CODE OF CONDUCT

LOCALISM ACT 2011 SECTION 28 - ARRANGEMENTS FOR DEALING WITH ALLEGATIONS

1. Making complaints

Any complaint that a member has failed to comply with the Code of Conduct should be addressed to:

The Monitoring Officer
New Forest District Council
Appletree Court
Beaulieu Road
LYNDHURST
SO43 7PA.

Or by email: democratic@nfdc.gov.uk

A form for making complaints is available. Its use is encouraged, but is not essential providing the complaint includes all the necessary information.

2. Initial action by Monitoring Officer (MO)

On receiving the complaint the MO may dismiss it without further action if:

(a) The person complained about is no longer a member of the relevant Council; or

(b) The MO considers the complaint does not relate to behaviour in the member's official capacity as a Councillor; or

(c) The matter being complained about happened more than 12 months before the complaint was received; or

(d) The matter being complained about came to the complainant's notice more than 6 months before the complaint was received.

The MO will inform the complainant and the member accordingly.

If the MO does not dismiss the complaint on one of the above grounds, they will acknowledge it and inform the complainant of the procedure to be followed. The MO may ask the complainant for further information or clarification.

The MO will (except in exceptional circumstances where they consider that it is in the public interest not to do so) send the member complained about a copy of the complaint, and invite the member to submit initial written comments within 10 working days.

The MO will also:

(a) Ask the member if they wish the views of an Independent Person (IP) appointed under section 28 of the Localism Act 2011 to be taken into account when the complaint is initially examined, and

(b) Ask the member any specific questions the MO considers will assist the initial assessment of the complaint.

(c) As an alternative to the above action, the MO may, if they consider it appropriate, refer the complaint to the Police and take no further action under this procedure unless and until informed by the Police that they will not proceed.

3. Initial assessment of the complaint

Initial assessment will, if practicable, take place within 15 working days of receipt of the member's written comments under section 2 above.

The decision on the initial assessment will be made by the Monitoring Team. This will comprise the MO and Chief Executive and, if the member has requested their involvement or the MO considers their involvement appropriate, the IP.

If the MO considers that it is not appropriate for them to act, the Deputy MO will take their place. If the Chief Executive considers that it is not appropriate for them to act, a Strategic Director, Assistant Director or Service Manager will take their place.

Before the Monitoring Team considers the complaint, the MO will send the Chief Executive and (if participating) the IP

(a) A copy of the complaint;

(b) A copy of the member's comments in response to the complaint; and

(c) Any other information in the MO's possession that they consider relevant.

The Monitoring Team's decision on the initial assessment, with reasons and the views of the IP (if involved) will be given in writing to the member, the complainant, and the Clerk to the Parish/Town Council (if the complaint was about a Parish/Town Councillor) within 5 working days.

There will be no right of appeal.

The decision will be available for public inspection.

4. Decision Options at Initial Assessment

The Monitoring Team may decide:

(a) To take no action (see Annex 1); or

(b) To attempt to resolve the matter informally between the complainant and member, either in writing, by face-to-face meeting, or by any other method they consider appropriate. In this case there will be no formal decision as to whether or not there was a breach of the Code of Conduct. If an attempt to resolve the matter in this way is not achieved to the satisfaction of the member and the complainant, options (a), (c) and (d) will remain open; or

(c) To arrange a hearing before a Panel of 3 members drawn from the Appeals Committee and the IP, at which the member and complainant can state their case and, if appropriate, call witnesses. Procedures are set out at Annex 2. The hearing will reach a formal decision as to whether the member breached the Code of Conduct; or.

(d) If the complaint is potentially complex, to arrange for a formal investigation to be undertaken, including interview of appropriate witnesses, and to seek the view of the investigator as to whether there has been a breach of the Code of Conduct. If the investigator considers there has been a breach of the Code, a hearing will be arranged as in (c). If the investigator considers that there has not been a breach of the Code, the MO will issue a formal finding to that effect.

ANNEX 1

No action will be taken where any of the following apply:

a. the Monitoring Team considers that there is no prima facie evidence that the Code has been breached;

b. taking into account the nature of the allegation. the Monitoring Team considers that using public funds to examine the matter further would be disproportionate;

c. the Monitoring Team considers that the complaint appears to be vexatious, politically motivated, tit-for-tat or made by a persistent complainant;

d. the conduct complained about has already been the subject of investigation or enquiry by another public body;

e. the same, or substantially the same, issue has been the subject of a previous Code of Conduct allegation, and the Monitoring Team considers that there is nothing further to be gained;

f. the Monitoring Team considers that there is not enough information to take the matter further;

g. the complaint was made anonymously;

h. the complainant has requested that their identity as complainant be withheld from the member, and the Monitoring Team considers that the matter cannot reasonably be taken further in these circumstances;

i. the member has already apologised for the action that was the subject of the complaint, and the Monitoring Team considers that this is sufficient to dispose of the complaint;

j. the Monitoring Team considers that the complaint is essentially against the action of the Council as a whole and cannot properly be directed against an individual member(s).

ANNEX 2

PROCEDURE FOR HEARINGS

General:

Hearings will where possible be held within 2 months of the initial assessment decision where there is no prior investigation, and within 2 months of receipt by the MO of the investigator's report where there has been a prior investigation.

The hearing will be before a Panel of 3 members drawn from the Appeals Committee. One of the members will be elected Chairman.

The Independent Person [IP] appointed under section 28 of the Localism Act 2011 will also be present. Their views will be requested and taken into account by the Panel, but by law they cannot vote.

The MO or deputy MO will be present as legal advisor to the Panel

Both the member and complainant will be invited to appear. They may present their own case or they may be represented.

They may bring witnesses (of a number the Panel considers is reasonable), in which case written statements from the witnesses must be lodged with the MO at least 8 working days before the hearing. "Character witnesses" who cannot provide evidence on the matter complained about will not be permitted.

The cost of any attendance/representation must be borne by the party concerned.

All written evidence will be circulated to the Panel, the IP, the member and the complainant at least 5 working days before the hearing.

Written statements will not be read out at the hearing as it will be assumed all those present are already familiar with their contents.

The legal advisor can speak at any time to advise the Panel on technical matters or ask questions of any party.

Proceedings:

The complainant can address the Panel and call witnesses (if any).

The member can ask the complainant and witnesses questions.

The Panel and IP can ask the complainant and witnesses questions.

The member can address the Panel and call witnesses (if any)

The complainant can ask the member and witnesses questions.

The Panel and IP can ask the member and witnesses questions.

The complainant can make a closing statement.

The member can make a closing statement.

All those present except the Panel, the IP, the legal advisor and Clerk will leave the room while the Panel makes its decision.

The Panel's decision will be announced orally as soon as possible.

A written report of the hearing and decision, with reasons, will be prepared, usually within 5 working days. A copy will be sent to all those present at the hearing and to the Clerk of the Parish/Town Council if the complaint was about a Parish/Town Councillor.

The written report will be available for public inspection.

Decisions open to the Panel:

These are:

(a) That the member did not fail to comply with their Council's Code of Conduct;

(b) That the member did fail to comply with their Council's Code of Conduct, and that

- (i) No action need be taken; or
- (ii) The member be censured; and/or
- (iii) Whatever publicity the Panel considers appropriate be given to their findings; and/or
- (iv) It be recommended to the Council (or to the member's political group where Committee appointments are made by political groups) that the member be removed from a specific Committee(s), or from any other position to which the Council has appointed them.

The Panel may also make any recommendations it considers appropriate to the Council concerned on procedural amendments that might assist members generally to follow the Code of Conduct.