



## **Cumberland Council**

### **How to complain about a Councillor**

Cumberland Council has a duty to promote high standards of conduct and, to achieve this, the Council has an adopted Members' Code of Conduct.

All Councillors, including Town and Parish, must follow a code of conduct. You can submit a complaint or if you think an individual Councillor is not following their code of conduct.

The code applies to councillors whenever they act in an official capacity as a member or co-opted member of the authority. You cannot use the codes to complain about what a councillor does as a private individual.

To submit a complaint about a councillor, you will need:

- to provide details about the councillor, including their name and that of the council they are a member of;
- to have read the Code of Conduct and be able to tell us which part of the code the councillor has breached;
- to provide a detailed explanation about the breach; and
- to explain why we should withhold your details, if you want your complaint to be anonymous.

The explanation should include:

- specific examples of what happened;
- the dates the alleged incidents took place;
- details of any witnesses to the breach; and
- any background information that could be relevant (such as letters or emails).

If you have a complaint about a Town or Parish Council as a whole, or an employee of a Town or Parish Council (such as the clerk) you must submit your complaint through that Town or Parish Council's own complaints process.

Cumberland Council has adopted a Code of Conduct for members, which is attached as Appendix 1 and is available for inspection on the authority's website and on request from [councillorcomplaints@cumberland.gov.uk](mailto:councillorcomplaints@cumberland.gov.uk).

Each Town and Parish Council is also required to adopt a Code of Conduct. If you wish to inspect a Town or Parish Council's Code of Conduct, you should do so by going to that Council's website and request the clerk allows you to inspect the Code of Conduct.

The information below details how to submit your complaint and what we will do with it when we receive it.

## **Making a complaint**

A complaint should be submitted using the Council's Code of Conduct Complaint form which can be accessed:

- by writing to: Monitoring Officer  
Cumberland Council  
Civic Centre  
Carlisle  
CA3 8QG
- by emailing: [councillorcomplaints@cumberland.gov.uk](mailto:councillorcomplaints@cumberland.gov.uk)
- Online: <https://www.cumberland.gov.uk/your-council/have-your-say/make-complaint-about-councillor>

If you are unable to make your complaint in writing or require assistance in submitting your complaint, please contact Democratic Services on 01228 817039.

## **Who is the Monitoring Officer?**

The Monitoring Officer is a senior officer of the authority who has statutory responsibility for maintaining the register of members' interests and who is responsible for administering the system in respect of complaints of member misconduct.

To ensure that the Monitoring Officer can acknowledge your complaint and keep you informed of its progress please ensure your complaint contains your name, address, telephone number and email address.

If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form, in which case we will not disclose your name and address to the Councillor against whom you make the complaint, without your prior consent. The authority does not normally investigate anonymous complaints unless there is a clear public interest in doing so.

The Monitoring Officer will seek to identify any conflicts of interest which may arise at any stage of the process and put alternative arrangements in place as appropriate.

The Monitoring Officer will acknowledge receipt of your complaint within 5 working days of receiving it and will keep you informed of the progress of your complaint.

In the absence of the Monitoring Officer, the Deputy Monitoring Officer will fulfil this role and references to the Monitoring Officer therefore include their deputy.

## **Who is the Chair of Standards and Governance Committee and who is an Independent Person?**

The Chair of Standards and Governance Committee is a Cumberland Councillor who has been appointed at Annual Council. The Standards and Governance Committee are responsible for

promoting, maintaining and advising on high standards of conduct by Councillors and Co-opted Members of Cumberland Council and Town and Parish Councils within Cumberland.

If alternative arrangements need to be made, the Vice-Chair will act for the Chair and references in this document to the Chair therefore include the Vice-Chair.

### **Who is the Independent Person?**

Legislation requires that Cumberland Council appoints at least one Independent Person who must be consulted before the Standards and Governance Committee decides upon the outcome of an investigation. The Independent Person is not an officer, Councillor, relative or close friend of Councillor in any of the authorities within Cumberland and are appointed by Council following a recruitment process.

Cumberland Council has appointed two Independent Persons.

### **Will your complaint be investigated?**

The Monitoring Officer will review every complaint received and take a decision as to whether it merits formal investigation. The Monitoring Officer aims to make their decision within 10 working days of receipt of your complaint. Where the Monitoring Officer has taken a decision, they will inform you of their decision and the reasons for that decision.

In certain cases, the Monitoring Officer may refer particular complaints to the Standards and Governance Committee where they feel that it would be inappropriate for them to take a decision on it, for example where the Monitoring Officer has previously advised the Councillor on the matter or the complaint is particularly sensitive.

Where the Monitoring Officer requires additional information in order to come to a decision, they may come back to you for such information, and may request information from the Councillor against whom your complaint is directed. Where your complaint relates to a Town or Parish Councillor, the Monitoring Officer may also inform that Council of your complaint and seek the views of the Clerk before deciding whether the complaint merits formal investigation.

In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the Councillor accepting that their conduct was unacceptable and offering an apology, or other remedial action by the authority. Where the Councillor or the authority make a reasonable offer of local resolution, but you are not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

The Monitoring Officer has only limited sanctions available to them in the case of Town and Parish Councillors and will take this into account when deciding whether the complaint merits formal investigation.

The Monitoring Officer may also take account of guidance published from time to time by the Local Government Association when consider whether the complaint merits formal investigation.

If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police and other regulatory agencies and may postpone investigation of the complaint until any criminal or regulatory investigation is complete.

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

The Council has adopted a procedure for the investigation of code of conduct complaints, which is attached as Appendix Two to these arrangements.

If the Monitoring Officer decides that a complaint merits formal investigation, they will appoint an Investigating Officer, who may be another senior officer of the authority, an officer of another authority or an external investigator.

The Investigating Officer will decide whether they need to meet or speak to you to understand the nature of your complaint, so that you can explain your understanding of events, suggest what documents the Investigating Officer needs to see, and who the Investigating Officer needs to interview.

The Investigating Officer would normally write to the Councillor against whom you have complained and provide them with a copy of your complaint and ask the Councillor to provide their explanation of events, and to identify what documents they need to see and who they need to interview.

In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the Councillor might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the Councillor, or delay notifying the Councillor until the investigation has progressed sufficiently.

At the end of their investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to you and to the Councillor concerned, to give you both an opportunity to identify any matter in that draft report which you disagree with or which you consider requires more consideration.

Having received and taken account of any comments which you may make on the draft report, the Investigating Officer will send their final report to the Monitoring Officer.

The Monitoring Officer will review the report in consultation with the Chair of the Standards and Governance Committee and the Independent Persons.

If there is insufficient information in the Investigation Officer's report, the Monitoring Officer will ask for additional information. If this is not forthcoming within a specified timeframe the Monitoring Officer will make a decision on the information they have. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, they may ask the Investigating Officer to reconsider their report.

### **No evidence of a failure to comply with the Code of Conduct:**

If they are are satisfied that the report is sufficient, the Monitoring Officer will write to you and to the Councillor concerned and to the Parish or Town Council, where your complaint relates to a Parish or Town Councillor, notifying you that they are satisfied that no further action is required, and give you both a copy of the Investigating Officer's final report.

The matter will be reported to the Standards and Governance Committee.

### **Evidence of a failure to comply with the Code of Conduct:**

If they are are satisfied that the report is sufficient, the Monitoring Officer will write to you and to the Councillor concerned and to the Parish or Town Council, where your complaint relates to a

Parish or Town Councillor, notifying you of their decision. After considering the public interest the Monitoring Officer will either send the matter for local hearing before the Hearings Panel or seek local resolution.

## **The Public Interest Stage**

In every case where there is sufficient evidence to justify an investigation or formal hearing, the Monitoring Officer must go on to consider (following consultation with the Independent Person) whether an investigation or formal hearing is required in the public interest.

It is not the case that an investigation or formal hearing will automatically take place once the evidential stage is met. An investigation or formal hearing will usually take place unless the Monitoring Officer is satisfied that there are public interest factors tending against such an investigation/hearing which outweigh those tending in favour. In some cases, the Monitoring Officer may be satisfied that the public interest can be properly served by offering the relevant Councillor the opportunity to have the matter dealt with by an alternative remedy rather than bringing the complaint before a formal hearing of the Standards and Governance Committee.

When deciding the public interest, the Monitoring Officer should consider each of the questions set out below as paragraphs a) to e) so as to identify and determine the relevant public interest factors tending for and against investigation/hearing. These factors should enable the Monitoring Officer to form an overall assessment of the public interest.

The explanatory text below each question in paragraphs a) to e) provides guidance to the Monitoring Officer when addressing each particular question and determining whether it identifies public interest factors for or against investigation/hearing. The questions identified are not exhaustive, and not all the questions may be relevant in every case. The weight to be attached to each of the questions, and the factors identified, will also vary according to the facts and merits of each case.

It is quite possible that one public interest factor alone may outweigh a number of other factors which tend in the opposite direction. Although there may be public interest factors tending against an investigation or in a particular case, the Monitoring Officer should consider whether nonetheless an investigation/formal hearing should go ahead and those factors put to the Standards Committee for consideration when coming to its decision.

The Monitoring Officer should consider each of the following questions:

### **How serious is the breach of the Code?**

- The more serious the breach, the more likely it is that a formal hearing is required.
- When assessing the seriousness of a breach, the Monitoring Officer should include in their consideration the Councillor culpability and the harm caused, by asking themselves the questions at b) and c).

### **What is the level of culpability of the Councillor?**

- The greater the Councillor's level of culpability, the more likely it is that an investigation is required.
- Culpability is likely to be determined by:
  - the Councillor's level of involvement;
  - the extent to which the breach of the Code was premeditated and/or planned;
  - the extent to which the Councillor has benefitted from the conduct;
  - whether the Councillor has previously breached the Code of Conduct;
  - whether the breach was or is likely to be continued, repeated or escalated;

### **What are the circumstances of and the harm caused to the complainant?**

- The circumstances of the complainant are highly relevant. The more vulnerable the complainant's situation, or the greater the perceived vulnerability of the complainant, the more likely it is that a formal investigation or hearing is required.
- This includes where a position of trust or authority exists between the Member and complainant.
- It is more likely that a formal hearing is required if the conduct complained of was motivated by any form of prejudice against the complainant's actual or presumed ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity; or if the Councillor targeted or exploited the complainant, or demonstrated hostility towards the complainant, based on any of those characteristics.
- The Monitoring Officer also needs to consider if a formal hearing is likely to have an adverse effect on the complainant's physical or mental health, always bearing in mind the seriousness of the conduct complained of, the availability of special measures and the possibility of a formal hearing without the participation of the complainant.
- The Monitoring Officer should take into account the views expressed by the complainant about the impact that the conduct has had. In appropriate cases, this may also include the views of the complainant's family.
- However, the Monitoring Officer does not act for complainants or their families in the same way as solicitors act for their clients, and Monitoring Officers must form an overall view of the public interest.

### **What is the impact on the community?**

- The greater the impact of the conduct complained of on the community, the more likely it is that an investigation or formal hearing is required.
- Community is not restricted to communities defined by location and may relate to a group of people who share certain characteristics, experiences or backgrounds, including an occupational group.

### **Is an investigation or formal hearing a proportionate response?**

- In considering whether investigation or formal hearing is proportionate to the likely outcome, the following may be relevant:
  - i. The cost, especially where it could be regarded as excessive when weighed against any likely penalty. The Monitoring Officer should not decide the public interest on the basis of this factor alone. It is essential that regard is also given to the public interest factors identified when considering the other questions in paragraphs a) to e), but cost can be a relevant factor when making an overall assessment of the public interest.
  - ii. Cases should be dealt with in accordance with principles of effective case management.

### **Local Resolution**

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing.

In such a case, they will consult with the Independent Person and with you as complainant and seek to agree what you consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the Councillor accepting that their conduct was unacceptable and offering an apology, and/or other remedial action by the authority. If the member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards and Governance Committee and the Parish or Town Council for information, but will take no further action. However, if you tell the Monitoring Officer that any suggested resolution would not be adequate, the Monitoring Officer will refer the matter for a local hearing.

## **Local Hearing**

If the Monitoring Officer considers that local resolution is not appropriate, or you are reasonably not satisfied by the proposed resolution, or the Councillor concerned is not prepared to undertake any proposed remedial action, such as giving an apology or undertaking training, then the Monitoring Officer will report the Investigating Officer's report to the Hearings Panel which will conduct a local hearing before deciding whether the member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the member.

The Hearings Panel is a Sub-Committee of the Council's Standards and Governance Committee. The Standards and Governance Committee has decided that it will comprise three members of the Council, appointed on a political balance basis.

The Independent Person is invited to attend all meetings of the Hearings Panel and their views are sought and taken into consideration before the Hearings Panel takes any decision on whether the 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.

The Council has agreed a procedure for local hearings, which is attached as Appendix Three to these arrangements.

In summary the Monitoring Officer will conduct a "pre-hearing process", requiring the Councillor to give their response to the Investigating Officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing, and the Chair of the Hearings Panel may issue directions as to the manner in which the hearing will be conducted. At the hearing, the Investigating Officer will present their report, call such witnesses as they consider necessary and make representations to substantiate their conclusion that the Councillor has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask you as the complainant to attend and give evidence to the Hearings Panel. The Councillor will then have an opportunity to give their evidence, to call witnesses and to make representations to the Hearings Panel as to why they consider that they did not fail to comply with the Code of Conduct.

The Hearings Panel, with the benefit of any advice from the Independent Person, may conclude that the Councillor did not fail to comply with the Code of Conduct, and so dismiss the complaint. If the Hearings Panel concludes that the Councillor did fail to comply with the Code of Conduct, the Chair will inform the Councillor of this finding and the Hearings Panel will then consider what action, if any, the Hearings Panel should take as a result of the Councillor's failure to comply with the Code of Conduct. In doing this, the Hearings Panel will give the Councillor an opportunity to make representations to the Panel and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter.

## **What action can the Hearings Panel take where a member has failed to comply with the Code of Conduct?**

The Council has delegated to the Hearings Panel such of its powers to take action in respect of individual Councillors as may be necessary to promote and maintain high standards of conduct. Accordingly, the Hearings Panel may –

- Publish its findings in respect of the Councillor's conduct;
- Send a formal letter to the Councillor;

- Report its findings to Council or to the Parish or Town Council for information;
- Recommend to the Councillor's Group Leader (or in the case of un-grouped Councillor, recommend to Council or to Committees) that they be removed from any or all Committees or Sub-Committees of the Council;
- Recommend to the Leader of the Council that the Councillor be removed from the Executive, or removed from particular Portfolio responsibilities;
- Instruct the Monitoring Officer to or recommend that the Parish or Town Council arrange training for the Councillor;
- Remove or recommend to the Parish or Town Council that the Councillor be removed from all outside appointments to which they have been appointed or nominated by the authority or by the Parish or Town Council;
- Withdraw or recommend to the Parish or Town Council that it withdraws certain facilities provided to the Councillor by the Council; or
- Exclude or recommend that the Parish or Town Council exclude the Councillor from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

The Hearings Panel has no power to suspend or disqualify the member or to withdraw members' or special responsibility allowances.

As soon as reasonably practicable after the Hearings panel, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Hearings Panel, and send a copy to you, to the Council and to the Parish or Parish Council, make that decision notice available for public inspection and report the decision to the next convenient meeting of the Council.

The decision notice will include a brief statement of the facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision maker and any sanction applied. The decision notice will be published on the Council's website.

## **Appeals**

There is no right of appeal for you as complainant or for the Councillor against a decision of the Monitoring Officer or of the Hearings Panel.

If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.



## **What will happen to my complaint:**

1. Submit complaint.
2. Monitoring Officer to acknowledge within 5 working days.
3. The Monitoring Officer will review the complaint and inform you of their decision within 10 working days.
4. One of the following will occur:
  - a. No further action.
  - b. Informal resolution.
  - c. Refer to Police.
  - d. Refer to Standards and Governance Committee
  - e. Refer to Investigation, the Monitoring Officer to appoint Investigating Officer.
5. Investigating Officer will undertake investigation (no timescales to ensure thorough investigation)
6. Investigating Officer will produce draft report for comments from Monitoring Officer, you and the person you have complained about.
7. The Investigating Officer will prepare a final report and submit it to the Monitoring Officer.
8. The Monitoring Officer will consider the report in consultation with the Chair of the Standards and Governance Committee and the Independent Person and issue their final decision.

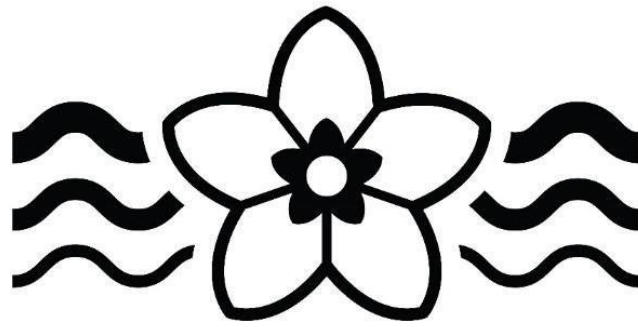
## **Revision of these arrangements**

The Council may by resolution agree to amend these arrangements and has delegated to the Chair of the Hearings Panel the right to depart from these arrangements where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

## **Appendices**

The following appendices, detailed in the text above, are attached:

- Appendix one      Cumberland Council Code of Conduct
- Appendix two      Procedure for Investigations
- Appendix three      Procedure for Hearings



# Cumberland Council

## **Councillor Code of Conduct**

Adopted on 17th May 2022

## Definitions

For the purposes of this Code of Conduct, a “councillor” means a member or co-opted member of a local authority or a directly elected mayor. A “co-opted member” is defined in the Localism Act 2011 Section 27(4) as “a person who is not a member of the authority but who

- a) is a member of any committee or sub-committee of the authority, or;
- b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority;

and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee”.

For the purposes of this Code of Conduct, “local authority” includes county councils, district councils, London borough councils, parish councils, town councils, fire and rescue authorities, police authorities, joint authorities, economic prosperity boards, combined authorities and National Park authorities.

## Purpose of the Code of Conduct

The purpose of this Code of Conduct is to assist you, as a councillor, in modelling the behaviour that is expected of you, to provide a personal check and balance, and to set out the type of conduct that could lead to action being taken against you. It is also to protect you, the public, fellow councillors, local authority officers and the reputation of local government. It sets out general principles of conduct expected of all councillors and your specific obligations in relation to standards of conduct. The LGA encourages the use of support, training and mediation prior to action being taken using the Code. The fundamental aim of the Code is to create and maintain public confidence in the role of councillor and local government.

## General principles of councillor conduct

Everyone in public office at all levels; all who serve the public or deliver public services, including ministers, civil servants, councillors and local authority officers; should uphold the [Seven Principles of Public Life](#), also known as the Nolan Principles.

Building on these principles, the following general principles have been developed specifically for the role of councillor.

In accordance with the public trust placed in me, on all occasions:

- I act with integrity and honesty
- I act lawfully
- I treat all persons fairly and with respect; and
- I lead by example and act in a way that secures public confidence in the role of councillor.

In undertaking my role:

- I impartially exercise my responsibilities in the interests of the local community
- I do not improperly seek to confer an advantage, or disadvantage, on any person

- I avoid conflicts of interest
- I exercise reasonable care and diligence; and
- I ensure that public resources are used prudently in accordance with my local authority's requirements and in the public interest.

## **Application of the Code of Conduct**

This Code of Conduct applies to you as soon as you sign your declaration of acceptance of the office of councillor or attend your first meeting as a co-opted member and continues to apply to you until you cease to be a councillor.

This Code of Conduct applies to you when you are acting in your capacity as a councillor which may include when:

- you misuse your position as a councillor
- Your actions would give the impression to a reasonable member of the public with knowledge of all the facts that you are acting as a councillor;

The Code applies to all forms of communication and interaction, including:

- at face-to-face meetings
- at online or telephone meetings
- in written communication
- in verbal communication
- in non-verbal communication
- in electronic and social media communication, posts, statements and comments.

You are also expected to uphold high standards of conduct and show leadership at all times when acting as a councillor.

Your Monitoring Officer has statutory responsibility for the implementation of the Code of Conduct, and you are encouraged to seek advice from your Monitoring Officer on any matters that may relate to the Code of Conduct. Town and parish councillors are encouraged to seek advice from their Clerk, who may refer matters to the Monitoring Officer.

## **Standards of councillor conduct**

This section sets out your obligations, which are the minimum standards of conduct required of you as a councillor. Should your conduct fall short of these standards, a complaint may be made against you, which may result in action being taken.

Guidance is included to help explain the reasons for the obligations and how they should be followed.

## **General Conduct**

### **1. Respect**

#### **As a councillor:**

**1.1 I treat other councillors and members of the public with respect.**

**1.2 I treat local authority employees, employees and representatives of partner organisations and those volunteering for the local authority with respect and respect the role they play.**

Respect means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a councillor, you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. You should not, however, subject individuals, groups of people or organisations to personal attack.

In your contact with the public, you should treat them politely and courteously. Rude and offensive behaviour lowers the public's expectations and confidence in councillors.

In return, you have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening you are entitled to stop any conversation or interaction in person or online and report them to the local authority, the relevant social media provider or the police. This also applies to fellow councillors, where action could then be taken under the Councillor Code of Conduct, and local authority employees, where concerns should be raised in line with the local authority's councillor- officer protocol.

### **2. Bullying, harassment and discrimination**

#### **As a councillor:**

**2.1 I do not bully any person.**

**2.2 I do not harass any person.**

**2.3 I promote equalities and do not discriminate unlawfully against any person.**

The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in virtual meetings, emails or phone calls, happen in the workplace or at work social events and may not always be obvious or noticed by others.

The Protection from Harassment Act 1997 defines harassment as conduct that causes alarm or distress or puts people in fear of violence and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person.

Unlawful discrimination is where someone is treated unfairly because of a protected characteristic. Protected characteristics are specific aspects of a person's identity defined by the Equality Act 2010. They are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The Equality Act 2010 places specific duties on local authorities. Councillors have a central role to play in ensuring that equality issues are integral to the local authority's performance and strategic aims, and that there is a strong vision and public commitment to equality across public services.

### **3. Impartiality of officers of the council**

**As a councillor:**

#### **3.1 I do not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the local authority.**

Officers work for the local authority as a whole and must be politically neutral (unless they are political assistants). They should not be coerced or persuaded to act in a way that would undermine their neutrality. You can question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written. However, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

### **4. Confidentiality and access to information**

**As a councillor:**

#### **4.1 I do not disclose information:**

- a. given to me in confidence by anyone**
- b. acquired by me which I believe, or ought reasonably to be aware, is of a confidential nature, unless**
  - i. I have received the consent of a person authorised to give it;**
  - ii. I am required by law to do so;**
  - iii. the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or**
  - iv. the disclosure is:**
    - 1. reasonable and in the public interest; and**
    - 2. made in good faith and in compliance with the reasonable requirements of the local authority; and**
    - 3. I have consulted the Monitoring Officer prior to its release.**

**4.2 I do not improperly use knowledge gained solely as a result of my role as a councillor for the advancement of myself, my friends, my family members, my employer or my business interests.**

**4.3 I do not prevent anyone from getting information that they are entitled to by law.**

Local authorities must work openly and transparently, and their proceedings and printed materials are open to the public, except in certain legally defined circumstances. You should work on this basis, but there will be times when it is required by law that discussions, documents and other information relating to or held by the local authority must be treated in a confidential manner. Examples include personal data relating to individuals or information relating to ongoing negotiations.

## **5. Disrepute**

**As a councillor:**

**5.1 I do not bring my role or local authority into disrepute.**

As a councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other councillors and/or your local authority and may lower the public's confidence in your or your local authority's ability to discharge your/it's functions. For example, behaviour that is considered dishonest and/or deceitful can bring your local authority into disrepute.

You are able to hold the local authority and fellow councillors to account and are able to constructively challenge and express concern about decisions and processes undertaken by the council whilst continuing to adhere to other aspects of this Code of Conduct.

## **6. Use of position**

**As a councillor:**

**6.1 I do not use, or attempt to use, my position improperly to the advantage or disadvantage of myself or anyone else.**

Your position as a member of the local authority provides you with certain opportunities, responsibilities and privileges, and you make choices all the time that will impact others. However, you should not take advantage of these opportunities to further your own or others' private interests or to disadvantage anyone unfairly.



## **7. Use of local authority resources and facilities**

**As a councillor:**

**7.1 I do not misuse council resources.**

**7.2 I will, when using the resources of the local authority or authorising their use by others:**

- a. act in accordance with the local authority's requirements; and**
- b. ensure that such resources are not used for political purposes.**

You may be provided with resources and facilities by the local authority to assist you in carrying out your duties as a councillor.

Examples include:

- office support
- stationery
- equipment such as phones, and computers
- transport
- access and use of local authority buildings and rooms.

These are given to you to help you carry out your role as a councillor more effectively and are not to be used for business or personal gain. They should be used in accordance with the purpose for which they have been provided and the local authority's own policies regarding their use.

## **8. Complying with the Code of Conduct**

**As a Councillor:**

**8.1 I undertake Code of Conduct training provided by my local authority.**

**8.2 I cooperate with any Code of Conduct investigation and/or determination.**

**8.3 I do not intimidate or attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings.**

**8.4 I comply with any sanction imposed on me following a finding that I have breached the Code of Conduct.**

It is extremely important for you as a councillor to demonstrate high standards, for you to have your actions open to scrutiny and for you not to undermine public trust in the local authority or its governance. If you do not understand or are concerned about the local authority's processes in handling a complaint you should raise this with your Monitoring Officer.

## Protecting your reputation and the reputation of the local authority

### 9. Interests

#### As a councillor:

##### 9.1 I register and disclose my interests.

Section 29 of the Localism Act 2011 requires the Monitoring Officer to establish and maintain a register of interests of members of the authority.

You need to register your interests so that the public, local authority employees and fellow councillors know which of your interests might give rise to a conflict of interest. The register is a public document that can be consulted when (or before) an issue arises. The register also protects you by allowing you to demonstrate openness and a willingness to be held accountable. You are personally responsible for deciding whether or not you should disclose an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be disclosed by you or other councillors when making or taking part in decisions, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.

You should note that failure to register or disclose a disclosable pecuniary interest as set out in Table 1, is a criminal offence under the Localism Act 2011.

Appendix B sets out the detailed provisions on registering and disclosing interests. If in doubt, you should always seek advice from your Monitoring Officer.

### 10. Gifts and hospitality

#### As a councillor:

- 10.1 I do not accept gifts or hospitality, irrespective of estimated value, which could give rise to real or substantive personal gain or a reasonable suspicion of influence on my part to show favour from persons seeking to acquire, develop or do business with the local authority or from persons who may apply to the local authority for any permission, licence or other significant advantage.**
- 10.2 I register with the Monitoring Officer any gift or hospitality with an estimated value of at least £50 within 28 days of its receipt.**
- 10.3 I register with the Monitoring Officer any gift or hospitality with an estimated value of at least £50 that I have been offered but have refused to accept.**

In order to protect your position and the reputation of the local authority, you should exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you because you are a councillor. The presumption should always be not to accept significant gifts or hospitality. However, there may be times when such a refusal may be difficult if it is seen as rudeness in which case you could accept it but must ensure it is publicly registered. However, you do not need to register gifts and hospitality which are not related to

your role as a councillor, such as Christmas gifts from your friends and family. It is also important to note that it is appropriate to accept normal expenses and hospitality associated with your duties as a councillor. If you are unsure, do contact your Monitoring Officer for guidance.

## **Appendices**

### **Appendix A – The Seven Principles of Public Life**

The principles are:

#### **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 disclose 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.

## Appendix B

### Registering interests

Within 28 days of becoming a member or your re-election or re-appointment to office you must

register with the Monitoring Officer the interests which fall within the categories set out in **Table 1 (Disclosable Pecuniary Interests)** which are as described in “The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012”. You should also register details of your other personal interests which fall within the categories set out in **Table 2 (Other Registerable Interests)**.

**“Disclosable pecuniary interest”** means an interest of yourself, or of your partner if you are aware of your partner's interest, within the descriptions set out in Table 1 below.

**"Partner"** means a spouse or civil partner, or a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners.

1. You must ensure that your register of interests is kept up-to-date and within 28 days of becoming aware of any new interest, or of any change to a registered interest, notify the Monitoring Officer.
2. A ‘sensitive interest’ is as an interest which, if disclosed, could lead to the councillor, or a person connected with the councillor, being subject to violence or intimidation.
3. Where you have a ‘sensitive interest’ you must notify the Monitoring Officer with the reasons why you believe it is a sensitive interest. If the Monitoring Officer agrees they will withhold the interest from the public register.

### Non participation in case of disclosable pecuniary interest

4. Where a matter arises at a meeting which directly relates to one of your Disclosable Pecuniary Interests as set out in **Table 1**, you must disclose the interest, not participate in any discussion or vote on the matter and must not remain in the room/meeting unless you have been granted a dispensation. In addition, you may speak on the matter only if members of the public are also allowed to speak and having spoken you must leave the room/meeting. If it is a ‘sensitive interest’, you do not have to disclose the nature of the interest, just that you have an interest. Dispensation may be granted in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest.
5. Where you have a disclosable pecuniary interest on a matter to be considered or is being considered by you as an Executive member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for

someone else to deal with it

## Disclosure of Other Registrable Interests

6. Where a matter arises at a meeting which **directly relates** to one of your Other Registrable Interests (as set out in Table 2), you must disclose the interest. If you have such an interest you must consider whether a reasonable member of the public, knowing all the facts, would think the interest such that it may influence the way you vote. If the ordinary person would think that the interest may influence your vote then you should not participate in the matter. In these circumstances you may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter. If it is a 'sensitive interest', you do not have to disclose the nature of the interest

## Disclosure of Non- Registrable Interests

7. Where a matter arises at a meeting which **directly relates** to your financial interest or well-being (and is not a Disclosable Pecuniary Interest set out in Table 1) or a financial interest or well-being of a relative or close associate, you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.
8. Where a matter arises at a meeting which **affects**—
  - a. your own financial interest or well-being;
  - b. a financial interest or well-being of a friend, relative, close associate; or
  - c. a financial interest or wellbeing of a body included under Other Registrable Interests set out in Table 1

you must disclose the interest. In order to determine whether you may participate in the meeting after disclosing your interest the following test should be applied:

9. Where a matter **affects** your financial interest or well-being so that a reasonable member of the public knowing all the facts would believe that it may affect your view of the wider public interest you may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter.

If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

10. Where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must make sure that any written statement of that decision records the existence and nature of your interest.

**Table 1: Disclosable Pecuniary Interests**

This table sets out the explanation of Disclosable Pecuniary Interests as set out in the [Relevant Authorities \(Disclosable Pecuniary Interests\) Regulations 2012](#).

<b>Subject</b>	<b>Description</b>
<b>Employment, office, trade, profession or vocation</b>	Any employment, office, trade, profession or vocation carried on for profit or gain.
<b>Sponsorship</b>	<p>Any payment or provision of any other financial benefit (other than from the council) made to the councillor during the previous 12-month period for expenses incurred by him/her in carrying out his/her duties as a councillor, or towards his/her election expenses.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.</p>
<b>Contracts</b>	<p>Any contract made between the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners (or a firm in which such person is a partner, or an incorporated body of which such person is a director* or a body that such person has a beneficial interest in the securities of*) and the council</p> <p>—</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
<b>Land and Property</b>	<p>Any beneficial interest in land which is within the area of the council.</p> <p>'Land' excludes an easement, servitude, interest or right in or over land which does not give the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/ civil partners (alone or jointly with another) a right to occupy or to receive income.</p>
<b>Licenses</b>	Any licence (alone or jointly with others) to occupy land in the area of the council for a month or longer

<b>Corporate tenancies</b>	Any tenancy where (to the councillor's knowledge)— (a) the landlord is the council; and (b) the tenant is a body that the councillor, or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/ civil partners is a partner of or a director* of or has a beneficial interest in the securities* of.
<b>Securities</b>	Any beneficial interest in securities* of a body where— (a) that body (to the councillor's knowledge) has a place of business or land in the area of the council; 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 councillor, or his/ her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

\* 'director' includes a member of the committee of management of an industrial and provident society.

\* '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.

\*

## Table 2: Other Registrable Interests

You have a personal interest in any business of your authority where it relates to or is likely to affect:

- a) Any unpaid directorships
- b) any body of which you are in general control or management and to which you are nominated or appointed by your authority
- c) any body
  - (i) exercising functions of a public nature
  - (ii) any body directed to 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



## CUMBERLAND COUNCIL

### Procedure for Local Investigation of Referred Complaints

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#### Introduction and Summary

This note sets out the procedure which will be followed in the local investigation of allegations of misconduct by Councillors or Co-opted Members (for ease of reference, hereinafter jointly referred to as “Councillors”). No departure will be made from this procedure unless and until the Monitoring Officer has first notified the Councillor against whom the allegation has been made of the proposed variation to the procedure and the reasons for that variation.

This procedure applies to breaches of the authority’s Code of Conduct for Members.

When the Monitoring Officer receives an allegation of a failure by a Councillor to comply with the Code of Conduct, and, following consultation with the Independent Person and Chair of the Standards Committee, they are of the opinion that the allegation merits investigation, they shall arrange for an Investigating Officer to investigate the allegation and to report to the Monitoring Officer.

Where the Investigating Officer has found, after investigation, that the Councillor has not acted in breach of the authority’s Code of Conduct for Members or a local protocol, the Monitoring Officer will review the Investigating Officer’s report and, following consultation with the Independent Person and the Chair of the Standards Committee, if they are of the view that the report is sufficient they will write to you, enclosing a copy of the report and advise you that no further action will be taken.

Where the Investigating Officer has found that there has been a failure to comply with the Code of Conduct for Members or a local protocol and a Local Resolution has not been possible then the Monitoring Officer, following consultation with the Independent Person and the Chair of the Standards Committee, may decide to hold a full hearing to determine whether a breach of the authority’s Code of Conduct has occurred and whether any action should be taken in consequence.

In this process, the function of the Investigating Officer is to ensure, as far as possible, that all the information which is relevant to the allegation is identified and presented to the Monitoring Officer, to enable them, in consultation with the Chair of the Standards Committee, to make an informed decision as to whether the Councillor has failed to comply with the authority’s Code of Conduct for Members, and upon any consequential action. At any Hearing, the Standards Committee acts in an inquisitorial manner, rather than an adversarial manner, seeking the truth in relation to the conduct of the Councillor on the balance of the information available to it, and may commission further investigation or information if it needs

to do so in order to come to a decision. In the event of the Investigating Officer requiring information from, or the attendance of, any Officer or elected Member in connection with the conduct of an investigation, such Officer or Member will be expected to co-operate fully with the Investigating Officer in accordance with their responsibilities under their contracts of employment and Code of Conduct respectively.

## **1. Interpretation**

‘Councillor’ means the member or co-opted member of the authority who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise. It also includes the Councillor’s representative.

‘Investigating Officer’ means the person appointed by the Monitoring Officer to undertake that investigation (which may include the Monitoring Officer and/or his or her representative).

‘The Matter’ is the subject matter of the Investigating Officer’s report.

‘The Standards Committee’ refers to the Standards Committee or to any Standards Sub-Committee to which it has delegated the conduct of the hearing, unless the context indicates that it refers only to the Standards Committee itself.

## **2. Notification of Reference of Allegation to the Monitoring Officer**

### **(a) Appointment of Investigating Officer**

If it is determined that an investigation is appropriate, the Monitoring Officer will appoint an Investigating Officer in respect of the allegation and instruct them to conduct an investigation of the allegation and to report thereon to the Monitoring Officer. The Investigating Officer may be an officer of the authority, an officer of another local authority, or an external Investigating Officer.

The Investigating Officer may appoint persons to assist them in the conduct of their functions and may obtain such professional advice as may be necessary for the conduct of the investigation.

### **(b) Notification to the Councillor**

The Monitoring Officer will then notify in writing the Councillor against whom the allegation is made:

- (i) that the allegation has been referred to him for local investigation and determination;
- (ii) the identity of the person making the allegation (unless identification of the complainant might prejudice the investigation or put the complainant at risk);

- (iii) of the conduct which is the subject of the allegation;
- (iv) of the section(s) of the Code of Conduct or local protocol which appear to him to be relevant to the allegation;
- (v) of the procedure which will be followed in respect of the allegation, and
- (vi) of the identity of the Investigating Officer.

(c) Notification to the Parish or Town Council Clerk

Where the allegation relates to the conduct of a member of a Parish or Town Council in their capacity as such, at the same time as notifying the Councillor, the Monitoring Officer will notify the Clerk of the Parish or Town Council concerned in writing of the matters set out in paragraphs 2(b)(i) - (iv) and (vi) above.

(d) Notification to the Person who made the Allegation

At the same time as notifying the Councillor, the Monitoring Officer will notify the person who made the allegation in writing of the matters set out in paragraphs 2(b)(i) - (iv) and (vi) above.

(e) Initial response of the Councillor

In notifying the Councillor of receipt of the allegation, the Monitoring Officer shall request the Councillor to respond to the Investigating Officer in writing within 14 days of notification as follows:

- (i) advising the Investigating Officer whether the Councillor admits or denies the breach of the Code of Conduct or local protocol which is the subject of the allegation;
- (ii) listing any documents which the Councillor would wish the Investigating Officer to take into account in any investigation of the allegation, where possible providing copies of these documents, and informing the Investigating Officer of where the original documents may be inspected,
- (iii) providing the Investigating Officer with the name, address and telephone number (or other appropriate contact details) of any person or organisation whom the Councillor would wish the Investigating Officer to interview in the course of any investigation of the allegation (providing that, in the reasonable opinion of the Investigating Officer, the number of such is not excessive or disproportionate), and
- (iv) providing the Investigating Officer with any information which the Councillor would wish the Investigating Officer to seek from any person or organisation.

- (f) Supporting information from the person who made the allegation

In notifying the person who made the allegation as above, the Monitoring Officer will request the person to respond to the Investigating Officer within 14 days

- (i) listing any documents which the person would wish the Investigating Officer to take into account in any investigation of the allegation, where possible providing copies of these documents, and informing the Investigating Officer of where the original documents may be inspected,
- (ii) providing the Investigating Officer with the name, address and telephone number (or other appropriate contact details) of any person or organisation whom the person would wish the Investigating Officer to interview in the course of any investigation of the allegation, and
- (iii) providing the Investigating Officer with any information which the person would wish the Investigating Officer to seek from any person or organisation.

### **3. Conduct of Investigation**

- (a) Purpose of the Investigation

The purpose of the Investigating Officer's investigation is to enable them to prepare and present to the Monitoring Officer a report which, if subsequently referred to the Standards Committee, would provide it with sufficient information to determine whether the Councillor has acted in breach of the Code of Conduct or local protocol and, where there has been a breach of the Code of Conduct or local protocol, whether any action should be taken in respect of the Councillor or in consequence of the breach, and what any such action should be.

- (b) Termination of the Investigation

The Investigating Officer may terminate their investigation at any point, where they are satisfied that they have sufficient information to enable them to report to the Standards Committee and to enable the Standards Committee to come to a considered decision on the allegation.

- (c) Additional Matters

Where, in the course of their investigation, the Investigating Officer becomes aware of any other matter which appears to them to indicate a breach of the Code of Conduct or local protocol by the Councillor other than the breach which they are currently investigating, the Investigating Officer shall either:

- (i) *(where the additional matter relates to an apparent breach of the authority's Code of Conduct by a member of the principal authority)* report the matter to the Monitoring Officer who will provide the

Councillor with details of the matter in the form set out in paragraphs 2(b)(iii) and (iv) above and invite the Councillor to provide a statement as to why the additional matter does not constitute a breach of the Code of Conduct;

- (ii) *(where the additional matter constitutes an apparent breach of the authority's local protocols but not a breach of the Code of Conduct by a member of the principal authority)* report the matter to the Monitoring Officer who will provide the Councillor with details of the matter in the form set out in paragraphs 2(b)(iii) and (iv) above and invite the Councillor to provide a statement as to why the additional matter does not constitute a breach of the authority's code of conduct. The Monitoring Officer, in consultation with the Independent Person and the Chair of the Standards Committee, will then take a decision whether to refer the matter to an Investigating Officer for local investigation and/or report to the Standards Committee as appropriate.;
  - (iii) *(Where the additional matter relates to an apparent breach of the Code of Conduct by a Parish or Town Councillor)* notify the Clerk to the Town or Parish Council of the additional matter and take no further action in respect thereof.
- (d) Following notification to the Councillor, the Investigating Officer will identify an initial list of persons to be interviewed, organisations from whom information is to be sought and documents to be inspected as part of the investigation. Where the Councillor has provided the Investigating Officer with the information requested in accordance with Paragraphs 2(f)(ii) and (iii) above, the Investigating Officer shall include in this list each document, person and organisation referred to in that response, unless they are of the opinion that the inclusion of that document, person or organisation would unreasonably delay the completion of the investigation rather than contribute to the accuracy of the Investigating Officer's final report. The Investigating Officer may supplement or amend this list at any stage of the investigation.
- (e) Production of documents, information and explanations
- (i) In the course of the investigation, the Investigating Officer and any person authorised on their behalf may make such enquiries of any person or organisation, and request any person or organisation to provide any document or information which is in his/its possession or control, or provide any explanation, as they think necessary for the purposes of carrying out the investigation.
  - (ii) In the course of the investigation, the Investigating Officer and any person authorised on their behalf may require any authority of which the Councillor is a member to provide any document which is in his/its possession or control which they think necessary for the

purposes of carrying out the investigation.

- (iii) Any decision about whether any particular document is sensitive or commercially sensitive and thus not suitable for publication shall rest with the Monitoring Officer in consultation with the Independent Person and Chair of the Standards Committee.

(f) Interviews

(i) Requesting attendance

In the course of the investigation the Investigating Officer may request any person to attend and appear before him or otherwise provide any information, document or explanation for the purpose of Paragraph 3(e), as they think necessary for the purposes of carrying out the investigation.

(ii) Representation

Any person who appears before the Investigating Officer may arrange to be accompanied at their own expense by a solicitor or friend.

(iii) Notes of interviews

Where practicable, following the interview the Investigating Officer shall produce a written note of the material points of the interview, provide two copies of that note to the person interviewed and ask them to return one copy signed as a correct record of the interview, with such corrections or amendments as they may feel necessary for that purpose.

(g) Costs

The Investigating Officer may, where they consider that it is appropriate in order to facilitate the conduct of the investigation, pay to any person who provides any document, information, advice or explanation in response to their request, such fees or allowances as they consider to be appropriate subject to any maxima set by the authority.

#### **4. The Draft Report**

- (a) When the Investigating Officer is satisfied that they have sufficient information to meet the requirement set out in Paragraph 3(a), or has obtained as much information as is likely to be reasonably capable of being obtained, they shall prepare a draft report with a “confidential” and “draft” marking setting out:

- (i) the details of the allegation;

- (ii) the relevant provisions of statute, of the Code of Conduct and any relevant local Protocols
  - (iii) the Councillor's initial response to notification of the allegation (if any);
  - (iv) the relevant information, evidence, advice and explanations which they have obtained in the course of the investigation;
  - (v) a list of any documents relevant to the matter;
  - (vi) a list of those persons whom they have interviewed and those organisations from whom they have sought information;
  - (vii) a note of any person or organisation who has failed to co-operate with the investigation and the manner in which they have failed to co-operate;
  - (viii) a statement of their draft findings of fact;
  - (ix) their conclusion (with reasons) as to whether the Councillor has or has not failed to comply with the Code of Conduct for Members of any authority or a local protocol, and
  - (x) any recommendations which the Investigating Officer is minded to make to any authority concerned for reviewing or reconsidering any decision which was the subject of the breach of the Code of Conduct or local protocol, for rectifying any deficiency in the authority's decision-making procedures or for preventing or deterring any breach of the Code of Conduct or local protocol or to remedy the position of any person who may have suffered detriment or injustice as a result of the breach. *Where the allegation relates to a Parish or Town Councillor, such recommendations would be recommendations which the Investigating Officer would recommend that the Standards Committee make to the Parish or Town Council.*
- (b) The draft report should also state that the report does not necessarily represent the Investigating Officer's final finding, and that the investigating Officer will present a final report to the Monitoring Officer once they have considered any comments received on the draft report.
- (c) The Investigating Officer shall then send a copy of their draft report in confidence to the Councillor and the person making the allegation, and request that they send any comments thereon to them within 14 days.
- (d) The Investigating Officer may send a copy of, or relevant extracts from their draft report in confidence to any person on whose evidence they have relied

in compiling the draft report, and request that they send any comments thereon to them within 14 days.

## **5. The Final Report**

- (a) After the expiry of that period (or such extended period as the Investigating Officer may allow), the Investigating Officer shall reconsider and amend their draft report in the light of any comments received, and produce and send to the Monitoring Officer his final report. The final report should be marked "final" and state that the report represents the Investigating Officer's final findings and may, if necessary, be presented to the Standards Committee, and should, subject to 3(e)(iii), have appended to it copies of any documents which the Investigating Officer has relied on in reaching their conclusions, such as background documents of telephone conversations, letters, notes of interviews with witnesses and a chronology of events;
- (b) The Monitoring Officer shall then send a copy of the final report to the Councillor, advising that:
  - (i) where the final report concludes that there has not been a failure to comply with the Code of Conduct for Members or a local protocol, (if the Monitoring Officer, in consultation with the Independent Person and Chair of the Standards Committee are satisfied) that no further action is required, and
  - (ii) where the final report concludes that there has been a failure by the Councillor to comply with the Code of Conduct for Members or with a local protocol, they will consider, in consultation with the Independent Person and Chair of the Standards Committee, whether the matter be further dealt with by Local Resolution or a Local Hearing.
- (c) If the complaint is dealt with by Local Resolution then that is the end of the matter.
- (d) If it is determined that there should be a Local Hearing then the Procedure for Determination of Allegations about the Personal Conduct of Members will apply.



## **CUMBERLAND COUNCIL**

### **PROCEDURE FOR DETERMINATION OF ALLEGATIONS ABOUT THE PERSONAL CONDUCT OF COUNCIL MEMBERS**

#### **INTRODUCTION**

1. The local determination of complaints by the Standards and Governance Committee (or sub-committee thereof) following a local investigation and referral by the Monitoring Officer, will be governed by this procedure.
2. 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 allegation will be heard by the Standards and Governance Committee or a Sub-Committee of the Standards and Governance Committee.

#### **PRE-HEARING PROCESS [LOCAL INVESTIGATIONS]**

3. Upon receipt of the final report of the Investigating Officer including a finding that the Member failed to comply with the Code of Conduct for Members and where it has not been possible to reach a local resolution or the Monitoring Officer, in consultation with the Independent Person and the Chair of the Standards and Governance Committee, finds that the matter should be considered at a formal hearing the Monitoring Officer shall arrange for the Standards and Governance Committee to consider the matter.
4. Where the Monitoring Officer is the Investigating Officer they must arrange for a separate legal advisor to the Committee to be appointed in respect of the allegation.

#### **NOTIFYING THE MEMBER AND COMPLAINANT**

5. Within five working days of the receipt of the Investigating Officer's report the Monitoring Officer shall send a copy of the report to the Member and, where possible, the Complainant, making the provision of the report conditional upon any appropriate undertaking of confidentiality. The Chairman and Members of the Committee shall be informed of the allegation by the Monitoring Officer, as well as any Parish or Town Council Clerk where the allegation relates to conduct of a Member in their capacity as a member of a Parish or Town Council.

6. The Member shall be asked for a written response, within fifteen working days of the receipt of the report, which response shall set out the reply to the Investigating Officer's report and state whether or not they:
  - i. disagree with any of the findings of fact in the Investigating Officer's report, including the reasons for any disagreement;
  - ii. wants to be represented, at their own expense, at the hearing by any other person;
  - iii. wants to give evidence to the Committee, either verbally or in writing;
  - iv. wants to call relevant witnesses to give evidence to the Committee;
  - v. wants any part of the hearing to be held in private;
  - vi. wants any part of the Investigating Officer's report or other relevant documents to be withheld from the public.
7. The Member shall be informed that if, at the meeting of the Committee, they seek to dispute any matter contained in the Investigating Officer's report without having previously notified the Monitoring Officer of the intention to do so the Committee may either [a] adjourn the meeting to enable the Investigating Officer to provide a response, or [b] refuse to allow the disputed matter to be raised.
8. Upon receipt, the Monitoring Officer shall invite the relevant Investigating Officer to comment, within ten working days, on the Member's response, and to say whether or not they:
  - i. want to be represented or be present at the hearing;
  - ii. wants to call relevant witnesses to give evidence or submit written or other evidence to the Committee;
  - iii. wants any part of the hearing to be held in private;
  - iv. wants any part of the Investigating Officer's report or other relevant documents to be withheld from the public.
9. Upon receipt of the Investigating Officer's response, the Monitoring Officer will consider the responses of the Member and the Investigating Officer and request the Monitoring Officer to set a date for the hearing in consultation with the Chairman.
10. The Member and the Investigating Officer are entitled to request that any witnesses they want should be called. However, the Chairman of the Hearing may

limit the number of witnesses to be called, if they believe the number requested is unreasonable and that some witnesses will simply be repeating the evidence of earlier witnesses, or else not providing evidence that will assist the Committee to reach its decision.

11. Nothing in this procedure shall limit the Chairman of the Hearing from requesting the attendance of any additional witnesses whose evidence they consider would assist the Committee to reach its decision.
12. The Monitoring Officer, in consultation with the Chairman, will:
  - i. confirm a date, time and place for the Hearing, which must be within three months from the date that the Investigating Officer's report was received;
  - ii. confirm the main facts of the case that are agreed;
  - iii. confirm the main facts that are not agreed;
  - iv. provide copies of any written evidence to the relevant parties;
  - v. confirm which witnesses will be called by the parties;
  - vi. provide the parties with a copy of the proposed procedure for the Hearing, specifying which parts of the matter, if any, may be considered in private; and
  - vii. ensure the appropriate information, with the agenda, is provided to everyone involved in the Hearing at least two weeks before the proposed date of the Hearing.

## **THE HEARING**

13. The Committee shall decide, on a balance of probabilities, whether the complaint[s] is or are upheld upon the evidence presented to it.
14. Each Committee Member shall have one vote, and all matters/issues shall be decided by a simple majority of votes cast. If there are equal numbers of votes for and against, the Chairman will have second or casting vote.
15. The meeting of the Committee will be open to the public and press unless confidential information or exempt information is likely to be disclosed.

## **PROCEDURE AT THE HEARING**

16. The initial order of business at the meeting shall be as follows:-
  - i. Establishing whether the Committee is quorate;

- ii. Declarations of interest;
  - iii. Introductions
  - iv. Consideration as to whether to adjourn or to proceed in the absence of the Member, if the Member is not present;
  - v. Consideration of any procedural issues and, in particular, any representation from the Investigating Officer and/or the Member as to reasons why the Committee should exclude the press and public and determination as to whether to exclude the press and public.
17. The purpose of the Hearing is to determine the facts at issue and what action, if any, should be taken. An inquisitorial approach will be adopted by the Committee members in seeking information and clarifying facts and issues. The Chairman will control the procedure and evidence presented at the Hearing, including the questioning of witnesses.
18. The Committee members may at any time seek legal advice from their advisor. [Such advice will be notified to the public in the presence of the Investigation Officer and the Member.]
19. The procedure will be as follows, subject to the Chairman being able to make changes as he or she thinks fit in order to ensure a fair and efficient hearing.

### **PROCEEDING IN THE ABSENCE OF THE MEMBER**

20. If the Member is not present at the start of the Hearing:
- i. The Chairman will ask the Monitoring Officer whether the Member has indicated their intention not to attend the Hearing;
  - ii. The Standards Committee shall then consider any reasons which the Member has provided for not attending the Hearing and shall decide whether it is satisfied that there is sufficient reason for such failure to attend;
  - iii. If the Standards Committee is satisfied with such reasons, it shall adjourn the Hearing to another date;
  - iv. If the Standards Committee is not satisfied with such reasons, or if the Member has not given any such reasons, the Standards Committee shall decide whether to consider the matter and make a determination in the absence of the member or to adjourn the Hearing to another date.

#### **Presentation by the Investigating Officer**

- 21 The Investigating Officer will present the evidence which is relevant to the matter. The Investigating Officer may introduce any witness required to substantiate any matter

contained in the report which has been disputed and present any other relevant evidence.

- 22 The Member or their representative may ask questions of the Investigating Officer or any witness.
- 23 The Committee members may ask questions of the Investigating Officer or any witness.

### **Presentation by the Member**

- 24 The Member or their representative will present the evidence which is relevant to the matter. The Member or their representative may introduce witnesses or present any other relevant evidence.
- 25 The Investigating Officer may ask questions of the Member, or any witness.
- 26 The Committee members may ask questions of the Member or any witness.

### **Summing Up**

- 27 The Investigating Officer and then the Member or their representative will be given the opportunity to sum up.

### **Power to Adjourn**

- 28 If the Committee at any time prior to determining whether there was a failure to comply with the Code of Conduct are of the opinion that they require additional evidence on any point in order to be able to come to a considered conclusion on the matter the Committee may (on not more than one occasion) adjourn the hearing and make a request to the Monitoring Officer to seek and provide such additional evidence and to undertake further investigation on any point specified by the Standards Committee.

### **Decision by the Committee**

29. The Committee will consider in private all the evidence which it has heard in order to establish its findings of fact.
30. At any stage in the consideration of the matter the Committee may return to ask further questions of the Investigating Officer or the Member or seek further information. The other party will be given an opportunity to comment upon the questions asked or the responses made.
31. The Committee may seek legal advice at any time. Such advice may be given in the presence of the Investigating Officer and the Member if appropriate.

32. At the conclusion of their deliberations, the Chairman will advise the Member and the Investigating Officer of their findings and whether the Code of Conduct has been breached.
33. If the Committee concludes that the Member has acted in breach of the Code representations will be invited from the Investigating Officer and the Member as to what action, if any, it should take. The Committee may ask questions of the Member and the Investigating Officer.

### **Determining the Matter**

34. The Committee, having heard any representations, will consider what actions, if any, to take.

The findings that the Committee may make are:

- a) That there has been no breach of the Code;
- b) That the Member has failed to comply with the Code of Conduct, but that no action needs to be taken;
- c) That the Member has failed to comply with the Code of Conduct and the sanction(s) should be that the Standards Committee:
  - ❖ Publish its findings in respect of the Member's conduct;
  - ❖ Send a formal letter to the Member
  - ❖ Report its findings to the Council or Parish Council for information;
  - ❖ Recommend to the member's Group Leader (or in the case of an ungrouped member(s), recommend to Council or Committees) that they be removed from any or all committees or sub-committees of the Council;
  - ❖ Recommend to the Leader of the Council that the member be removed from the Executive or removed from particular Portfolio responsibilities;
  - ❖ Instruct the Monitoring Officer or recommend that the Parish Council arrange training for the member;
  - ❖ Remove or recommend to the Parish Council that the member be removed from all outside appointments to which they have been appointed or nominated by the Council or the Parish Council;
  - ❖ Withdraw or recommend to the Parish Council that it withdraws certain facilities provided to the member by the Council; or
  - ❖ Exclude or recommend that the Parish Council exclude the member from the member from Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committees and Sub-Committee meetings.

35. In deciding what penalty to set, the Committee will consider all relevant circumstances.
36. The Chairman will announce the decision of the Committee, the action, if any, it will take and the reasons for the decision.

37. The Committee will then consider in open session whether there are any recommendations which should be made to any Authority concerned arising from the consideration of the allegation.

## **APPEAL**

38. There is no right of appeal against the decision of the Hearing Panel.

## **NOTICE OF FINDINGS**

39. A full written decision in draft [including the reasons for it] will be prepared as soon as practicable. The draft decision will be forwarded to the Chairman of the Committee for approval.
40. Once approved and as soon as reasonably practicable after the Hearing the full written decision will be forwarded to the Member, the Complainant [where possible], the Investigating Officer and any other Authority concerned.
41. If the Hearing Panel wishes to publish its finding, the Monitoring Officer, subject to paragraph 42, shall arrange for a summary of the findings to be published in one newspaper circulating in the area of the Authority in accordance with paragraphs 43 and 44 or in such other manner as the Hearing Panel may determine (for example, by reporting the matter to Council for information).
42. Where the Committee determines that there has not been a breach of the Code of Conduct, the notice shall:
- i. State that the 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
  - ii. Not be published in the local newspaper if the Member so requests.
43. Where the Committee determines that there has been a failure to comply with the Code of Code but no action is required, the notice shall:
- i. State that the 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;
  - ii. Specify the details of the failure;
  - iii. Give reasons for the decision reached; and
44. Where the 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 include a brief statement of the facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision maker and any sanction

applied. The decision notice will be published on the Council's website.

45. 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, shall be available for public inspection for six years after the Hearing.