



## NTCA Constitution

### Part 5.1 Code of Conduct for Members

## **Part 5.1 Code of Conduct for Members**

The Authority has adopted the following code which sets out the conduct that is expected of elected members appointed to the Authority (including the Interim Mayor/Mayor and substitute members) and voting co-opted members of its committees when they are acting in that capacity.

**This means the code applies whenever you:**

- (a) conduct the business of the Authority (including the business of your office as an elected member appointed to the Authority) or**
- (b) act, claim to act or give the impression you are acting as a representative of the Authority.**

The code is intended to be consistent with Nolan's Seven Principles of Public Life and should be read in the light of those principles, namely that Members will act with selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Those Principles are not part of this Code but are set out in full at Annex 1 for information.

### **Part 1 - General Conduct**

1. You must treat others with respect, including Authority officers and other elected members.
2. You must not bully or harass any person (including specifically any Authority officer) and you must not intimidate or improperly influence, or attempt to intimidate or improperly influence, any person who is involved in any complaint about any alleged breach of this code of conduct.

(Note:

*Bullying may be characterised as:*

- *offensive, intimidating, malicious or insulting behaviour; or*
- *an abuse or misuse of power in a way that intends to undermine, humiliate, criticise unfairly or injure someone.*

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

*Bullying and/or harassment may take many forms and may relate to a variety of issues. For example, bullying and harassment may relate to age, disability, gender reassignment, race, religion, belief, sex and/or sexual orientation*

*However, this list is not exhaustive, and any form of bullying or harassment is prohibited by the Code of Conduct.)*

3. You must not do anything which compromises or is likely to compromise the impartiality of anyone who works for or on behalf of the Authority.
4. You must not conduct yourself in a manner which could reasonably be regarded as bringing the Authority, or your office as a member of the Authority, into disrepute.
5. You must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person any advantage or disadvantage.
6. You must comply with any Protocol adopted by the Authority which seeks to regulate the conduct of its elected members and which the Cabinet has specifically declared should fall within the provisions of this code of conduct and which is listed in Annex 5 to this Code.
7. When using or authorising the use by others of the resources of the Authority, you must act in accordance with the Authority's reasonable requirements (as set out in such protocol as it may adopt from time to time for these purposes) and must ensure they are not used for party political purposes.
8. You must not prevent, or attempt to prevent, another person from gaining access to information to which they are entitled by law.
9. You must not disclose information which is given to you in confidence, or information which you believe or ought reasonably to be aware is of a confidential nature, unless:
  - (a) You have the consent of a person authorised to give it; or
  - (b) You are required by law to do so; or
  - (c) The disclosure is made to a third party for the purpose of obtaining professional advice, provided that the third party agrees not to disclose the information to any other person; or
  - (d) The disclosure is reasonable and in the public interest and made in good faith.
10. Where you have been involved in making any decision by the Authority which is subsequently subject to scrutiny by an overview and scrutiny committee of the Authority, you must not take part in that scrutiny process except to the extent you may be invited by the committee to give evidence to, or otherwise assist, it. In this paragraph, 'scrutiny' means the formal examination of a policy or decision previously approved or taken by or on behalf of the Authority in order to reach a view as to its merits or effectiveness.

## Part 2 – Registration of Interests

11. You must register in the Authority's Register of Members Interests information about your registerable personal interests. In this code of conduct 'your registerable personal interests' means:

- (a) Any Disclosable Pecuniary Interest as set out in **Annex 2**; or
- (b) Any other interest held by you as set out in **Annex 3**.

You must register information about your registerable personal interests by giving written notice to the Monitoring Officer, who maintains the Register, within 28 days of:

- your appointment as a member of the Authority; and
- any change taking place in your registerable personal interests.

*(Note: Failure without reasonable excuse to register a Disclosable Pecuniary Interest is a criminal offence under section 34 of the Localism Act 2011 as well as being a breach of this code.)*

12. Where you think that disclosure of the details of any of your registerable personal interests could lead to you, or a person connected with you, being subject to violence or intimidation, the Monitoring Officer may at your request make a note on the Register that you have a personal interest, details of which are withheld.

## Part 3 – Non-registerable interests

13. You will have a non-registerable personal interest when you attend a meeting of the Authority, or one of its joint committees, committees or sub-committees, and you are, or ought reasonably to be, aware that a decision in relation to an item of business which is to be transacted might reasonably be regarded as affecting your well-being or financial position, or the well-being or financial position of a person described in paragraph 14 to a greater extent than most inhabitants of the area of the Authority by the decision.

14. The persons referred to in paragraph 13 are:

- (a) A member of your family;
- (b) Any person with whom you have a close association;
- (c) In relation to persons described in (a) and (b), their employer, any firm in which they are a partner, or company of which they are a director or shareholder.

(Note:)

- (a) *“A member of your family” means: your partner (i.e. your spouse, civil partner or anyone with whom you live in a similar capacity); your parent or parent-in-law; any child, stepchild or sibling of you or your partner; your grandparent, grandchild, aunt, uncle, nephew or niece; and the partners of any of those people.*
  - (b) *You have a “close association” with someone if your relationship is such that a reasonable member of the public might think you would be prepared to favour or disadvantage that person when deciding a matter which affects them).*
15. When you attend a meeting of the Authority, or one of its joint committees, committees or sub-committees, and you are aware that you have a non-registerable interest in an item of business (as defined in paragraph 13) you must disclose that interest to the meeting before consideration of that item begins or (if later) when you become aware of the interest.

#### **Part 4 - Non-Participation in Authority Business**

16. When you attend a meeting of the Authority or one of its joint committees, committees or sub-committees, and you are aware that the criteria set out in paragraph 17 are satisfied in relation to any matter to be considered, or being considered at that meeting, you must:
- (a) Declare that fact to the meeting;
  - (b) Not participate (or further participate) in any discussion of the matter at the meeting; and
  - (c) Not participate in any vote (or further vote) taken on the matter at the meeting;
  - (d) Leave the room whilst the matter is being discussed.
17. The criteria for the purposes of paragraph 16 are that:
- (a) You have a registerable or non-registerable personal interest in the matter which is such that a member of the public knowing the relevant facts would reasonably think it so significant that it is likely to prejudice your judgement of the public interest; **and either**
  - (b) The matter will affect the financial position of yourself or one of the persons or bodies referred to in paragraph 14 or in any of your register entries; **or**
  - (c) The matter concerns a request for any permission, licence, consent or registration which relates to or affects you or any of the persons referred to in paragraph 14 or in any of your register entries.

18. If an Authority function can be discharged by you as a member acting alone and you are aware you have a registerable or non-registerable personal interest in any matter to be dealt with by you in that way which meets the criteria set out in paragraph 17, you shall not deal with that matter in any way (except to enable it to be dealt with by someone else).

*(Note: Failure, without reasonable excuse, to comply with paragraphs 16 to 18 in relation to a Disclosable Pecuniary Interest could be a criminal offence under section 34 Localism Act 2011 as well as being a breach of this code.)*

19. Paragraphs 16 to 18 do not apply if (i) you have a relevant dispensation under section 33 of the Localism Act 2011 (see Annex 4) or (ii) the matter in question relates to any of the following functions of the Authority:
- (a) statutory sick pay where you are in receipt of, or entitled to receipt of, such pay;
  - (b) an allowance, payment or indemnity given to members;
  - (c) any ceremonial honour given to members; and
  - (d) setting council tax or a precept/levy under the Local Government Finance Act 1992.

## **Annex 1 to Code of Conduct**

### **Nolan's Seven Principles of Public Life**

#### **Selflessness**

Holders of public office should act solely in terms of the public interest.

#### **Integrity**

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

#### **Objectivity**

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

#### **Accountability**

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

#### **Openness**

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

#### **Honesty**

Holders of public office should be truthful.

#### **Leadership**

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

## Annex 2 to Code of Conduct

### Disclosable Pecuniary Interests

(as defined by Regulations made by the Secretary of State under section 30 Localism Act 2011)

**Please Note:** The following interests are Disclosable Pecuniary Interests if they are an interest of either (a) **yourself**, or (b) **your spouse or civil partner**, or (c) **a person with whom you are living as husband and wife**, or (d) **a person with whom you are living as if you were civil partners** (all of whom are referred to as “relevant persons”):-

**Employment, office, trade, profession or vocation** - Any employment, office, trade, profession or vocation carried on for profit or gain.

**Sponsorship** - Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by you in carrying out your duties as a member, or towards your election expenses.

This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.

**Contracts** - Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the Authority —

- (a) under which goods or services are to be provided or works are to be executed; and
- (b) which has not been fully discharged.

**Land** - Any beneficial interest in land which is within the area of the Authority.

**Licences** - Any licence (alone or jointly with others) to occupy land in the area of the Authority for a month or longer.

**Corporate tenancies** - Any tenancy where (to your knowledge)—

- (a) the landlord is the Authority; and
- (b) the tenant is a body in which the relevant person has a beneficial interest.

**Securities** - Any beneficial interest in securities of a body where—

- (a) that body (to your knowledge) has a place of business or land in the area of the Authority; and
- (b) either—
  - (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or



- (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

Note: In the above descriptions, the following words have the following meanings –

“body in which the relevant person has a beneficial interest” means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;

“director” includes a member of the committee of management of an industrial and provident society;

“land” excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;

“securities” means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

## **Annex 3 to Code of Conduct**

### **Other Registerable Personal Interests**

The other interests which you must register under paragraph 11(b) of the code are:

1. Any body of which you are a member (or in a position of general control or management) to which you are appointed or nominated by the Authority;
2. Any body which (i) exercises functions of a public nature or (ii) has charitable purposes or (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union) of which you are a member (or in a position of general control or management);
3. Any person from whom you have received within the previous three years a gift or hospitality with an estimated value of more than £50 which is attributable to your position as member of the Authority.

Note: These mean only your interests and not those of your spouse or civil partner.

## **Annex 4 to Code of Conduct**

### **Dispensations Procedure**

A Registerable Personal Interest may in relation to any item of business considered at any meeting of the Authority (including specifically in connection with an Authority budget setting meeting) mean that the criteria set out in paragraph 17 of the Code of Conduct may be satisfied and require the Member to leave the meeting.

Under section 33(2) of the Localism Act 2011 a dispensation can be granted if, after having had regard to all relevant circumstances, the Authority:

- 1) considers that so many Members of the decision-making body have interests that require them not to take part in a matter that it would “impede the transaction of the business”. Effectively this means the decision-making body would be inquorate as a result;
- 2) without a dispensation, no member of the Cabinet would be able to participate on the matter;
- 3) considers that, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the likely outcome of any vote on the matter;
- 4) considers that granting a dispensation is in the interests of persons living in its area; and
- 5) considers that it is otherwise appropriate to grant a dispensation.

Members may be given a dispensation either to speak but not vote, or to speak and vote.

The Cabinet has delegated the granting of dispensations to the Audit and Standards Committee (see Responsibility for Functions - Part 2.7 Audit and Standards Committee).

A Member must complete a dispensations form explaining why a dispensation is appropriate and submit it to the Monitoring Officer. A report will be submitted to a meeting of the Audit and Standards Committee (or a sub-committee thereof) to determine what level of dispensation (if any) should be granted and for what duration; the duration must be specified and can be for up to four years.

The Member will receive notification of the decision of the Audit and Standards Committee within five working days of the committee meeting. Any dispensations must be declared by the Member at meetings where the dispensation applies.

## **Annex 5 to Code of Conduct**

### **Protocols which fall within the provisions of the Code of Conduct**

1. Member/Officer Relations Protocol (see Part 5.3).

## **Arrangements for Dealing with Allegations of Breaches of the Code of Conduct for Members**

### **1. Introduction**

These arrangements set out how the Authority will deal with a complaint that an elected member of the Authority has failed to comply with the Authority's Code of Conduct.

Where a complaint is made against a Member of the Authority, the Monitoring Officer and the Monitoring Officer of the Member's appropriate constituent council will determine whether the complaint is to be properly dealt with in accordance with the Authority's local arrangements or the appropriate constituent council's local arrangements.

Under section 28(6) and (7) of the Localism Act 2011, the Authority must have in place "arrangements" under which allegations that a Member of the Authority, has failed to comply with the Code of Conduct can be dealt with. Such arrangements must provide for the Authority to appoint at least one Independent Person, whose views must be sought by the Authority before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the Authority, or a Member against whom an allegation has been made, at any other stage.

The Authority has appointed two Independent Persons.

### **2. Receipt of a complaint**

A complaint against a Member will be sent by the Complainant in writing or by email to:

The Authority Monitoring Officer  
Quadrant West, 2 Quicksilver Way, Cobalt Business Park, Newcastle upon Tyne,  
NE27 0QQ.

The Monitoring Officer has statutory responsibility for maintaining the register of members' interests and is responsible for dealing with complaints of member misconduct.

To make sure we have all the information we need to process your complaint, please complete and send us the model Complaint Form. This can be downloaded from the Authority's website and is available on request from the Monitoring Officer.

Please include your name and a contact address or email address, so that we can acknowledge receipt of your complaint.

The Monitoring Officer will acknowledge receipt of the complaint to the Complainant and provide the subject member of the complaint, with a copy of the complaint within

5 working days of receiving it. The Monitoring Officer will also seek comments from the subject member of the complaint to assist in the initial assessment of the complaint.

### **3. Request for confidentiality**

If a Complainant wants to keep their name and address confidential, they are required to indicate this and explain why when they submit their complaint. The Authority does not normally investigate anonymous complaints, unless there are compelling reasons.

To ensure openness and transparency, confidentiality will only be granted in exceptional circumstances and, in many instances, it will not be practical or possible to investigate a complaint without the identity of the complainant being revealed. If, however, confidentiality is granted and the complaint proceeds, the Monitoring Officer will determine whether or when the subject member will be advised of the complaint and the identity of the complainant. The procedure set out below will be adjusted as appropriate to accommodate the decision of the Monitoring Officer.

Where a request for confidentiality is refused by the Monitoring Officer, the Complainant will be advised of that refusal and will be given the option to withdraw the complaint within 10 working days. If the complaint is withdrawn the matter will be then closed and the subject member will not be informed of the complaint. If the Complainant refuses to withdraw the complaint or does not respond within the specified timescale, then the subject member will be sent a copy of the complaint and the complaint will proceed as set out in paragraph 4 below.

### **4. Will the complaint be investigated?**

The Monitoring Officer will review every complaint received and, after consultation with the Independent Persons where appropriate and consideration of any initial comments of the subject member, decide whether the complaint will be investigated. The decision will be based on whether the allegation, if proved, would constitute a failure to observe the Code of Conduct and the application of the Authority's adopted assessment criteria (attached at Annex 1). This decision will normally be taken within 28 days of receipt of the complaint. The parties will be advised of the Monitoring Officer's decision together with the reasons for that decision— subject to any decision on confidentiality arising as referred to above.

Where the Monitoring Officer requires additional information in order to come to a decision, he/she may go back to the Complainant for such information and may request information from the subject member of the complaint.

If the complaint alleges criminal conduct or breach of other regulation by any person, the Monitoring Officer may refer the complaint to the Police or other regulatory agencies, irrespective of a request for confidentiality by the Complainant.

### **5. Informal Resolution**

The Monitoring Officer may consider that a complaint can be reasonably resolved informally. In such a case, the Monitoring Officer will consult with the Independent

Persons, the subject member and the Complainant to seek to agree an informal resolution of the complaint which also helps to ensure high standards of conduct for the future. If the subject member complies with the suggested resolution, the Monitoring Officer will report the matter to the Audit and Standards Committee for information, but will take no further action.

## **6. How is the investigation conducted?**

If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer. The Investigating Officer may be another officer of the Authority, an officer of a constituent council or an external investigator.

The Investigating Officer will write to the subject member and will ask them to provide their explanation of events, and to identify what documents or other materials they believe the Investigating Officer needs to see and who the Investigating Officer needs to interview.

The Investigating Officer will decide whether he/she needs to meet or speak to the Complainant to understand the nature of the complaint and so that the Complainant can explain their understanding of events and suggest what documents or other materials the Investigating Officer needs to see, and who the Investigating Officer needs to interview.

At the end of his/her investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to the subject member and to the Complainant, to give both an opportunity to identify any matter in that draft report which they disagree with (and give their reasons why) or which they consider requires more consideration. A copy of the draft report will also be sent to the Monitoring Officer.

Having received and taken account of any comments which the Complainant or subject member may make on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer.

## **7. What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?**

If the Monitoring Officer (after consulting the Independent Persons and taking into account any views they may give on the report) is satisfied with the Investigating Officer's conclusion, the Monitoring Officer will normally write to the subject member and to the Complainant, notifying both that he/she is satisfied that no further action is required, and give both a copy of the Investigating Officer's final report.

If the Monitoring Officer (after consulting the Independent Persons) is not satisfied that the Investigating Officer's conclusion is necessarily correct or well-founded, or for any other reason, the Monitoring Officer may either (a) ask the Investigating Officer to reconsider his/her report or (b) deal with the matter under paragraph 8 below as if there had been a finding of evidence of failure to comply with the Code.

**8. What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?**

a) Local Resolution

Where the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct, there may still be an opportunity for local resolution, avoiding the necessity of a hearing. An investigation report may cause a member to recognise that his/her conduct was at least capable of giving offence, and /or identify other appropriate remedial action, and the Complainant may be satisfied for instance, by recognition of fault or an apology. It would only be appropriate for the Monitoring Officer to agree a local resolution at this stage after consultation with the Authority's Independent Persons and the Chair of the Audit and Standards Committee. In addition this would be conditional on the Complainant being satisfied with the outcome. A summary report on any local resolution of a complaint would be reported to the Audit and Standards Committee for information.

b) Referral for Hearing

If local resolution was not appropriate, the Monitoring Officer will then refer the matter for a hearing before the Committee.

**9. The Hearing**

Where the Audit and Standards Committee has referred a matter for a hearing the procedure at Annex 2 will apply.

**10. What action can the Audit and Standards Committee/Sub-Committee take where a Member has failed to comply with the Code of Conduct?**

The Cabinet has delegated to the Audit and Standards Committee such of its powers to take action in respect of individual Members as may be necessary to promote and maintain high standards of conduct. The Audit and Standards Committee may appoint an Audit and Standards Subcommittee to fulfil these responsibilities on its behalf or deal with the matter itself.

Accordingly, the Audit and Standards Committee (or Subcommittee thereof) may:

- (a) Issue a formal censure;
- (b) Refer the determination findings to the Cabinet for information;
- (c) Publish the determination findings by such means as thought fit;
- (d) Recommend the Cabinet to remove the member from being the Chair or Vice Chair of any Committee or Sub-committee;
- (e) Recommend the Cabinet remove them from any or all Committees or Sub-committees for a specified period;
- (f) Recommend the Cabinet remove particular Cabinet portfolio responsibilities;



- (g) Recommend the Cabinet remove the member for a specified time from all or specified outside appointments to which s/he has been appointed or nominated by the Cabinet;
- (h) Offer training to the member; or
- (i) Exclude the member from the Authority's offices or other premises or facilities, for a specified period and to the extent desirable and so as not to interfere with the democratic process, in particular the member's ability to carry out his or her role as a member.

The Audit and Standards Committee has no power to suspend or disqualify the subject member or to withdraw or suspend allowances or restrict access to or use of Authority facilities so that the subject member is unable to perform their essential role as a member.

## **11. What happens at the end of the Hearing?**

At the end of the hearing, the Chair will state the decision of the Audit and Standards Committee (or Subcommittee) as to whether a Member has failed to comply with the Code of Conduct and as to any actions which the Audit and Standards Committee (or Subcommittee) resolves to take.

As soon as reasonably practicable after that, the Monitoring Officer, in consultation with the Chair of the Committee (or Subcommittee), will prepare a formal decision notice, and send a copy to the Member and the Complainant, make that decision notice available for public inspection on the Authority's website and, if so directed by the Audit and Standards Committee (or Subcommittee), report the decision to the next convenient meeting of the Cabinet.

## **12. Review of decisions**

Procedures for the review of decisions are set out in Annex 3.

## **13. What is the Audit and Standards Committee?**

The Audit and Standards Committee is made up of nine members from the constituent councils and one co-opted member. The Committee is a key component of the Authority's corporate governance arrangements and is responsible (amongst other things) for the promotion and maintenance of high standards of conduct by its elected and co-opted members. The Audit and Standards Committee can appoint, when required, an Audit and Standards Subcommittee to conduct hearings and determine complaints of breaches of the Code of Conduct for Members. The full terms of reference for the Committee and the Subcommittee can be found at Part 2.7 of the Constitution.

## **14. Who are the Independent Persons?**

The Independent Persons are people who applied for the post following advertisement of a vacancy for the role, and are appointed by the Cabinet.

A person does not qualify as “independent”, if they are (or at any time in the last 5 years have been) a Member, Co-opted Member or officer of the Authority, or if they are a relative or close friend of such a Member, Co-opted Member or officer.

For this purpose, “relative” means –

- (a) a spouse or civil partner;
- (b) any person with whom the candidate is living as if they are a spouse or civil partner;
- (c) a grandparent;
- (d) any person who is a lineal descendent of a grandparent;
- (e) a parent, brother, sister or child of anyone in paragraphs (a) or (b);
- (f) any spouse or civil partner of anyone within paragraphs (c), (d) or (e); or
- (g) any person living with a person within paragraphs (c), (d) or (e) as if they were spouse or civil partner to that person.

The Independent Persons are invited to attend meetings of the Committee and their views are sought and taken into consideration before the Committee takes any decision on whether a Member’s conduct constitutes a failure to comply with the Code of Conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct. However, the Independent Persons are not members of the Committee.

## **15. Revision of these arrangements**

The Audit and Standards Committee, on the advice of the Monitoring Officer, may depart from these arrangements where it is necessary to do so in order to secure the effective and fair consideration of any matter. The arrangements will also be subject to periodic review by the Cabinet.

## Annex 1

### Complaints against Members - Assessment Criteria

The following criteria will be taken into account in deciding what action, if any, to take in relation to a complaint that a member has failed to comply with the requirements of the Code of Conduct for Members:

1. Has the complainant submitted enough information to satisfy the Monitoring Officer (or the Audit and Standards Committee if appropriate) that the complaint should be referred for investigation or other action?

If not:

The information provided is insufficient to make a decision. So unless, or until, further information is received, no further action will be taken on the complaint.

2. Is the complaint about someone who is no longer a member of the Authority, but is a member of another authority? If so, should the complaint be referred to the Monitoring Officer of that other authority?

If yes:

The complaint will be referred to the Monitoring Officer of that other authority to consider.

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

If yes:

There may be nothing more to be gained by further action being taken.

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

If yes:

Further action may not be warranted.

5. Does the complaint appear insufficiently serious to justify the cost or use of resources involved in further action?

If yes:

Further action will not be warranted.

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

If yes:

Further action will not normally be warranted.

7. Is the complaint anonymous?

If yes:

No action will normally be taken unless there are compelling reasons to suggest otherwise, e.g. if it includes documentary or photographic evidence indicating an exceptionally serious or significant matter.

## **Annex 2**

### **Procedure for Hearings**

#### **1. Introduction**

This Annex details the procedure to be adopted for the hearing of complaints by the Audit and Standards Committee (or Sub-committee) where an investigation has been completed.

The person(s) making the complaint will be referred to in this procedure as the Complainant and the person against whom the complaint is made will be referred to as the Member.

The Investigating Officer means the Monitoring Officer or other person appointed by the Monitoring Officer to conduct a local investigation.

References to Monitoring Officer include any other person appointed by the Monitoring Officer to carry out the functions of the Monitoring Officer.

#### **2. Legal Advice to the Audit and Standards Committee**

Where the Monitoring Officer also takes the role of the Investigating Officer, he/she must arrange for a separate legal adviser for the Audit and Standards Committee in respect of the allegation.

#### **3. Notifying the Member and Complainant**

The Monitoring Officer shall send a copy of the Investigating Officer's final report to the Member, the Complainant and the Independent Persons.

The Monitoring Officer will ask for a written response from the Member within 14 days, stating whether or not s/he:

- disagrees with any of the findings of fact in the report, including the reasons for any disagreements;
- wants to be represented, at his/her own expense, at the hearing by a solicitor, barrister or any other person;
- wants to give evidence to the Audit and Standards Committee, either verbally or in writing;
- wants to call relevant witnesses to give evidence to the Audit and Standards Committee and, if so, who;
- wants any part of the hearing to be held in private and, if so, why; and
- wants any part of the report or other relevant documents to be withheld from the public and, if so, why.

The Monitoring Officer will also inform the Member that if, at the meeting of the Audit and Standards Committee, s/he seeks to dispute any matter contained in the report, without having previously notified his/her intention to do so, the Audit and Standards

Committee may either adjourn the meeting to enable the Investigating Officer to provide a response, or refuse to allow the disputed matter to be raised.

The Monitoring Officer will also seek the views of the Independent Persons on the report and on any action the Independent Persons feel should be taken in respect of it.

Upon receipt of the responses, the Monitoring Officer will complete a Pre-hearing Summary which will include:

- (a) The name of the 'home' authority of the Member.
- (b) The name of the Member.
- (c) The name of the complainant (unless there are good reasons to keep his/her identity confidential).
- (d) The Case reference number.
- (e) The name of the Chair for the hearing.
- (f) The name of the Investigating Officer.
- (g) The name of the clerk of the hearing or other administrative officer.
- (h) The date the pre-hearing summary was produced.
- (i) The date, time and place of the hearing.
- (j) A summary of the complaint.
- (k) The relevant section or sections of the Code of Conduct.
- (l) The findings of fact in the investigation report which are agreed and the findings of fact in the investigation report which are not agreed.
- (m) Whether the Member or the Investigating Officer will attend or be represented.
- (n) The names of any witnesses who will be asked to give evidence.
- (o) An outline of the proposed procedure for the hearing.

The Member and the Investigating Officer are entitled to request that any witnesses they want should be called. However, the Chair of the Audit and Standards Committee, following advice from the legal adviser, may limit the number of witnesses, if he/she believes the number requested is unreasonable or that some witnesses will simply be repeating the evidence of earlier witnesses, or else will not provide evidence that will assist the Committee to reach its decision.

Nothing in this procedure shall limit the Chair of the Audit and Standards Committee from requesting the attendance of any additional witnesses whose evidence he/she considers would assist the Audit and Standards Committee to reach its decision.

#### **4. The Audit and Standards Committee**

The Audit and Standards Committee shall decide, on the balance of probability, whether the grounds of the complaint are upheld. It shall do so by considering the report and, where appropriate, written or oral representations made by the Member, and any additional relevant information from the Investigating Officer or witnesses.

All matters/issues shall be decided by a simple majority of votes cast.

The meeting of the Audit and Standards Committee will be open to the public and press unless confidential information or exempt information under Schedule 12A of the Local Government Act 1972 is likely to be disclosed.

#### **5. Procedure at the Hearing**

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

- declarations of interest;
- consideration as to whether to adjourn or to proceed in the absence of the Member, if the Member is not present;
- introductions;
- any representation from the Investigating Officer and/or the Member as to reasons why the Audit and Standards Committee should exclude the press and public and determination as to whether to exclude the press and public. Where the Audit and Standards Committee decides that it will not exclude press and public, the Monitoring Officer may at this point provide copies of the agenda and reports to any members of the press and public who are present.

The purpose of the hearing is to establish the facts and then consider whether, based on those facts, the member has failed to follow the Code of Conduct. The Audit and Standards Committee will control the procedure and evidence presented at the hearing, including the questioning of witnesses.

The Audit and Standards Committee may at any time seek legal advice from its legal adviser. Such advice will on all occasions be given in the presence of the Investigating Officer and the Member.

The procedure at the hearing will be as follows, subject to the Chair of the Committee being able to make changes as he or she thinks fit in order to ensure a fair and efficient meeting.

##### **(a) Examination of report and written representations**

The Committee will consider the report together with any written response from the Member to the report. The Committee may require the Investigating Officer to answer questions put to him/her by members regarding the contents of the report.

The Committee must also take account of the views expressed by the Independent Persons in their response to the Monitoring Officer.

(b) Oral evidence

If there is any disagreement as to the facts of the case, the Investigating Officer will be invited to make any necessary representations to support the relevant findings of fact in the report, calling supporting witnesses as agreed by the Chair.

Questions may be asked by the Committee at any point. The Member will not be permitted to directly question the Investigating Officer or the witnesses he/she calls.

If the Member wishes to challenge any oral evidence being presented, then these questions shall be directed through the Chair.

The Member will then be invited to make any necessary representations to support their version of the facts, calling supporting witnesses as agreed by the Chair.

Questions may be asked by the Committee at any point. The Investigating Officer will not be permitted to directly question the Member or the witnesses he/she calls. If they wish to challenge any oral evidence being presented, then these questions must be directed through the Chair.

Where the Member seeks to dispute any matter in the report which he/she had not given notice of intention to dispute in his/her written statement in response, the Investigating Officer shall draw this to the attention of the Audit and Standards Committee. The Audit and Standards Committee may then decide:

- not to admit such dispute but to proceed to a decision;
- to admit the dispute, but to invite the Investigating Officer to respond
- to adjourn the meeting to enable the Investigating Officer to investigate and report on the dispute.

The Audit and Standards Committee may adjourn the hearing to require the Monitoring Officer to seek further information or undertake further investigation on any point specified by the Committee.

## **6. Decision by the Audit and Standards Committee**

The Audit and Standards Committee will consider in private session which of the following findings to adopt:

- that there is no evidence of any failure to comply with the Code of Conduct;
- that the Member has failed to comply with the Code of Conduct, but that no action needs to be taken;
- that the Member has failed to comply with the Code of Conduct and that a sanction should be imposed.



The available sanctions are:

- (a) Issue a formal censure;
- (b) Refer the determination findings to the Cabinet for information;
- (c) Publish the determination findings by such means as thought fit;
- (d) Recommend the Cabinet remove the member from being the Chair or Vice Chair of any Committee or Subcommittee;
- (e) Recommend the Cabinet remove them from any or all Committees or Subcommittees for a specified period;
- (f) Recommend the Cabinet remove particular Cabinet portfolio responsibilities;
- (g) Recommend the Cabinet remove the member for a specified time from all or specified outside appointments to which s/he has been appointed or nominated by the Cabinet;
- (h) Offer training to the member; or
- (i) Exclude the member from the Authority's offices or other premises or facilities, for a specified period and to the extent desirable and so as not to interfere with the democratic process, in particular the member's ability to carry out his or her role as an elected member.

In deciding what sanction (if any) to set, the Audit and Standards Committee will consider all relevant circumstances including any views expressed by the Independent Persons.

The Audit and Standards Committee will then resume the public session and the Chair will announce the decision and the reasons for that decision.

If the matter is a complicated one, where the complaint has a number of aspects, the Audit and Standards Committee can decide to consider the evidence and reach a finding on each aspect separately.

The Audit and Standards Committee will then consider in open session whether there are any recommendations which it wishes to make arising from consideration of the allegation.

## **7. Notice of findings**

The Monitoring Officer will make a short written decision available on the day of the hearing and a full written decision in draft will be prepared as soon as possible.

Within two weeks of the end of the hearing, the Monitoring Officer will circulate a full written decision to the Member and the Complainant.

At the same time the Monitoring Officer shall arrange for a summary of the findings to be published as may be directed by the Audit and Standards Committee.

Where the Audit and Standards Committee determines that there has not been a breach of the Code of Conduct, the notice shall:

- state that the Audit and Standards Committee found that the Member had not failed to comply with the Code of Conduct and shall give its reasons for reaching that finding and not be published if the Member so requests.

Where the Audit and Standards Committee determines that there has been a failure to comply with the Code of Conduct but no action is required, the notice shall:

- state that the Audit and Standards Committee found that the Member had failed to comply with the Code of Conduct but that no action needs to be taken in respect of that failure specify the details of the failure; and give reasons for the decision reached.

Where the Audit and Standards Committee determines that there has been a failure to comply with the Code of Conduct and that a sanction should be imposed, the notice shall:

- state that the Audit and Standards Committee found that the Member had failed to comply with the Code of Conduct;
- specify the details of the failure;
- give reasons for the decision reached; and
- specify the sanction imposed.

Copies of the agenda, reports and minutes of a hearing, as well as any background papers, apart from sections of documents relating to parts of the hearing that were held in private, will be available for public inspection for six years after the hearing.

## **8 Confidentiality and disclosure of information**

Where the Chair of the Audit and Standards Committee considers that the report and/or any of the written statements in response are likely to disclose any exempt information and in consequence that it is likely that the Audit and Standards Committee will, during consideration of these matters, not be open to the public, he/she shall, taking account of the advice of the legal adviser, decide not to provide copies of these papers to the press or public or permit their inspection by the press or public in advance of the meeting.

The Hearing will be held in public except for those parts of its proceedings which involve exempt information and during the deliberations of the Audit and Standards Committee.

## **Annex 3**

### **Review of Decisions**

#### **1. Initial Assessment Decisions**

If a Complainant is aggrieved by a decision by the Monitoring Officer to not investigate a complaint then the Complainant may request the Monitoring Officer to reconsider their decision.

The Monitoring Officer will consult the Independent Persons and the Chair of the Audit and Standards Committee, and take their views into account, before deciding whether to uphold or vary their original decision.

#### **2. Findings of Audit and Standards Committee following a hearing**

If a member is aggrieved by a finding of the Audit and Standards Committee that they have failed to comply with the Code, or with the sanction imposed, they may request a review by an Independent Person from another local authority in accordance with the following procedure:

- The member must request a review, with their detailed reasons for seeking a review, within 5 working days of the publication of the decision notice otherwise the decision of the Audit and Standards Committee will become final.
- The request for a review must be in writing and must be submitted to the Monitoring Officer.

If a request for a review is received, the decision of the Audit and Standards Committee will be held in abeyance pending completion of the review process.

If a request for a review is received, the decision of the Audit and Standards Committee (including all the papers considered by the Committee) will be referred to an Independent Person of a constituent council not being the home authority of the Member. The Independent Person will review the case on the information provided and will provide a report to the Audit and Standards Committee. The report to the Audit and Standards Committee will provide any comments the Independent Person considers are appropriate and relevant, taking into account the basis of the request for review from the Member.

Upon the receipt of the Independent Person's report, the Audit and Standards Committee will consider the Independent Person's comments; the reasons submitted for the review by the Member and will determine whether to confirm the decision of the Audit and Standards Committee, amend the decision or substitute it with an alternative decision; this could include concluding that no breach of the Code occurred.

No further right of appeal or review of the Audit and Standards Committee's decision within the Authority is available. However, if the Member or the Complainant considers

that the Authority has failed to deal with the complaint properly, they may make a complaint to the Local Government Ombudsman.