



**PROCEDURE FOR THE ASSESSMENT OF
WRITTEN COMPLAINTS OF BREACH OF THE
CODE OF CONDUCT**

CHAPTER A - OVERVIEW

1.0 GENERAL

1.1 For the purpose of this procedure:

‘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/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 Managing Director (People and Places) / The Deputy Monitoring Officer (The Borough Solicitor)

The **‘Independent Person’** is the Independent Person/the 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 Gill Rowe, Managing Director (People and Places), 52 Derby Street, Ormskirk, Lancashire L39 2DF using the appropriate complaint form. **(See Document 1)**

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 it is a potential criminal offence.

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 Managing Director or Director Service Head

1.6 The Managing Director (People & Places) may decide to refer the complaint to the monitoring officer of another relevant authority if it considers it appropriate to do so particularly if:

- a) the subject member is no longer a member of the Council, or
- b) is a member or co-opted member of another relevant authority.

1.7 C Complaints that are of a potential criminal matter will be referred directly to the Police and the complainant will be notified accordingly.

- 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.
- 1.9 No member of the Standards Committee or officer supporting the Standards Committee will 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 if any member or officer is concerned about potential conflicts of interest.

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 decide 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 are 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 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 INITIAL ASSESSMENT BY THE MONITORING OFFICER

3.1 On receipt of the written complaint the Monitoring Officer, in consultation with the Independent Person, will, taking into account the Standards Committee Assessment criteria detailed at Chapter B, paragraph 3.3, determine either:

- A. That the complaint does not merit any further action **(See Document 2A)**
or
- B. That the complaint can be resolved without the need for formal investigation.
(See Document 2B)
or

- C. That the complaint requires a formal investigation **(See Document 2C)**
or
D. That the complaint should be referred directly to the Police as it is potentially a criminal matter. **(See Document 2D)**
or
E. That it would not be appropriate for an officer to take a decision on this matter and the complaint should be referred to the Assessment Sub-Committee for consideration within 20 working days from the date of acknowledgement. **(See Document 2E)**

4.0 ASSESSMENT SUB-COMMITTEE

- 4.1 When a complaint is referred to the Assessment Sub-Committee, the Monitoring Officer will prepare a written summary report and will submit the report together with the original complaint to the Sub-Committee for consideration, within 20 working days of the date that the complaint was acknowledged - see Chapter B, paragraph 2.2.
- 4.2 The Assessment Sub-Committee, in consultation with the Independent Person, will decide either to:
- Take no further action
 - Refer the complaint to the Monitoring Officer for investigation or local resolution
- 4.3 The Assessment Sub-Committee will take into account any relevant criteria and factors that the Standards Committee decides should be considered at meetings of the Assessment Sub-Committee, as amended from time to time, and any relevant advice from officers, (See Assessment Sub-Committee Procedure at Chapter B for further details).
- 3.4 The 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 is decided that a complaint can reasonably be resolved without the need for a hearing, 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.
- 4.2 If the Subject Member and the Complainant accept the suggested resolution, the Monitoring Officer will report the outcome to the Standards Committee and the Clerk of the Parish Council (if appropriate) for information, but will take no further action.
- 4.3 If the Subject Member refuses Local Resolution in principal or to engage with the agreed outcome, the Monitoring Officer may refer the complaint to the Assessment Sub-Committee or for formal investigation.

5.0 INVESTIGATION

- 5.1 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.
- 5.2 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 on the outcome of the investigation.
- 5.3 Where the investigation finds evidence of a failure to comply with the Code of Conduct, the Monitoring Officer, in consultation with the Independent Person, will 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 which will be referred via the Monitoring Officer, to the police.

6.0 HEARING FOLLOWING FORMAL INVESTIGATION

- 6.1 A member of the Assessment Sub-Committee who was involved in the initial assessment decision **can** be a member of the Hearing Su-Committee that hears and determines the complaint at the conclusion of an investigation.
- 6.2 The sub-committee hearing the case will decide on the evidence before it as to whether the Code has been breached and, if so, if any sanction should apply.
- 6.3 Sanctions available to the Hearing Sub-Committee include:
- A. Reporting its findings to Council [*or to the Parish 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 Managing Director (People and Places) to [*or recommend that the Parish Council*] arrange training for the member;
 - E. Removing [*or recommend to the Parish Council that the member be removed*] from all outside appointments to which he/she has been appointed or nominated by the authority [*or by the Parish Council*];
 - F. Withdrawing [*or recommend to the Parish 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. Excluding [*or recommend that the Parish Council exclude*] 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.

(See Hearing Process for further details.)

CHAPTER B - ASSESSMENT SUB-COMMITTEE PROCEDURE

1.0 GENERAL

- 1.1 The Standards Committee has established an Assessment Sub-Committee which is responsible for assessing complaints that a member may have breached the Code, if requested to do so by the Monitoring Officer. Complaints must be submitted as referred to at Chapter A paragraph 1.2 above.
- 1.2 Upon request of the Monitoring Officer a meeting of the Assessment Sub-Committee will be convened as soon as practicable and in any event within 20 working days of the complaint being acknowledged.
- 1.3 **Membership of the Assessment Sub-Committee - 3 Elected Members**
- 1.4 **Purpose – To** To carry out the initial assessment of allegations if requested to do so by the Monitoring Officer.
- 1.5 The Assessment Sub-Committee will be advised by the Monitoring Officer or her representative.

2.0 SUB-COMMITTEE MEETINGS

2.1 Pre-Assessment Report

The Monitoring Officer will prepare a written summary report (“the report”), usually with the assistance of an external advisor and will be submitted to the Assessment Sub Committee together with the complaint for consideration within 20 working days of the complaint being acknowledged, unless there are exceptional circumstances which would prevent the report and complaint being submitted within this period.

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.
- The paragraphs of the 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 the Assessment Sub-Committee with its decision – this may include:
 - (a) obtaining a copy of a declaration of acceptance of office form and an undertaking to observe the Code.
 - (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.

- 2.3 Contact may also be made with complainants for clarification of their complaint if the Managing Director (People and Places) is unable to understand the complaint submitted.
- 2.4 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.
- 2.5 The report would then go on to evaluate whether the complaint meets the initial test at 3.1 below and, if so, to carry out an analysis based on the application of the Standards Committee Assessment criteria, as to which see below. It will then make a recommendation as to action, either:
 - (1) no further action
 - (2) referral to the Monitoring Officer for investigation, other
Action or local resolution
 - (3) 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 Assessment Sub-Committee refer the complaint to the other relevant authority.

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

3.0 ASSESSMENT SUB-COMMITTEES' DECISIONS

3.1 INITIAL TEST

Before assessment of a complaint begins, the 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 within West Lancashire. (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 Code of Conduct was in force at the time.
- 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. **(See Document 3 in respect of bullet points 1 and 2)**

- 3.2 If the complaint meets all parts of the 'Initial Test', the Sub-Committee will decide whether to
 - Take no further action

- Refer the complaint to the Monitoring Officer for investigation, other action or local resolution
- Refer to the Police for investigation

In making its decision, the Sub-Committee will take account of the Assessment criteria set out below which have been approved by the Standards Committee and which will be reviewed from time to time by the Standards Committee. The Sub-Committee will also take into account advice provided by officers.

3.3 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 Assessment Sub-Committee may decide to take no further action

1. Where the complaint:

- (1) does not have enough information to satisfy the sub-committee that the complaint should be referred for investigation or other action;
- (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 Assessment Sub-Committee is 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 they are considered not to be sufficient, may result in no action being taken.

B Circumstances where the Assessment Sub-Committee may decide to refer the complaint to the Monitoring Officer for local investigation

The 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 or other action. The Assessment Sub-Committee will therefore refer complaints to the Monitoring Officer 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.

C Circumstances where the Assessment Sub- Committee may decide to refer the allegation to the Monitoring Officer for other positive action

(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) The Assessment Sub-Committee must consult the Managing Director (People and Places) before reaching a decision to take other action. It is to be noted that the purpose of this approach is not to determine whether there has been a breach of the Code. The Monitoring Officer may need to contact the subject member and complainant in relation to other action proposed by the Assessment Sub-Committee.

(b) If members decide to refer the complaint to the Monitoring Officer for another form of positive action the following must be considered:

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

(c) There will be no statement or finding as to whether the member has breached the code of conduct if the Assessment Sub-Committee refers the complaint to the Monitoring Officer for any form of positive action.

The decision to refer the complaint to the Monitoring Officer for other action is an alternative to investigation. The Monitoring Officer will provide an update to the Standards Committee on any other action taken.

3.4 CONFIDENTIALITY OF COMPLAINANT

If the complainant has requested that their identity should be withheld, the Sub-Committee will need to decide 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 are 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 sub-committee may wish to request medical evidence of the complainant's condition.

The Sub-Committee will also consider whether an investigation can be carried out effectively if the identity of the complainant is withheld. If the Sub-Committee agrees to withhold the identity of the complainant, and it has decided to refer the complaint for investigation, it will state that it cannot guarantee that the complainant's identity will be withheld throughout the investigation in the interests of fairness of the investigative process.

If 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.

4.0 NOTIFICATION OF DECISIONS

4.1 Decision Notice – No Further Action

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 5 working days of the decision being made. **(See Documents 4 and 5)** 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 they believe this to be the case. This notice must be given to the complainant **(See Documents 4A and 5A)** and the subject member. **(See Documents 4B and 5B)** A copy of the Written Summary Decision Notice should also be given to the Parish Clerk if the subject member is a Parish Councillor. **(See Documents 4C and 5C)**

4.2 Referral to the Monitoring Officer

- (a) If the Sub-Committee decides the complaint should be referred to the monitoring officer, it must send a summary of the complaint to the relevant parties and state

what the allegation was. The decision notice must explain why a particular referral decision has been made, see paragraphs 4.3 and 4.4 below.

- (b) **However**, the Assessment Sub-Committee does not have to give the subject member a summary of the complaint if 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 Assessment Sub-Committee needs to take such possibilities into account when developing with its monitoring officer any process that notifies a member about a complaint made against them.
- (c) The Assessment Sub-Committee should take advice from the Monitoring Officer in deciding whether it is against the public interest to inform the subject member of the details of the complaint made against them. It should also take advice from the Monitoring Officer in deciding whether informing the subject member of the details of the complaint would prejudice a person's ability to investigate it.
- (d) The Monitoring Officer 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. The Monitoring Officer should then advise the Assessment Sub-Committee accordingly. The Assessment Sub-Committee can use its discretion to give limited information to the subject member if 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.

4.3 Decision Notice – Referral for Investigation or other Action

Subject to 4.2(b) to (d) above, if the Assessment Sub-Committee decides to refer the complaint for investigation or other action, it will give notice in writing of that decision within 5 working days of the decision being made. **(See Document 6)** This Notice must be given to the complainant **(See Document 6A)** and the subject member **(See Document 6B)**. A copy of the Written Summary Decision Notice should also be given to the Parish Clerk if the subject member is a Parish Councillor. **(See Document 6C)**

Within the period of three months beginning on the day on which the direction to take other action was received, or as soon as reasonably practicable thereafter, the Monitoring Officer must submit a written report to the Standards Committee giving details of the action taken or proposed to comply with the direction.

If the Standards Committee is not satisfied with the action specified in the report received it shall give a further direction. This cannot include a direction to carry out an investigation.

If the Standards Committee is satisfied with the action specified in the report received the Monitoring Officer shall give written notice to the subject member, the complainant, the Standards Committee and the Parish Clerk if the subject member is a Parish Councillor **(See Documents 14 A, B & C)**.

4.4 Referral to the Police

If the Assessment Sub-Committee decides to refer the complaint for investigation by the Police, it will give notice in writing of that decision in 5 working days of the decision being made. **(See Document ??)**. The Sub-Committee will decide if that decision notice is given to the complainant **(See Document ??)**, the subject member **(See Document ??)** and the Parish Clerk if the subject member is a Parish Council **(See Document ??)**

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

5.0 ADDITIONAL MATTERS

5.1 Withdrawing Complaints

There may be occasions when the complainant asks to withdraw their complaint prior to the Assessment Sub-Committee having made a decision on it. In these circumstances, the sub-committee will need to decide whether to grant the request. It will consider:

- (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? Eg, 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?

5.2 Multiple Complaints

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

