accept the complaint as a valid complaint under the Arrangements.
<b>Decision Maker</b>	Monitoring Officer, in consultation with two Independent Persons.
<b>Guidance</b>	

- 2a. The complainant must provide enough information/evidence for the MO to reach a conclusion at Initial Assessment stage.
- 2b. If the complaint contains sufficient evidence, the MO will assess the complaint, using the following criteria (known as the Legal Jurisdiction Criteria), to decide whether the Council can deal with the complaint:
- (i) The complaint is against one or more named members or co-opted members of the Council or a town/parish council within the Council's area;
  - (ii) The subject member was in office at the time of the alleged misconduct/or at the time of the complaint;
  - (iii) The complaint relates to matters where the councillor was acting as a councillor or representative of the Council and it is not a private matter;
  - (iv) The complaint, if proven, would be a breach of the Code under which the councillor was operating at the time of the alleged misconduct.
- 2c. All complaints will be received by the MO, who will make a decision on whether a complaint is valid and should be accepted by the Council, or whether the complaint should be rejected.
- 2d. Once accepted as a complaint, the MO will provide a summary of the complaint, redacted if appropriate, to the subject member and invite them to comment within 10 working days. The MO will also determine what simple or straightforward additional information or investigations could be made at this stage. This may include checking corroborative minutes and agendas of meetings, information on websites, emails etc. or conversations with officers that will assist the initial assessment process. This is not intended to be comprehensive or investigative, but will make best use of time and resources, and will inform the Initial Assessment stages of the 'Legal Jurisdiction Criteria' and the 'Local Assessment Criteria' below.
- 2e. If the complaint concerns the conduct of an elected member or co-opted member of a town or parish council, the MO will notify the Clerk to the town or parish council (unless there is a conflict of interest, in which case the Chair or Vice Chair will be so

notified) once (i) the subject member has acknowledged receipt or (ii) 5 working days have passed and the subject member has not replied.

- 2f. Members are entitled to privacy in their personal lives and the provisions of the Code of Conduct only apply to members when they are acting as a member or co-opted member or as a representative of their council.
- 2g. When reaching a decision as to whether the Code of Conduct applies to a member at a particular time, the MO will have regard to the particular circumstances and the nature of the conduct at that time.
- 2h. If the complaint fails one or more of the legal jurisdiction tests, it will be rejected i.e. Rejected at Preliminary Stage ('Legal Jurisdiction Criteria test not met'). The MO will consult with the Independent Persons before rejecting the complaint. The MO will have regard to the views of the Independent Persons.

## Stage 3 – Initial Assessment of Complaint

<b>Action:</b>	Decision about what steps will be taken under the Arrangements at Initial Assessment.
<b>Decision Maker</b>	Monitoring Officer, in consultation with two Independent Persons.
<b>Guidance</b>	

- 3a. If the complaint satisfies the Legal Jurisdiction criteria, the MO will consider the complaint, and the information provided by the subject member against the Local Assessment Criteria test described below:
1. Does the complaint contain sufficient evidence to demonstrate a potential breach of the Code?
  2. Are there alternative, more appropriate, remedies that should be explored first?
  3. Where the complaint is by one councillor against another, a greater allowance for robust political debate may be given, bearing in mind the right to freedom of expression.
  4. Is the complaint trivial, malicious, politically motivated, or ‘tit for tat’?
  5. Whether an investigation would not be in the public interest or the matter, even if proven, would not be serious enough to warrant any sanction?
  6. Has a substantially similar complaint been considered, and no material evidence has been submitted?
  7. Has a substantially similar complaint been submitted and accepted?
  8. Does the complaint relate to conduct in the distant past?
  9. Has the behaviour already been dealt with?
  10. Does the complaint relate to dissatisfaction with a local authority decision rather than conduct?
  11. Is the complaint about someone who is seriously ill?
- 3b. The MO will reject a complaint and the complainant will be informed that no further action will be taken if one or more of the Local Assessment Criteria applies i.e. ‘Rejected at Preliminary Stage (‘Local Assessment Criteria not met’).

The MO will aim to complete initial assessment within 15 working days of acceptance of the complaint.

### 3c. **Anonymous complaints**

The MO will normally reject anonymous complaints, since accepting anonymous complaints would be against the principles of transparency and fairness and make matters difficult, or impossible, to investigate. However, there may be exceptional, compelling, reasons why an anonymous complaint could be accepted without detriment

to the process and where the allegation can be evidenced without reference to the complainant.

**3c. Subject member is no longer a member**

The MO will reject a complaint where the subject member is no longer an elected member of Herefordshire Council, or a town/parish member, or co-opted member, within the Council's area. However, if the subject member is a member of another authority the MO shall, if appropriate, refer the complaint to that authority.

**3d. Behaviour that has been dealt with**

The MO will reject a complaint has already been the subject of an investigation or other action relating to the Code of Conduct by the Council, or the complaint has been the subject of an investigation by other regulatory authorities.

**3e. Conduct in the distant past**

Where a matter happened some time ago, the MO will consider whether any further action would be warranted. The MO will normally reject a complaint about conduct that happened more than six months prior to receipt of a complaint, unless there is good reason why a complaint is 'late' – for example, victims of bullying or harassment may have needed time and courage before coming forward or been made aware of other incidents which has prompted them to make a complaint about things in the past.

**3f. Conduct that is trivial, malicious, politically motivated, or 'tit for tat'**

Where a complaint is rejected on these grounds the MO will be clear about the reasons and will discourage politically motivated or tit-for-tat complaints in particular. When considering this part of the Local Assessment Criteria, the MO will, however, consider whether the complaint itself is sufficiently serious to warrant further action regardless of the motive. For example, a complaint may appear on the face of it to be politically motivated but if it raises sufficiently serious matters, it would nevertheless be considered fully.

**3g. Matters that require reporting to the Police**

The MO will reject a complaint and the complainant will be informed that they should refer the matter to the Police if the complaint is sufficiently serious (whether a single act or repeated acts) to require reporting the matter to the Police. In the alternative, the MO may refer the matter to the Police.

**3h.** The MO will consult with two of the Council's Independent Persons in making a decision on the complaint at Initial Assessment stage.

**3i.** The MO will decide on one of the following three outcomes at Initial Assessment:

1. No further action should be taken on the allegation (e.g. there is no breach or no jurisdiction);
  2. The matter should be dealt with through a process of informal resolution in the first instance (e.g the member has agreed to apologise); or
  3. The matter should be referred for a formal investigation.
- 3j. The subject member and the complainant will be notified in writing of the outcome of the Initial Assessment. There is no right of appeal of the decision.

## Possible outcomes following Initial Assessment

### Stage 3A – No Further Action

<b>Action:</b>	To perform all actions to complete ‘No Further Action’
<b>Decision Maker</b>	Monitoring Officer, in consultation with two Independent Persons.
<b>Guidance</b>	

- 3Aa. No Further Action may be the decision where the MO has decided that there may be substance to the complaint but where (i) the subject member has already taken the action that the MO would determine as being the appropriate sanction (for example, having already apologised); (ii) there is insufficient evidence to establish whether a breach took place or; (iii) there is no public interest in taking the complaint any further. Where the MO reaches this decision, and where an allegation may have disclosed a potential breach of the Code, the MO will nevertheless have made no finding of fact if it is not considered to be in the public interest to pursue the matter further.

## Stage 3B – Informal Resolution

<b>Action:</b>	To perform all actions to complete 'Informal Resolution'
<b>Decision Maker</b>	Monitoring Officer, in consultation with two Independent Persons.
<b>Guidance</b>	

- 3Ba. Informal resolution does not mean that a subject member has been found to have breached the Code of Conduct because the matter has not been investigated at this stage. Complaints will not be referred for informal resolution when an investigation is in the public interest.
- 3Bb. If the MO considers, after consultation with the Independent Persons, that the complaint could be dealt with through informal resolution then the subject member and the complainant will be informed of this proposal and given 10 working days to comment before the MO reaches a final decision. The purpose of this is to establish how successful the resolution might be. It does not give either party the right of veto.
- 3Bc. Both parties will be informed by the MO of the action to be taken and the time scales in which it will be undertaken. They will also be advised on what will happen if the action is not undertaken (if any). If the relevant action is taken within the timescales, the Monitoring Officer will notify both parties that the matter is then closed.
- 3Bd. The MO will seek confirmation that the suggested resolution has been complied with. Where a subject member or the complainant disagrees with or refuses to comply with the proposed resolution, fails to co-operate or has taken inadequate action, then the MO will consider whether a formal investigation is needed, having regard to the public interest test and the agreed criteria within this procedure. The MO will consult the Independent Persons before making a decision whether to commence a formal investigation. The MO may consider that no further action is required even where the resolution has not been complied with.
- 3Be. Matters which are suitable for informal resolution include: -
- The same breach of the Code by a number of members, indicating a lack of understanding of procedures;
  - A general breakdown of relationships, including between members and officers, of a minor nature;
  - Misunderstanding of procedures or protocols;
  - Misleading, unclear or misunderstood advice from officers;
  - Lack of experience or training;
  - Interpersonal conflict;

- Allegations and retaliatory allegations from the same members;
  - Allegations about how formal meetings are conducted;
  - Allegations which may be more symptomatic of governance problems within the council.
- 3Bf. The range of possible actions that the MO will be appropriate to the nature of the complaint. Such actions, though this is not an exhaustive list, may include:
- a letter of apology being issued by the subject member to the complainant;
  - training of the subject member;
  - a meeting with the complainant and the MO for the subject member to listen to the complainant and understand the reasoning why the complaint was raised.
- 3Bg. If informal resolution is determined as appropriate and the complainant declines to comply with a proposed action or does not accept the action as appropriate, then no further action will be taken.

## Stage 3C – Referral for formal investigation

<b>Action:</b>	To perform all actions to completion of formal investigation and Monitoring Officer's decision thereafter.
<b>Decision Maker</b>	Monitoring Officer, in consultation with two Independent Persons.
<b>Guidance</b>	

- 3Ca. Where, in the opinion of the MO, following consultation with the Independent Persons, a formal investigation is required, the MO will investigate or appoint an investigating officer to investigate the complaint, gather further evidence and prepare a report.
- 3Cb. The MO or the Investigator will advise the relevant parties so that they know who is dealing with the case, the scope of the investigation and what will happen next. The subject member will also be informed that they have the right to seek the views of the Independent Persons and be accompanied at any interviews with the Investigator.
- 3Cc. In the event of a town or parish council investigation, a notice will be sent to the Parish Clerk (unless there is a conflict of interest, in which case it will be sent to the Chair or Vice Chair). The MO will set out what action they consider the town or parish council should take with regards the complaint and the requirements relating to confidentiality, given that standing orders may require the clerk to report the complaint to the town or parish council.
- 3Cd. The scope of the delegation of the investigation will be kept in writing, and there will be agreed timelines for delivery of the report, usually within two months. Any extension of time will be agreed by the MO.
- 3Ce. The Investigator may make inquiries of any person they think necessary, however there is no obligation for such persons to respond /this will not delay the investigation, but it will be made clear in the Investigator's report.
- 3Cf. During the investigation, there may be evidence of further breaches which extend beyond the scope of the investigation. These cannot be investigated and should be the subject of a separate complaint to the Council if necessary.
- 3Cg. The Investigator can refer the investigation back to the MO in the event that circumstances change during the investigation, and it will be for the MO to decide whether the investigation should continue, after consulting with the Independent Persons.

3Ch. All information gathered will be kept confidential and all those being interviewed will be asked to maintain confidentiality. Any draft report will be marked as confidential and all requests for information will be dealt with having regard to the relevant legislation.

3Ci. The Investigator will produce a draft report which will be shared with the MO and the Independent Persons. It will contain the agreed and disputed facts, the Investigator's view on whether there has been a breach of the Code and their reasons for their conclusion. Once the MO is satisfied, it will be sent to the relevant parties with a deadline for comment. The Investigator is under no obligation to accept any comments from the parties, but where they do not, then they will make a note explaining why.

3Cj. Upon completion of an investigation, the MO will make one of the following decisions:-

1. There has been no breach and therefore no further action will be taken;
2. There have been one or more breaches, but no further action is needed (for example: the member has already apologised for the breach);
3. There have been one or more breaches, but the matters should be resolved in a way other than by a hearing (e.g. an appropriate form of resolution or actions to be taken); or
4. That the matter be referred to a hearing.

The investigation will be regarded as complete if the MO receives the final report and accepts that no further investigation is necessary.

3Ck. If the MO considers that there has been a breach of the Code, the MO will decide what action, if any, to take and notify the relevant parties. For example, the MO may decide to seek an informal resolution at this stage or decide that the matter is merely a technical breach which will not lead to any sanction. In doing so the MO will consult with the Independent Persons.

3Cl. Following completion of a formal investigation, if the MO decides that the matter should be referred to the Standards Panel, the MO will convene a meeting of the Standards Panel and shall give the complainant and the subject member at least 20 working days' notice. The authority to make a determination of breach rests solely with the Hearing Panel once the Monitoring Officer decides to refer the matter to a hearing.

3Cm. Stage 4 will take effect if the matter is referred to a Standards Panel for hearing.

## Decision Notices following Initial Assessment or Formal Investigation

- 3Da. In all circumstances after the Initial Assessment or the Formal Investigation, the outcome will result in either the complaint being closed or a referral to the Standard Panel (Stage 4).
- 3Db. Where a complaint is closed, a Decision Notice will be issued by the MO. This will be provided in writing to the complainant and the subject member and, in the case of complaints concerning an elected member of a town or parish council, to the clerk as Proper Officer.
- 3Dc. The Decision Notice will set out the outcome to the complaint and the decision made by the MO.
- 3De. All Decision Notices are provided to the Standards Panel. A Decision Notice will not be provided where the substantive complaint is being referring to the Standards Panel (Stage 4).
- 3Df. All Decision Notices detailing a breach of the Code of Conduct will be published on the Council's website for 6 years.

## Stage 4 - Standards Panel Hearing Procedure

<b>Action:</b>	To arrange the Meeting of the Standards Panel; To hold the meeting of the Standards Panel and determine the outcome of the complaint.
<b>Decision Maker</b>	Standards Panel (in consultation with one of the two Independent Persons)
<b>Guidance</b>	

- 4a. Unless determined by the MO, all matters considered by the Standards Panel under these Arrangements shall be open to the public. The meeting shall only be exempt under Schedule 12A of the Local Government Act 1972 by a decision of the Standards Panel after receiving a recommendation from the MO. The press, public and members who are not the relevant subject members, witnesses or the Standards Panel shall be excluded where the Standards Panel deems the matter is exempt.
- 4b. At least 10 working days prior to the meeting the Democratic Services Manager will issue the paperwork for the Standards Panel. The paperwork will be sent to each member of the Standards Panel, to the subject member, the Independent Person, the complainant and to the MO. The paperwork will include the agenda for the meeting of the Panel, a copy of any investigator's report (whether performed by the MO or a third party) and copies of any written statements.
- 4c. The report will contain the investigator's recommendation and may provide guidance on decisions or law in similar matters. The report will clear set out the allegations, the breach of the Code reported, and the decision required from the Panel.
- 4d. The meeting of the Standards Panel shall be held as soon as practicably possible after issue of the agenda but no sooner than 10 working days after issue of the agenda. The Democratic Services Manager shall arrange a time and date for the Standard's Panel to meet and consider the matter.
- 4e. At least 5 working days before the date of the meeting of the Standards Panel, the Democratic Services Manager shall notify the subject member, complainant and any relevant witnesses of the date, time and place of the meeting and the membership of the Standards Panel at which the matter will be considered.
- 4f. The Democratic Services Manager shall request that any copy documentation is kept confidential, and all members and officers of the Council shall maintain such confidentiality. Where any third party does not comply with any request for

confidentiality then the MO will advise the parties as to the further right of disclosure in relation to the paperwork.

- 4g. All paperwork associated with the Standards Panel meeting will be subject to the Council's Access to Information Procedure Rules save that no other member of the Council shall receive the agenda.
- 4h. The Democratic Services Manager shall use reasonable endeavours to arrange a date which is convenient to the Standards Panel, subject member, complainant and MO provided that where the subject member or complainant are unable to attend within 20 working days of the date the Democratic Services Manager intends to issue the agenda then the meeting shall go ahead in their absence.
- 4i. Once the Democratic Services Manager fixes the date of the meeting, if the subject member, complainant or any witness fails to attend (or indicates they will not attend) the meeting, then the meeting shall proceed in their absence.

## Attendance of the Subject Member and Complainant

- 4j. The subject member may be accompanied at the meeting by one person. An officer may be accompanied by one officer colleague. Any third party can be accompanied by one colleague. All attendance shall be at their own expense. The agenda shall not be sent to persons accompanying the parties.
- 4k. Any party opting to be accompanied at the meeting must notify the Democratic Services Manager of their intention to do so and identity of the person at least three clear working days before the meeting.
- 4l. If the subject member or complainant are not present, unless the Panel is satisfied that there is sufficient reason for their failure to attend, then the Panel shall proceed in their absence. Where the Panel proceeds in their absence, the procedure for the meeting shall be adapted as necessary.

## Order of business

- 4m. The order of business at the meeting shall be as follows:
  - (i) elect a person to preside if the Chairperson or Vice-Chairperson are not present;
  - (ii) receive apologies for any inability to attend the meeting;
  - (iii) receive any Declarations of Interest from Members;
  - (iv) consideration as to whether to adjourn or to proceed in the absence of the subject member or complainant;

- (v) introduction of the Panel, MO (or their representative), independent investigator (if instructed), the Democratic Services Manager (or their representative), the subject member, the Independent Person, complainant and any other witnesses present;
- (vi) hear any representation from the MO (or their representative) and/or the subject member as to reasons (if any) why the Panel should exclude the press and public and a determination as to whether to exclude the press and public. Where the Panel decides that it will not exclude press and public, the Democratic Services Manager shall at this point provide copies of the agenda and reports to any members of the press and public who are present;
- (vii) the Panel shall determine whether all witnesses need to attend to give oral evidence and the timing of such attendance; and
- (viii) consideration of the complaints in the order in which the Panel shall determine.

## Speaking

4l. The order of speaking shall be as follows:

- (i) The MO shall introduce the complaint and (where an independent investigator is not in attendance) any report;
- (ii) The independent investigator (if requested and in attendance) shall introduce the report;
- (iii) Complainant (or their representative) shall introduce their complaint;
- (iv) Complainant (or their representative) shall call their witnesses to give evidence;
- (v) The subject member (or their representative) shall introduce their rebuttal of the complaint;
- (vi) The subject member (or their representative) shall call their witness to give evidence;
- (vii) The complainant (or their representative) will sum up their complaint;
- (viii) The subject member (or their representative) will sum their position.

4m. In respect of each speaker, the Chairperson of the Panel shall allow questions in such order as the Chairperson considers appropriate from:

- (i) The complainant (or their representative);
- (ii) The subject member (or their representative);
- (iii) The Panel;
- (iv) The MO;
- (v) The Independent Person.

4n. The Chairperson shall determine the order, manner and time necessary to enable the orderly conduct of the meeting with the aim that the meeting is conducted in a fair manner within the time and resources available. Such discretion will include deciding if:

- (i) a further right of reply is required from a party;
- (ii) whether questions by the subject member or complainant (or by their representatives) of each other should be put directly or by directing appropriate questions to through the Chairperson);

- (iii) limiting the number of witnesses to be heard by the Panel to only those considered critical to the substance of the complaint; or
- (iv) deciding when a person shall be heard (or not heard) further.

4o. The Panel shall permit a representative to present the case and ask questions on behalf of the subject member or the complainant, but any questions put shall be answered only by the subject member or the complainant.

4p. At the conclusion of the presentation by the last speaker, the Chairperson will close this part of the meeting and request the subject member, representatives, witnesses and complainant & members of press & public leave the meeting. The Chairperson will inform the parties that the Panel will convene in private with the Independent Person, MO and Democratic Services Manager. The Panel will then decide in the private session to either:

- (i) Adjourn the meeting if further investigation or information is required; or
- (ii) Make a decision on the facts presented at the meeting.

4q. The Chairperson will notify the parties that the MO shall communicate the parties of the decision within 5 working days of the meeting (unless an adjournment is requested).

### Making a Decision

4r. In the private session, the Chairperson will ask the MO whether there was any matter raised during the course of the meeting which was not addressed in the report or requires further investigation. The views of the Independent Person will be sought.

4s. The Panel will decide whether to adjourn to enable the MO to investigate and report on that new matter and/or to secure the attendance of witnesses as to the new matter.

4t. If no adjournment is requested, then the MO will sum up the evidence presented in respect to denying or supporting the alleged breach of the Code of Conduct and if upheld then the appropriate sanction that could be recommended.

4u. The Panel shall then make a decision whether the subject member has breached the relevant Code of Conduct, and the reasons for that decision. If the subject member is in breach of the Code of Conduct, the Panel shall further decide whether there shall be:

- (i) letter of censure but no further action;
- (ii) letter of censure and recommendation of further sanctions.

4v. No further action shall be appropriate where there is a minor or incidental breach of the Code of Conduct, or where the member has demonstrated to the Panel acceptance and regret as to the

breach, or where the member has performed an act of mitigation (such as an apology) prior to the decision of the Panel.

4w. The Panel may refer to previous decisions of the Standards Panel or the MO when making its decision.

## Sanctions

4x. Where a member has been found by the Panel to have breached the Code of Conduct, the Panel may apply any one or more of the sanctions below:

- (a) Report its findings to Council or relevant Town/Parish Council;
- (b) Recommend to the Council or Parish/Town Council that the member be issued with a formal censure (i.e. the issue of an unfavourable opinion or judgement or reprimand);
- (c) Recommend to the subject member's Group Leader, or Parish/Town Council, or in the case of an ungrouped Member to the Council, that they be removed from Cabinet, committees or sub-committees of the Council;
- (d) Recommend to the Leader of the Council that the member be removed from positions of responsibility;
- (e) Instruct the Monitoring Officer, or recommending to the Parish/Town Council, to arrange training for the member, and requiring that confirmation of completion of such training is provided to the Monitoring Officer;
- (f) Recommend to the Council or Parish/Town Council that the member be removed from one or more outside appointments to which they have been appointed or nominated by the Council or Parish/Town Council;
- (g) Recommend to the Council or Parish/Town Council that it withdraws facilities provided to the member by the Council, such as a computer, website and/or email and internet access, for a specified period;
- (h) Recommend to the Council or Parish/Town Council the exclusion of the member from the Council or Parish/Town Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council or Parish/Town Council committee and sub-committee meetings;
- (i) If relevant, recommend to Council/political group that the subject member be removed from their role as Leader of the Council or group Leader or other position of responsibility.

## Reporting Decision of Standards Panel

4y. As soon as reasonably practicable (usually within 24 hours) after the Panel has made its determination in respect of an allegation, the MO shall take reasonable steps to notify the subject member and complainant of the decision only.

4z. As soon as reasonably practicable (usually within five working days) after the Panel has made its determination in respect of an allegation, the MO shall take reasonable steps to give written notice of that determination and the reasons for such determination to the complainant and subject member.

4aa. Where the Panel determines that there has not been a breach of the Code of Conduct the Decision Notice shall state that the Panel found that the subject member concerned had not failed to comply with the code of conduct of the Council and shall give its reasons for reaching that finding.

4ab. Where the Panel determines that there has been a breach of the Code of Conduct the Decision Notice shall:

- (i) state that the Panel found that the subject member concerned had failed to comply with the Code of Conduct;
- (ii) specify the details of the failure;
- (iii) give reasons for the decision reached by the Panel; and
- (iv) state what sanction, if any, is recommended.

There is no right of appeal against the decision of the Standards Panel or recommended sanctions.

### Transparency Arrangements

5a All decision notices where there is a finding of a breach of the Code of Conduct, either following a decision by the Monitoring Officer after formal investigation, or by a Standards Panel, will be published on the Council's website. Such notices will be retained until the later of 6 years, or the subject member ceasing to be an elected member.

5b The Monitoring Officer (in consultation with the Chair of Standards Panel) may also publish for such period as considered appropriate other decision notices that do not amount to a breach.

5c All decision notices, whether following initial assessment by the Monitoring Officer or formal investigation by the Monitoring Officer, will be copied to the members of the Standards Panel. This will include:

#### Following Initial Assessment:

1. No further action should be taken on the allegation (e.g. there is no breach or no jurisdiction);
2. The matter should be dealt with through a process of informal resolution in the first instance (e.g. the member has agreed to apologise); or
3. The matter should be referred for a formal investigation.

Following Formal Investigation by the Monitoring Officer:

1. There has been no breach and therefore no further action will be taken;
2. There have been one or more breaches, but no further action is needed (for example: the member has already apologised for the breach;
3. There have been one or more breaches, but the matters should be resolved in a way other than by a hearing (e.g an appropriate form of resolution or actions to be taken); or
4. That the matter be referred to a hearing.

## Appendix I General Guidance

Requests for Anonymity ie. Complainant's identity withheld from subject member

- 1 In the interests of fairness and in compliance with the rules of natural justice, the subject member has a right to know who has made the complaint and the substance of the allegation(s) made against them.
- 2 Complainants have the right to request that their identity is not revealed to the subject member and the MO, may grant such requests at their discretion in exceptional circumstances. The MO is unlikely to withhold a complainant's personal details or the details of the complaint unless they consider there to be good reasons to believe that a complainant has justifiable grounds for anonymity.
- 3 When considering a request for anonymity the MO will consider any such request alongside the substance of the complaint and will apply the following criteria:
  - the complainant has reasonable grounds for believing that they will be at risk of physical harm from, or that they may be victimised or harassed by the subject member(s) against whom they are submitting the complaint (or from or by a person associated with the subject member(s));
  - the complainant has reasonable grounds for the belief that they may receive less favourable treatment from the Council because of the identity and/or seniority of the subject member(s) in terms of any existing Council service provision or any tender/contract that they may have or are about to submit to the Council.
- 4 When considering a request for anonymity against these criteria the MO will also:
  - balance the request for anonymity against the substance of the complaint;

- consider whether it is possible to investigate the complaint without making the complainant's identity known to the subject member, given the requirement for a proper investigation.

### Confidentiality of process

- 5 The subject member and officers shall keep all matters confidential and shall only disclose any information (including the existence of any complaint) as necessary to pursue or defend as appropriate.
- 6 The parties acknowledge that the Council is unable to prevent any third parties from disclosing the existence of a complaint, the use of the Arrangements or any documentation produced to the party as a requirement of the Arrangements.

### Withdrawal of complaint

- 7 If a complainant wishes to withdraw a complaint, at any stage prior to the Monitoring Officer's referral to Standards Panel, the Monitoring Officer will consider this. However, the Monitoring Officer will proceed with assessment or investigation of the case if that is considered to be in the public interest.
- 8 Authority to make a determination of breach rests solely with the Hearing Panel once the Monitoring Officer decides to refer the matter to a hearing.

### Evidential Standard

- 9 Decisions shall be made on a civil basis of balance of probabilities.
- 10 A decision maker under these Arrangements shall give weight and regard to evidence based upon its content but also on the method such evidence is delivered).
- 11 A decision maker shall place greatest weight and regard to first hand witness testimony which has been subject to question and examination. Lesser weight (to be determined by decision maker) will be placed on evidence delivered in another method (for example, written statements only, hearsay evidence).

### Persistent and Serious Breaches; referrals to the Police

- 12 Persistent, repeated or serious breaches will not be considered under these Arrangements and the complainant will be advised by the MO to refer the matter to the Police.
- 13 If, following the initial assessment stage, the MO decides that the matter should be referred to the Police, the subject member and the complainant will be informed.

- 14 The MO will pass to the Police any relevant evidence relating to the allegations received which disclose behaviour that may constitute serious misconduct or a criminal offence, whether under the ethical standards provisions of the Local Government Act 2000 or otherwise.
- 15 The Arrangements will be put on hold until such time as the Police have completed their investigations and receipt of confirmation of completion the matter (including any information or directions received from the Police) will be referred to the Standards Panel.

### Deferral

- 16 An investigation will be deferred when any of the following conditions are met: -

- Ongoing criminal proceedings or a police/regulatory investigation;
- The investigation cannot proceed without investigating similar conduct;
- The investigation might prejudice another investigation or court proceedings;
- Because of serious illness or genuine unavailability of a key party.

Any deferred investigation will be kept under regular review and all parties will be notified once it is recommenced.

If the matter has been deferred or ended the subject member and the complainant will be notified of the decision, and timescales if it has been deferred, unless the matter has been referred to the Police.

### Referral of Monitoring Officer decisions to Standards Panel

- 17 Members of Standards Panel will receive copies of all decisions made by the Monitoring Officer under the Code of Conduct complaint process and may directly provide feedback of their views on the decision or meet informally with the Monitoring Officer. Where requested by the Chairperson of the Standards Panel, the Monitoring Officer will convene a meeting to discuss a specific decision.

### Code of Conduct function of Audit & Governance Committee

- 18 Audit & Governance Committee will twice yearly review overall figures and trends from Code of Conduct complaints which will include number of upheld complaints by reference to individual councillors within unitary, town and parish councils with the Independent Persons in attendance who can provide feedback on decision making and trends for complaints / suggestions for training.

### Changes to the Arrangements

- 19 The MO is authorised to change the 'Guidance' sections of these Arrangements in consultation with the Chairperson of the Council's Audit and Governance Committee where improvements and clarifications are required.

- 20 The MO may also make changes of an editorial nature as appropriate to make the Arrangements consistent with the other Council Protocols or any decision made by the Council, is up-to-date and understandable.
- 21 Any changes made under paragraph 19 will be notified to the members of the Audit and Governance Committee together with the reasoning for the change.

### Version Control and Changes

<b>Version</b>	<b>Date</b>	<b>Authority</b>	<b>Changes</b>
1.0	June 2024	Herefordshire Council	Amended Arrangements proposed to replace previous Arrangements for dealing with complaints about members under the Code of Conduct.