

Appendix 3 (Please note this Appendix contains Appendices)

South Lakeland District Council Arrangements for dealing with standards allegations under the Localism Act 2011

1 Context

These “Arrangements” set out how you may make a complaint that an elected or co-opted member of this authority *[or of a parish council within its area]* has failed to comply with the authority’s Code of Conduct, and sets out how the authority will deal with allegations of a failure to comply with the authority’s Code of Conduct.

Under Section 28(6) and (7) of the Localism Act 2011, the Council must have in place “arrangements” under which allegations that a member or co-opted member of the authority *[or of a parish council within the authority’s area]*, or of a Committee or Sub-Committee of the authority, has failed to comply with that authority’s Code of Conduct can be investigated and decisions made on such allegations.

Such arrangements must provide for the authority to appoint at least one Independent Person, whose views must be sought by the authority before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the authority at any other stage, or by a member *[or a member or co-opted member of a parish council]* against whom an allegation has been made.

2 The Code of Conduct

The Council has adopted a Code of Conduct for members, which is attached as Appendix One to these arrangements and available for inspection on the authority’s website and on request from Reception at the Council Offices, South Lakeland House, Lowther Street, Kendal.

Each parish council is also required to adopt a Code of Conduct. If you wish to inspect a Parish Council’s Code of Conduct, you should do so by going to the ~~inspect any~~ website operated by the parish council and request the parish clerk to allow you to inspect the parish council’s Code of Conduct.

3 Making a complaint

If you wish to make a complaint, please write or email to –

Monitoring Officer
South Lakeland District Council,
South Lakeland House,
Lowther Street,
Kendal,
Cumbria, LA9 4UQ

Or –

monitoringofficer@southlakeland.gov.uk

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.

In order to ensure that we have all the information which we need to be able to process your complaint, please complete and send us the model complaint form, which can be downloaded from the authority's website, ~~next to the Code of Conduct~~, and is available on request from Reception at the main council Offices.

Please do provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. 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 member 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 acknowledge receipt of your complaint within 5 working days of receiving it, and will keep you informed of the progress of your complaint.

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.

4 Will your complaint be investigated?

The Monitoring Officer will review every complaint received and, after consultation with the Independent Person, take a decision as to whether it merits formal investigation. This decision will normally be taken within 10 working days of receipt of your complaint. Where the Monitoring Officer has taken a decision, he/she will inform you of his/her decision and the reasons for that decision.

In certain cases the Monitoring Officer may refer particular complaints to the Standards Committee where he/she feels that it would be inappropriate for him/her to take a decision on it, for example where he/she has previously advised the member on the matter or the complaint is particularly sensitive.

Where he/she requires additional information in order to come to a decision, he/she may come back to you for such information, and may request information from the member against whom your complaint is directed. Where your complaint relates to a Parish Councillor, the Monitoring Officer may also inform the Parish Council of your complaint and seek the views of the Parish 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 member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the authority. Where the member 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.

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.

5 How is the investigation conducted?

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

If the Monitoring Officer decides that a complaint merits formal investigation, he/she 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 he/she needs to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and 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 member against whom you have complained and provide him/her with a copy of your complaint, and ask the member to provide his/her explanation of events, and to identify what documents he needs to see and who he needs to interview. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the member, or delay notifying the member until the investigation has progressed sufficiently.

At the end of his/her investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to you and to the member 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 his/her final report to the Monitoring Officer.

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

The Monitoring Officer will review the Investigating Officer's report and, (following consultation with the Independent Person), if he/she is satisfied that it is sufficient, the Monitoring Officer will write to you and to the member concerned and to the Parish Council, where your complaint relates to a Parish Councillor, notifying you that he/she is satisfied that no further action is required, and give you both a copy of the Investigating Officer's final report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider his/her report.

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

The Monitoring Officer will review the Investigating Officer's report and after considering the public interest will then either send the matter for local hearing before the Hearings Panel or, after consulting the Independent Person, 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 (in 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 elected Member the opportunity to have the matter dealt with by an alternative remedy rather than bringing the complaint before a formal hearing of the Standards Committee.

When deciding the public interest, 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:

a) 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 elected Member's culpability and the harm caused, by asking themselves the questions at b) and c).

b) What is the level of culpability of the elected Member?

- The greater the Member's level of culpability, the more likely it is that an investigation is required.
- Culpability is likely to be determined by:

- the Member's level of involvement;
- the extent to which the breach of the Code was premeditated and/or planned;
- the extent to which the Member has benefitted from the conduct;
- whether the Member has previously breached the Code of Conduct;
- whether the breach was or is likely to be continued, repeated or escalated;

c) 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 Member 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.

d) 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.

e) 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.

7.1 Local Resolution

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she 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 member accepting that his/her 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 Committee and the Parish 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.

7.2 Local Hearing

If the Monitoring Officer considers that local resolution is not appropriate, or you are not satisfied by the proposed resolution, or the member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, 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 Council has agreed a procedure for local hearings, which is attached as Appendix Three to these arrangements.

Essentially, the Monitoring Officer will conduct a "pre-hearing process", requiring the member to give his/her 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 his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the member 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 member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Hearings Panel as to why he/she considers that he/she 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 member did not fail to comply with the Code of Conduct, and so dismiss the complaint. If the Hearings Panel concludes that the member did fail to comply with the Code of Conduct, the Chair will inform the member of this finding and the Hearings Panel will then consider what action, if any, the Hearings Panel should take as a result of the member's failure to comply with the Code of Conduct. In doing this, the Hearings Panel will give the member 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.

8 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 members as may be necessary to promote and maintain high standards of conduct. Accordingly the Hearings Panel may –

- 8.1 Publish its findings in respect of the member's conduct;
- 8.2 Send a formal letter to the Member;
- 8.3 Report its findings to Council or to the Parish Council for information;
- 8.4 Recommend 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;
- 8.5 Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;

- 8.6 Instruct the Monitoring Officer to or recommend that the Parish Council arrange training for the member;
- 8.7 Remove 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;
- 8.8 Withdraw or recommend to the Parish Council that it withdraws certain facilities provided to the member by the Council; or
- 8.9 Exclude 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.

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

9 What happens at the end of the hearing?

At the end of the hearing, the Chair will state the decision of the Hearings Panel as to whether the member failed to comply with the Code of Conduct and as to any actions which the Hearings Panel resolves to take.

As soon as reasonably practicable thereafter, 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 member and to the 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.

10 Who are the Hearings Panel?

The Hearings Panel is a Sub-Committee of the Council's Standards Committee. The Standards 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 his/her 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.

11 Who is the Independent Person?

The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the members of Council.

A person cannot be "independent" if he/she –

- 11.1 Is, or has been within the past 5 years, a member, co-opted member or officer of the authority;
- 11.2 Is or has been within the past 5 years, a member, co-opted member or officer of a parish council within the authority's area, or
- 11.3 Is a relative, or close friend, of a person within paragraph 11.1 or 11.2 above. For this purpose, "relative" means –
 - 11.3.1 Spouse or civil partner;
 - 11.3.2 Living with the other person as husband and wife or as if they were civil partners;
 - 11.3.3 Grandparent of the other person;
 - 11.3.4 A lineal descendent of a grandparent of the other person;
 - 11.3.5 A parent, sibling or child of a person within paragraphs 11.3.1 or 11.3.2;
 - 11.3.6 A spouse or civil partner of a person within paragraphs 11.3.3, 11.3.4 or 11.3.5; or
 - 11.3.7 Living with a person within paragraphs 11.3.3, 11.3.4 or 11.3.5 as husband and wife or as if they were civil partners.

Please note, however, that transitional arrangements allow the Council to appoint a person as an Independent Person who, although not a member of the Standards Committee at the time of appointment (or thereafter), has held such a post during the 5 years ending 30 June 2012.

12 Revision of these arrangements

The Council's Standards Committee may by resolution agree to amend these arrangements, and the Council has delegated to the Chair of the Hearings Panel the right to depart from these arrangements where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

13 Appeals

There is no right of appeal for you as complainant or for the member 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.

Appendix One _____ **The authority's Code of Conduct** ([New one to be inserted](#))

SOUTH LAKELAND DISTRICT COUNCIL

PROCEDURE FOR INVESTIGATION OF MISCONDUCT COMPLAINTS

Article I. INTRODUCTION

1. This procedure applies to the investigation of misconduct complaints where a decision has been taken to refer for formal investigation.

Article II. APPOINTMENT OF INVESTIGATING OFFICER

2. Once a decision has been made to refer a complaint for local investigation, the Monitoring Officer will appoint an Investigating Officer in respect of the allegation, and instruct him/her to conduct an investigation of the allegation and to make a report to the Monitoring Officer. The Investigating Officer may be an Officer of the Council, the Officer of another Local Authority, or an external Investigating Officer.

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

Article III. NOTIFYING THE MEMBER

3. The Monitoring Officer shall notify the Member in writing:
 - i. that the allegation has been referred for formal investigation;
 - 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 procedure which will be followed in respect of the allegation; and
 - v. of the identity of the Investigating Officer.

Article IV. NOTIFYING THE PARISH OR TOWN COUNCIL CLERK

4. Where the allegation relates to the conduct of a Member of a Parish or Town Council in his/her capacity as such, at the same time as notifying the Member, the Monitoring Officer will notify the Clerk to the Parish or Town Council concerned in writing of the investigation.

Article V. NOTIFYING THE COMPLAINANT

5. At the same time as notifying the Member, the Monitoring Officer will notify the person who made the allegation in writing of the matters set out at paragraph 3 i, iii – v.

Article VI. CONDUCT OF INVESTIGATION

6. [a] Purpose of the Investigation
The purpose of the Investigating Officer's investigation is to enable him/her to prepare and present to the Monitoring Officer a report with sufficient information to determine whether the Member 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 Member or in consequence of the breach, and what any action should be.
- [b] Termination of the Investigation
The Investigating Officer may terminate his/her investigation at any point, where he/she is satisfied that he/she has sufficient information to enable him/her to report to the Monitoring Officer and to enable the Monitoring Officer to come to a considered decision on the report.
- [c] Additional Matters
Where, in the course of his/her investigation, the Investigating Officer becomes aware of any other matter which appears to him/her to indicate a breach of the Code of Conduct or local protocol by the Member other than the breach which he/she is 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 Member with details of the matter in the form set out in paragraph 6 iii and iv above and invite the Member to provide a statement as to why the additional matter does not constitute a breach of the Code of Conduct. The Monitoring Officer will then determine, in consultation with the Independent Person, whether to request the Investigating Officer to investigate the additional matter;
 - ii. *[where the additional matter constitutes an apparent breach of the Authority's 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 Member with details of the matter in the form set out in paragraph 6 iii and iv above and invite the Member to provide a statement as to why the additional matter does not constitute a breach of the Authority's local protocols. The Monitoring Officer, in consultation with the Independent Person, will then take a decision whether to request the Investigating Officer to consider the matter and report to the Monitoring Officer as appropriate.
 - iii. *[where the additional matter relates to an apparent breach of the Code of Conduct or a local protocol by a Parish or Town Councillor]* notify the Clerk to the Town or Parish Council of the additional matter and any action taken.
- [d] Following notification to the Member, 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. 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 his/her 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/her/its possession or control, or provide any explanation, as he/she thinks necessary for the purposes of carrying out the investigation.
- ii. In the course of the investigation, the Investigating Officer and any person authorised on his/her behalf may require any authority of which the Member is a member to provide any document which is in his/her/its possession or control which he/she thinks necessary for the purposes of carrying out the investigation.

[f] Interviews

- i. In the course of the investigation the Investigating Officer may request any person to attend and appear before him/her or otherwise provide any information, document or explanation for the purpose of paragraph 10[e], as he/she thinks necessary for the purposes of carrying out the investigation.
- ii. Representation
Any person who appears before the Investigating Officer can 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.

DRAFT REPORT

11. [a] Where the Investigating Officer is satisfied that he/she has sufficient information to meet the requirement set out in paragraph 10[a], or has obtained as much information as is likely to be reasonably capable of being obtained, he/she will prepare a draft report 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 Member's initial response to notification of the allegation [if any];
 - iv. the relevant information, advice and explanations which he/she has obtained in the course of the investigation;
 - v. a list of any documents relevant to the matter;
 - vi. a list of those persons whom he/she has interviewed and those organisations from whom he/she has sought information;
 - vii. a note of any person or organisation who has failed to co-operate with the investigation and the matter in which they have failed to co-operate;
 - viii. a statement of his/her draft findings of fact;
 - ix. the reasoning for his/her decision;
 - x. his/her conclusion as to whether the Member has or has not failed to comply with the Code of Conduct for Members of any authority or a local protocol; and
 - xi. 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 be made 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 he/she has considered any comments received on the draft report.
- [c] The Investigating Officer shall then send a copy of his/her draft report in confidence to the Member and the Complainant and request that they send any comments thereon to him/her within 14 days.
- [d] The Investigating Officer may send a copy of, or relevant extracts from his/her draft report in confidence to any person on whose evidence he/she has relied in compiling the draft report, and request that they send any comments thereon to him/her within 14 days.

FINAL REPORT

- 12. [a] After the expiry of that period [or such extended period as the Investigating Officer may allow], the Investigating Officer shall reconsider and amend his/her draft report in the light of any comments received, and produce and send to the Monitoring Officer his/her final report. The final report should state that the report represents the Investigating Officer's final findings and should have appended to it copies of any documents which the Investigating Officer has relied on in reaching his/her conclusions, such as background documents or telephone conversations, letters and notes of interviews with witnesses.
- [b] The Monitoring Officer will review the Investigating Officer's report and, if he/she is satisfied that the Investigating Officer's report is sufficient he/she shall then:
 - 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, will write to the Complainant and the Member concerned and to the Parish Council, where the complaint relates to a Parish Councillor, notifying them that he/she is satisfied that no further action is required and provide a copy of the final report.
 - 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, he/she will either send the matter for local hearing before the Hearings Panel or, after consulting the Independent Person, seek local resolution.
- (c) If the report 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 Local Hearing will apply.

Appendix Three Procedure for Hearings

SOUTH LAKELAND DISTRICT COUNCIL

PROCEDURE FOR LOCAL HEARING OF ALLEGATIONS ABOUT THE PERSONAL CONDUCT OF COUNCIL MEMBERS

INTRODUCTION

1. Where there is no local resolution of complaints following evidence of a failure to comply with the Code of Conduct, 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.
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 Committee or a Sub-Committee or Hearings Panel of the Standards Committee.

PRE-HEARING PROCESS

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 it is considered that a local resolution is not possible and that the matter should be considered at a formal hearing the Monitoring Officer shall arrange for the Hearings Panel to consider the matter.
4. Where the Monitoring Officer is the Investigating Officer he/she must arrange for a separate legal advisor to the Panel 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 the Complainant, making the provision of the report conditional upon any appropriate undertaking of confidentiality. The Chairman of the Standards Committee and Independent Person 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 his/her 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. The response shall set out the reply to the Investigating Officer's report and state whether or not he/she:
 - i. disagrees 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 his/her own expense, at the hearing by any other person;
 - iii. wants to give evidence to the Hearings Panel, either verbally or in writing;
 - iv. wants to call relevant witnesses to give evidence to the Hearings Panel;
 - 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 Panel, he/she seeks 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 he/she:
 - i. wants 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 Panel;
 - 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 and all Members.
10. The Members 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 he/she believes 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 he/she considers would assist the Committee to reach its decision.
12. The Monitoring Officer, in consultation with the Chairman and Independent Person, will:
 - i. confirm a date, time and place for the Hearing, which must be within three months from the date of 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 Hearings Panel shall decide, on a balance of probabilities, whether the complaint[s] is or are upheld upon the evidence presented to it.

14. Each Panel 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 shall have the second and casting vote.
15. The meeting of the Panel 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 Panel 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 Panel 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 Panel 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 his/her intention not to attend the Hearing;
 - ii. The Hearings Panel 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 Panel is satisfied with such reasons, it shall adjourn the Hearing to another date;
 - iv. If the Panel is not satisfied with such reasons, or if the Member has not given any such reasons, the Panel 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.
21. **Presentation by the Investigating Officer**
- 21.1 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.
 - 21.2 The Member or his/her representative may ask questions of the Investigating Officer or any witness.
 - 21.3 The Panel members or Independent Person may ask questions of the Investigating Officer or any witness.
22. **Presentation by the Member**
- 22.1 The Member or his/her representative will present the evidence which is relevant to the matter. The Member or his/her representative may introduce witnesses or present any other relevant evidence.
 - 22.2 The Investigating Officer may ask questions of the Member, or any witness.
 - 22.3 The Panel members or Independent Person may ask questions of the Member or any witness.
 - 22.4 The Investigating Officer and then the Member or his/her representative will be given the opportunity to sum up.
23. **Decision by the Hearings Panel**
- 23.1 The Panel will consider in private, with the Independent Person, all the evidence which it has heard in order to establish its findings of fact.

- 23.2 At any stage in the consideration of the matter the Panel 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.
- 23.3 The Panel may seek legal advice at any time. Such advice may be given in the presence of the Investigating Officer and the Member if appropriate.
- 23.4 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.
- 23.5 If the Panel 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 Panel may ask questions of the Member and the Investigating Officer.

24. The Panel, having heard any representations, will consider what actions, if any, to take.

The findings that the Panel 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 Panel will:
- ❖ 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 on an ungrouped member(s), recommend to Council or Committees) that he/she 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 to 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 he/she has been appointed or nominated by the authority or by 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 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.

25. In deciding what penalty to set, the Committee will consider all relevant circumstances.
26. The Chairman will announce the decision of the Committee, the action, if any, it is proposed to take and the reasons for the decision.
27. 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

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

NOTICE OF FINDINGS

29. 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.
30. Once approved and as soon as reasonably practicable after the Hearing the full written decision will be forwarded to the Member, the Independent Person, the Complainant, the Investigating Officer and any other Authority concerned.
31. If the Hearing Panel wishes to publish its finding, the Monitoring Officer, subject to paragraph 32, shall arrange for a summary of the findings to be published in such manner as the Hearings Panel may determine.
32. Where the Panel determines that there has not been a breach of the Code of Conduct, the notice shall:
- i. State that the Panel 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.
33. Where the Panel 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 Panel 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
34. Where the Panel determines that there has been a failure to comply with the Code of Conduct and that a sanction should be imposed, the notice shall:
- i. State that the Panel found that the Member had failed to comply with the Code of Conduct;
 - ii. Specify the details of the failure;
 - iii. Give reasons for the decision reached;
 - iv. Specify the sanction imposed;
35. 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.