



**PROCEDURE FOR THE ASSESSMENT OF WRITTEN COMPLAINTS
OF BREACH OF THE WEST LANCASHIRE BOROUGH COUNCIL AND
PARISH COUNCILS MEMBERS' CODE OF CONDUCT
(from July 2012)**

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Assessmentstandards

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CHAPTER A - OVERVIEW

1.0 GENERAL

1.1. For the purpose of this procedure:

‘Code of Conduct’ or ‘Code’ – means the Members’ Code of Conduct for the Council or Parish Council in force at the time of matters giving rise to a complaint.

‘the Council’ means West Lancashire Borough Council.

‘Parish Council’ means a Parish Council in the borough of West Lancashire.

‘misconduct’ means any conduct by a member which is in breach of the Council's/relevant Parish Council's Code of Conduct.

‘Subject Member’ means the member of the Council/Parish Council against whom the complaint has been made.

The **‘Monitoring Officer’** is the Borough Solicitor

The **‘Deputy Monitoring Officer’** is the Legal and Member Services Manager.

The **‘Independent Person’** is the person appointed as Independent Person or Reserve Independent Person.

1.2 Any complaint of misconduct against a member of the Borough Council or a Parish Council in West Lancashire should be made in writing to Terry Broderick, Borough Solicitor, 52 Derby Street, Ormskirk, Lancashire L39 2DF using the appropriate complaint form.

1.3 A Complainant may in the first instance discuss their concerns about a member's conduct with the Monitoring Officer who may provide guidance to the Complainant as to the type of conduct which may amount to a breach of the Code. If the Complainant still has concerns about the member's conduct, the Monitoring Officer should ask the Complainant whether they want to formally put the matter in writing in order that it can be considered either by the Council and/or by the police if the complaint alleges/demonstrates a potential criminal offence under the Code activity.

1.4 Complaints may be made by any person, including members of the public, or members or officers of the Council/Parish Council and should specify the misconduct alleged and be submitted as soon as practicable (within 3 months of the misconduct except in exceptional circumstances).

1.5 The Monitoring Officer will consider whether it is clear from the complaint received that the complaint is about a breach of the code of conduct by a member of the

Council/Parish Council. Some complaints may relate to the provision of services by the Council or the manner in which matters have been dealt with by the Council and these will be referred to the appropriate Director or Head of Service.

- 1.6 The Monitoring Officer may decide to refer the complaint to the monitoring officer of another relevant authority if he considers it appropriate to do so, particularly if the Subject Member is a member or co-opted member of another relevant authority.
- 1.7 Complaints that allege/demonstrate a potential criminal offence under the Code activity will be referred directly to the Police and the Complainant will be notified appropriately.
- 1.8 The Monitoring Officer, will formally acknowledge receipt of the written complaint to the Complainant within 10 working days of receipt of the complaint. At this stage the process will remain Confidential and the subject member will not be notified.
- 1.9 The Independent Person, a member of the Standards Committee or officer supporting the Standards Committee may not participate in any stage of the assessment process if they have any personal conflict of interest in the matter. Advice should be sought at the earliest opportunity by any such person if they are concerned about potential conflicts of interest.
- 1.10 At several stages of the assessment of the complaint there may be a need for clarification or further information to be provided to enable decisions to be taken. If so a request will be made as appropriate.

2.0 CONFIDENTIALITY OF COMPLAINANT

If the Complainant has requested that their identity should be withheld, the Monitoring Officer or the Assessment Sub-Committee will need to consider the following in deciding upon the request, i.e. whether:

- (a) The Complainant has reasonable grounds for believing that they will be at risk of physical harm if their identity is disclosed.
- (b) The Complainant is an officer who works closely with the Subject Member and they have grounds for being afraid of the consequences to their employment or of losing their job if their identity is disclosed.
- (c) The Complainant suffers from a serious health condition and there are medical risks associated with their identity being disclosed. In such circumstances, the Monitoring Officer or Assessment Sub-Committee may wish to request medical evidence of the Complainant's condition.

(Note: This list is not exhaustive.)

The Monitoring Officer or the Sub-Committee will also consider whether an investigation can be carried out effectively if the identity of the Complainant is withheld. If the Monitoring Officer or the Sub-Committee agree to withhold the identity of the Complainant, and decide to refer the complaint for investigation, a guarantee cannot be given that the Complainant's identity will be withheld throughout the investigation, in the interests of fairness of the investigative process.

If the Monitoring Officer or the Sub-Committee refuse the request to withhold the Complainant's identity, the Complainant should be given the option to withdraw their complaint, although the public interest in proceeding with an investigation may outweigh the Complainant's wish to have their identity withheld from the Subject Member.

3.0 ASSESSMENT BY THE MONITORING OFFICER

3.1 On receipt of the written complaint the Monitoring Officer will obtain a Pre-Assessment Report as set out in Chapter B, paragraph 1. He will then consult with the Independent Person, taking into account the Initial Test and the Standards Committee Assessment criteria detailed at Chapter B, paragraphs 2.1 and 2.2.

3.2 Any assessment decision relates only to whether action should be taken on the complaint, it does not determine whether the conduct actually took place or whether it was a breach of the Code.

4.0 LOCAL RESOLUTION

4.1 If it appears that a complaint can reasonably be resolved without formal investigation the Subject Member and the Complainant will be consulted to seek a fair resolution. Such resolution may include the Subject Member accepting that their conduct was unacceptable and offering an apology, and/or other remedial action.

5.0 ASSESSMENT SUB-COMMITTEE

5.1 The Standards Committee has established an Assessment Sub-Committee which if requested to do so by the Monitoring Officer is to assess complaints that a member may have breached the Code. Complaints must be submitted as referred to at Chapter A paragraph 1.2 above.

5.2 Upon request of the Monitoring Officer a meeting of the Assessment Sub-Committee will be convened as soon as practicable.

5.3 **Membership of the Assessment Sub-Committee - 3 Elected Members**

5.4 **Purpose** – To make decisions as to whether to investigate a complaint referred to the Sub-Committee by the Monitoring Officer or to take no further action.

5.5 The Assessment Sub-Committee will be advised by the Monitoring Officer or his representative.

5.6 The Assessment Sub-Committee will take into account any relevant criteria and factors that the Standards Committee decides should be considered, as amended from time to time, and any relevant advice from officers.

6.0 INVESTIGATION

6.1 If it is decided that the complaint is sufficiently serious to warrant further investigation the Monitoring Officer, in consultation with the Independent Person, will make arrangements for a formal investigation to take place (usually by an external

independent advisor). On completion of the investigation, the investigating officer will complete a report, which will include his/her findings.

- 6.2 Where the investigation finds no evidence of failure to comply with the Code of Conduct, the Monitoring Officer, in consultation with the Independent Person, will close the matter and will provide a copy of the report and findings of the investigation to the Complainant, the Subject Member, the Independent Person and the relevant Parish Clerk, if appropriate. The Monitoring Officer will also provide an update to the Standards Committee via the statistics on the outcome of the investigation.
- 6.3 Where the investigation finds evidence of a failure to comply with the Code of Conduct, the Monitoring Officer, in consultation with the Independent Person, may seek local resolution to the satisfaction of the Complainant in appropriate cases. Where such local resolution is not appropriate or not possible, the investigation report and findings will be submitted to the Hearing Sub-Committee of the Standards Committee for a local hearing, unless the outcome of the investigation is deemed to be a criminal matter in which case the matter will be referred by the Monitoring Officer, to the Police.

7.0 HEARING FOLLOWING FORMAL INVESTIGATION

- 7.1 A member of the Assessment Sub-Committee who was involved in the initial assessment decision can be a member of the Hearing Sub-Committee that hears and determines the complaint at the conclusion of an investigation.
- 7.2 The sub-committee hearing the case will decide on the evidence before it as to whether the Code has been breached and, if so, any sanction that should apply.
- 7.3 Sanctions available to the Hearing Sub-Committee include:

Borough Council

- A. Reporting its findings to Council for information;
- B. Recommending to the member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- C. Recommending to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- D. Instructing the Borough Solicitor to arrange training for the member;
- E. Recommending to the Council the member be removed from all outside appointments to which he/she has been appointed or nominated by the authority.
- F. Recommending to the Council that it withdraws facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
- G. Recommending that the Council excludes the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

Parish Councils

- A. Reporting its findings to the Parish Council for information;
- B. Recommending the Parish Council arrange training for the member;
- C. Recommending to the Parish Council the member be removed from all outside appointments to which he/she has been appointed or nominated by the authority.

- D. Recommending to the Parish Council that it withdraws facilities provided to the member by the Parish Council, such as a computer, website and/or email and Internet access.

There is no appeal mechanism against decisions of the Hearing Sub Committee. Any challenges to unreasonable or unlawful decisions would be made by way of Judicial Review. The grounds for challenging by way of Judicial Review are limited.

CHAPTER B - ASSESSMENT

1.0 PRE-ASSESSMENT

1.1 Pre-Assessment Report

The Monitoring Officer will have a written summary report prepared (“the report”), usually with the assistance of an external advisor and which will be for discussion with the Independent Person and may be submitted to the Assessment Sub Committee as appropriate.

The report will set out the following details:

- Whether the complaint is within jurisdiction.
- Whether the member has ceased to be a member of the Council and is a member of another relevant authority.
- Whether the complaint was made within 3 months of the alleged misconduct.
- The paragraphs of the West Lancashire Borough and/or Parish Councils Members’ Code of Conduct the complaint might relate to, or the paragraphs the Complainant has identified.
- A summary of the key aspects of the complaint if it is lengthy or complex.
- Any further information that has been obtained to assist with the decision – this may include:

- (a) Obtaining a copy of a declaration of acceptance of office form.
- (b) Minutes of meetings.
- (c) A copy of a member’s entry in the register of interests.
- (d) Information from Companies House or the Land Registry.
- (e) Other easily obtainable documents.

1.2 Contact may also be made with Complainants for clarification of their complaint if the Borough Solicitor is unable to understand the complaint submitted.

1.3 Pre-assessment enquiries will not be carried out in such a way as to amount to an investigation, eg they will not extend to interviewing potential witnesses, the Complainant or the Subject Member.

1.4 The report would then go on to evaluate whether the complaint meets the initial test at 2.1 below and, if so, to carry out an analysis based on the application of the Assessment Criteria, as to which see para 2.2. below. It will then make a recommendation as to:

- no further action
- local resolution

- referral to the Assessment Sub-Committee where the Monitoring Officer feels it is inappropriate for him to take the decision.
- referral for investigation
- referral to the Police

(If the Subject Member is no longer a member of the Council, and is a member or co-opted member of another relevant authority, the report may also recommend that the complaint be referred to the other relevant authority).

1.5 The report should not influence improperly the Monitoring Officer or Assessment Sub-Committee's decision or make the decision for him/it. Opinions will not be sought on an allegation. Only factual information will be presented to ensure that any subsequent investigation is not prejudiced.

2.0 ASSESSMENT (by Monitoring Officer or Assessment Sub-Committee)

2.1 INITIAL TEST

Before assessment of a complaint begins, the Monitoring Officer or Assessment Sub-Committee should be satisfied that the complaint meets the following tests:

- It is a complaint against one or more named members of the Council or a Parish Council. (If the complaint is about a member of another Council or a parish council outside West Lancashire which could be referred to the Monitoring Officer of that other Council then the Complainant will be so advised)
- The named member was in office at the time of the alleged conduct and the West Lancashire Borough and Parish Members Code of Conduct was in force at the time.
- The complaint, was made within 3 months of the alleged misconduct unless exceptional circumstances exist.
- The complaint, if proven, would be a breach of the Code under which the member was operating at the time of the alleged misconduct.

If the complaint fails one or more of these tests the Complainant must be informed that no further action will be taken in respect of the complaint.

If the complaint meets all parts of the 'Initial Test', the Monitoring Officer will take account of the Assessment Criteria set out in paragraph 2.2 below which have been approved by the Standards Committee and which will be reviewed from time to time by the Standards Committee, and then decide, after consultation with the Independent Person,

- A. That the complaint does not merit any further action.
- or
- B. That the complaint can be resolved without the need for formal investigation.
(local resolution).
- or
- C. That it would not be appropriate for him to take a decision on this matter and the complaint should be referred to the Assessment Sub-Committee for consideration
- or
- D. That the complaint requires a formal investigation.
- or

- E. That the complaint should be referred directly to the Police as it is potentially a criminal matter.

2.2 ASSESSMENT CRITERIA

These criteria are intended to reflect local circumstances and priorities and are simple, clear and open. They are to ensure fairness for the Complainant and the Subject Member.

A Circumstances where the Monitoring Officer/Assessment Sub-Committee may decide to take no further action:

1. Where the complaint:

- (1) does not have enough information to satisfy:
the Monitoring Officer that the complaint should be subject to local resolution; or
the Monitoring Officer or Assessment Sub-Committee that the complaint should be referred for investigation;
- (2) is about someone who is no longer a member of the Council or the Parish Council or any other relevant authority, and there is no public interest in, and there is nothing to be gained by, action being taken;
- (3) is about someone who has died or is seriously ill and there is no public interest in, and there is nothing to be gained by, action being taken;
- (4) is substantially similar to a complaint which has already been the subject of an investigation or other action relating to the Code of Conduct or has been the subject of an investigation by other regulatory authorities and there is nothing further to be gained by further action being taken;
- (5) is believed to be either:
 - (a) not sufficiently serious to warrant further action
 - (b) tit-for-tat
 - (c) politically motivated
 - (d) malicious
- (6) is anonymous, unless it includes documentary or photographic evidence indicating an exceptionally serious or significant matter

or

2. Where the Subject Member has apologised and admitted making an error and the matter would not warrant a more serious sanction, and there is nothing to be gained by action being taken.

The Monitoring Officer and Assessment Sub-Committee are unlikely to refer complaints that have been made about conduct which happened so long ago that there is little benefit to the public interest in taking action now. Complainants are encouraged to make complaints as soon as reasonably practicable and within 3 months of the conduct occurring. The reasons for complaints being made after this period will be carefully considered and if exceptional circumstances do not exist no action will be taken.

B Circumstances where the Monitoring Officer may decide to consider local resolution:

- (1) Where the complaint:
 - (i) could be dealt with more effectively by:
 - (a) requesting an apology
 - (b) mediation
 - (c) training
 - (d) reviewing procedures and protocols
 - (ii) is part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the authority which could be dealt with by:
 - (a) mediation
 - (b) training
 - (c) reviewing procedures and protocols
- (2) Where it is not in the interests of good governance to undertake or complete an investigation into a complaint.

Notes (a) If local resolution is proposed the following must be considered:

- *What is being proposed.*
- *Why it is being proposed.*
- *Why the Member should co-operate*
- *What it is hoped to achieve*

(b) There will be no statement or finding as to whether the member has breached the code of conduct if local resolution is agreed.

C Circumstances where the Monitoring Officer or Assessment Sub-Committee may decide to refer the complaint for investigation:

The Monitoring Officer and Assessment Sub-Committee must be mindful of the public money which may be incurred in investigating complaints. Investigations are costly and time consuming and in some circumstances, complaints may be more effectively dealt with by informal resolution. Complaints will only be referred for investigation in circumstances in which the complaint is sufficiently serious to justify the cost of an investigation and it is in the public interest to investigate.

3.0 NOTIFICATION OF DECISIONS

3.1 Decision Notice – No Further Action (Monitoring Officer)

If the Monitoring Officer, after consultation with the Independent Person, decides to take no action over a complaint, he will give notice in writing of that decision, including the reasons for that decision, within 10 working days of the decision being made. Where no potential breach of the Code is disclosed, the Monitoring Officer must explain in the decision notice what the allegation was and why he believes this to be the case.

Subject to 3.7 below, this notice must be given to the Complainant and the Subject Member and to the Parish Clerk, if the Subject Member is a Parish Councillor.

The Monitoring Officer must notify the Standards Committee of the action taken via the statistics.

3.2. Decision Notice – Local Resolution (Monitoring Officer)

If the Monitoring Officer, after consultation with the Independent Person, decides on local resolution, he will liaise appropriately with the Subject Member and Complainant. He will give appropriate notice in writing of the decision including the reasons for that decision. Subject to 3.7 below, this notice must be given to the Complainant and the Subject Member and to the Parish Clerk, if the Subject Member is a Parish Councillor.

The Monitoring Officer must notify the Standards Committee of the action taken via the statistics.

3.3. Decision Notice – Refer decision to Assessment Sub-Committee (Monitoring Officer)

If the Monitoring Officer, after consultation with the Independent Person, determines that it would not be appropriate for him to take a decision on the matter and the complaint should be referred to the Assessment Sub-Committee for consideration, subject to 3.7 below, he will give notice in writing of that decision, including the reasons for that decision, within 10 working days of the decision being made, to the Complainant, Subject Member and the Parish Clerk, if the Subject Member is a Parish Councillor.

The Monitoring Officer must notify the Standards Committee of the action taken via the statistics.

3.4. Decision Notice – Referral for Investigation (Monitoring Officer or Assessment Sub-Committee)

Subject to 3.7 below, if the Monitoring Officer, after consultation with the Independent Person, or the Assessment Sub-Committee decides to refer the complaint for investigation, he/it will give notice in writing of that decision within 10 working days of the decision being made to the Complainant, Subject Member and the Parish Clerk, if the Subject Member is a Parish Councillor.

The Monitoring Officer must notify the Standards Committee of the action taken via the statistics.

3.5. Decision Notice – No further action (Assessment Sub-Committee)

If the Assessment Sub-Committee decides to take no action over a complaint, it will give notice in writing of that decision, including the reasons for that decision, within 10 working days of the decision being made. Where no potential breach of the Code is disclosed, the Assessment Sub-Committee must explain in the decision notice what the allegation was and why it believes this to be the case. Subject to 3.7 below, this notice must be given to the Complainant and the Subject Member and the Parish Clerk should also be notified, if the Subject Member is a Parish Councillor.

The Monitoring Officer must notify the Standards Committee of the action taken via the statistics.

3.6 Referral to the Police (Monitoring Officer or Assessment Sub-Committee)

If the Monitoring Officer or Assessment Sub-Committee decides to refer the complaint for investigation by the Police, he/it will give notice in writing of that decision within 10 working days of the decision being made. Subject to 3.7 below, the Monitoring Officer/Sub-Committee will decide if that decision notice is given to the Complainant, the Subject Member and the Parish Clerk, if the Subject Member is a Parish Councillor

The Monitoring Officer must notify the Standards Committee of the action taken via the statistics.

The Monitoring Officer will provide an update to the Standards Committee of any action being taken by the Police as appropriate.

3.7 Giving Details/Summary of Complaint

- (a) The Monitoring Officer or Assessment Sub-Committee does not have to give the Subject Member a summary of the complaint if he/it decides by doing so it would be against the public interest or would prejudice any future investigation, eg where it is considered likely that the Subject Member may intimidate the Complainant or the witnesses involved or where early disclosure of the complaint may lead to evidence being compromised or destroyed. The Monitoring Officer/Assessment Sub-Committee needs to take such possibilities into account when developing any process that notifies a member about a complaint made against them.
- (b) The Monitoring Officer or Assessment Sub-Committee should consider whether it is against the public interest to inform the Subject Member of the details of the complaint made against them. He/it should also decide whether informing the Subject Member of the details of the complaint would prejudice a person's ability to investigate it.
- (c) The Monitoring Officer or Assessment Sub-Committee will need to carry out an assessment of the potential risks to the investigation. This is to determine whether the risk of the case being prejudiced by the Subject Member being informed of the details of the complaint at that stage may outweigh the fairness of notifying the Subject Member, eg allowing the Subject Member to preserve any evidence. Discretion can be used to give limited information to the Subject Member if he/it decides this would not be against the public interest or prejudice any investigation. Any decision to withhold the summary must be kept under review as circumstances change and must be provided before the completion of an investigation.

CHAPTER C - ADDITIONAL MATTERS

1.0. Withdrawing Complaints

There may be occasions when the Complainant asks to withdraw their complaint prior to a formal decision being made. In these circumstances, consideration will be given whether to grant the request and

- (a) Whether the public interest in taking some action on the complaint outweighs the Complainant's desire to withdraw it?
- (b) Whether the complaint is such that action can be taken on it, for example an investigation, without the Complainant's participation?
- (c) Whether there is an identifiable underlying reason for the request to withdraw the complaint? For example, is there information to suggest that the Complainant may have been pressured by the Subject Member, or an associate of theirs, to withdraw the complaint?
- (d) Whether it is potentially a criminal matter.

2.0. Multiple Complaints

A number of complaints about the same matter may be considered by the Monitoring Officer or Assessment Sub-Committee, as appropriate, at the same time. The Monitoring Officer may present one 'Pre-Assessment Report' that draws together all the relevant information and highlights any substantively different or contradictory information. However, a decision on each individual complaint must still be reached and the notification procedure followed for each one.