

Procedures for dealing with complaints about members

Terms Used

In this procedure:

- The person making the complaint is referred to as the **complainant**
- The councillor about whom the complaint is made is referred to as the **subject member**
- An **independent person** is a person unconnected with the Council and appointed by the Council to assist with the complaints process
- An **investigating officer** is a person appointed by the Monitoring Officer to undertake a formal investigation in respect of a complaint. This may include the Monitoring Officer, another officer of the Council, an officer of another local authority or an external investigating officer.

1. Introduction

- 1.1 Pursuant to section 28 Localism Act 2011, this procedure sets out the Council's arrangements for dealing with allegations that a councillor has failed to comply with the Council's member code of conduct (and applies also to complaints about members of Altham Parish Council);
- 1.2 The following principles form the basis of this procedure and inform its interpretation and application:
 - This procedure should have the confidence of the public, councillors and Council employees;
 - This procedure should be fair to both the complainant and the subject member, and comply with the principles of natural justice;
 - This procedure should be decisive;
 - This procedure should as simple and speedy as possible;
 - This procedure should be proportionate and cost effective
- 1.3 The operation and application of this procedure will be the responsibility of the Monitoring Officer. If the Monitoring Officer has a conflict of interest in respect of a particular complaint, that complaint will be overseen by the Deputy Monitoring Officer or a monitoring officer from another local authority. In addition, no councillor or officer will be involved in the consideration, investigation or determination of a complaint if they have a personal conflict of interest in respect of the same;

2. Making a complaint

2.1 Complaints should be made in writing by post or email to:

The Monitoring Officer
Scaitcliffe House
Ormerod Street
Accrington
BB5 0PF

Or:

Jane.ellis@hyndburnbc.gov.uk.

- 2.2 The complaint can be made using the complaint form attached at Appendix 1, but this does not have to be used. Guidance has been produced to assist complainants to make a complaint and this is attached at Appendix 2.
- 2.3 The Monitoring Officer will acknowledge receipt of the complaint in writing within 5 working days and will provide the complainant with a copy of the Council's Publicity Protocol, as attached at Appendix 3.

3. Anonymous complaints

- 3.1 Anonymous complaints (or complaints made under a false name) will not usually be accepted. The presumption is that, in the interests of fairness, the subject member is entitled to know what allegations are being made against them, and the identity of the person making them. Where a complaint is anonymous there may also be problems in assessing and investigating the complaint.
- 3.2 In exceptional circumstances, the following factors may together outweigh the presumption that the subject member is entitled to know the identity of the complainant and allow the complaint to be accepted:
- Where there is a good reason why the complaint is being made anonymously. For example, there may be circumstances where a complainant would have a reasonable concern that if their identity is revealed it could lead to adverse consequences for their health and safety or financial well-being. This may depend upon the seriousness of the allegations being made and whether the allegations themselves are of a nature which suggests potential adverse consequences for the complainant.
 - Where the complaint relates to a potentially serious breach of the member code of conduct.
 - Where the allegations can be properly investigated by reference to documentary, photographic or other evidence without need for further contact with the complainant.

4 **Requests For Confidentiality**

- 4.1 Normally the subject member is entitled to know the identity of the complainant, as a matter of fairness and natural justice. Complainants may however request that their identity is not revealed to the subject member. The Monitoring Officer (or the Standards Assessment Panel if the Monitoring Officer refers the complaint to the Panel as part of the assessment process) may grant such requests at their discretion in exceptional circumstances.
- 4.2 When considering a request for confidentiality the following criteria will be applied:
- does the complainant have reasonable grounds to believe that they will be at risk of physical harm if their identity is revealed ?
 - is the complainant an officer of the Council who fears the consequences for their employment if their identity is revealed ?
 - is there a medical risk to the complainant's health if their identity is revealed and is this supported by medical evidence ?
 - do any other exceptional circumstances exist that justify the grant of confidentiality ?
- 4.3 When considering a request for confidentiality against these criteria the Monitoring Officer or Assessment Panel will also:
- balance the request for confidentiality against the substance of the complaint
 - consider whether it is possible to investigate the complaint without making the complainant's identity known to the subject member, given the requirement for a proper investigation and a fair hearing.
- 4.4 If a decision is made to refuse a request for confidentiality the complainant will usually be offered the opportunity to withdraw their complaint. When deciding whether to allow a complaint to be withdrawn consideration will be given to whether the public interest in proceeding with an investigation outweighs the complainant's wish to have their identity withheld from the subject member. If the complaint alleges serious wrong-doing, or potential illegality, the Council may be required to continue to investigate the matter in the public interest.

5. **Initial Assessment Of A Complaint**

- 5.1 The Monitoring Officer will carry out an initial assessment of all complaints received and may make further enquiries in respect of a complaint as part of this process. The initial assessment will usually be completed within 5 working days of receipt of the complaint. Complaints will be rejected at the outset, with no right of appeal, unless all of the following criteria are satisfied:
- the complaint is about a current member of Hyndburn Borough Council or Altham Parish Council; and

- the subject member was a member of Hyndburn Borough Council or Altham Parish at the time of the conduct complained about; and
- if proven, the conduct complained about could be a breach of the member code of conduct (and if there is insufficient information to enable the Monitoring Officer to make a decision in this regard, she may offer the complainant 10 working days to provide additional information in support of the complaint. If further information is not provided within that time, the complaint will be rejected).

5.2 The complaint will also be rejected, with no right of appeal if :

- the subject matter has already been considered by the Council (unless the complaint discloses new evidence that could not previously have been produced); or
- it would be more appropriate for the complaint to be dealt with by a court or under another complaints or arbitration procedure; or
- the events to which the complaint relates occurred more than 6 months ago; or
- the complainant is seeking to overturn a decision made by the Council; or
- the matters complained about have already been resolved in favour of the subject councillor through litigation; or
- the complaint relates to conduct of the subject member whilst acting in their private capacity; or
- the complaint is considered to be trivial or a minor, technical breach of the member code of conduct and there is no public interest in pursuing it (in this regard the complaints procedure requires the Monitoring Officer to be mindful of resource considerations); or
- the subject member has remedied (or made reasonable endeavours to remedy) the issues to which the complaint relates and the complaint does not disclose sufficiently serious potential breaches of the code of conduct to merit further action.

5.3 If a complaint is rejected at this initial stage the Monitoring Officer will:

- write to the complainant to advise that the complaint will not be progressed, explaining why;
- write to the subject member providing a summary of the complaint, the name of the complainant and an explanation of why the complaint will not be progressed
- if the complaint relates to a member of Altham Parish Council, write to the clerk, providing the same information as has been provided to the subject member.

5.4 If a complaint is not rejected at this initial stage the Monitoring Officer will:

- write to the subject member enclosing a summary of the complaint, the name of the complainant (subject to any decision in respect of confidentiality made in accordance with paragraph 4 of this procedure)

and a copy of the Council's Publicity Protocol. The subject member will be given 5 working days to submit their initial comments in respect of the complaint. The subject member will also be given contact details for an independent person who they may contact during the complaint process;

- Having regard to the complaint and any comments submitted by the subject member, the Monitoring Officer will then reach one of the following decisions:
 - That the complaint is suitable for informal resolution by the Monitoring Officer; or
 - That the conduct complained about is, if proven, sufficiently serious to merit formal investigation; or
 - That the nature of the complaint is such that it should be referred to the Standards Assessment Panel to determine how it will be dealt with

Note: a complaint will usually be referred to the Standards Assessment Panel if (i) the subject member or the complainant is a member of the Council's Executive or is the leader or deputy leader of a political group or (ii) the Monitoring Officer considers the complaint to be particularly sensitive for any reason

- The Monitoring Officer will notify the complainant and the subject councillor in writing of her decision and will explain how the complaint will be progressed

5.4 Where:

- it appears to the Monitoring Officer that legal action may be taken in respect of the matters complained about (for example because the matter has been reported to the Police and is under investigation); or
- legal action is underway in respect of the matter;

the complaint will not be progressed under this procedure until any such legal action has concluded or until confirmation has been received that no legal action will be taken (e.g. the Police confirm that there will be no prosecution). The Council will not take any action that may compromise the integrity of such other proceedings.

- #### 5.5
- Where the complaint discloses behaviour that may constitute a criminal offence, the Monitoring Officer will decide whether to refer the allegations to the Police or other appropriate body, such as the Council's external auditors.

6 Standards Assessment Panel

- ### 6.1
- The Standards Assessment Panel will comprise 2 members of the Council's Standards Committee, plus an independent person. The Panel will usually meet within 14 working days of a referral by the Monitoring Officer. Meetings of the Panel will be held in private, with press and public excluded. The complainant and subject member will not attend.

- 6.2 The Panel will consider the complaint and any comments submitted by the subject member, and may seek advice from the Monitoring Officer.
- 6.2 The Panel will not make any findings of fact, or make a decision on the complaint or the merits of the allegation. The Panel will make one of the following decisions in respect of the complaint, having regard to the criteria attached at Appendix 4:
- To take no action;
 - To refer the complaint for informal resolution;
 - To refer the complaint for formal investigation.
- 6.2 Within 2 working days the Monitoring Officer will notify the complainant and the subject councillor in writing of the Panel's decision and the reasons for the decision, and will explain how the complaint will be progressed.

7. Formal Investigations

- 7.1 The Monitoring Officer will appoint an investigating officer if a complaint is referred for formal investigation. The investigating officer may be a council officer, an officer of another council or an external investigator.
- 7.2 The investigating officer will usually be expected to complete their investigation within one month, although this will be subject to witness availability and the complexity of the complaint.
- 7.3 At the end of their investigation the investigating officer will produce a draft report which will make one of the following recommendations:
- That there has been a breach of the member code of conduct by the subject councillor; or
 - That there has not been a breach of the member code of conduct by the subject councillor.

The investigating officer will send a copy of the draft report to both the complainant and subject member and will allow them 10 working days to submit their comments. The investigating officer will consider any comments received and will then issue their final report to the Monitoring Officer, the complainant and the subject councillor. The draft and final report will be treated as confidential at this stage.

- 7.4 If the investigating officer's report recommends that there has been a breach of the member code of conduct:
- The Monitoring Officer will refer the matter for hearing before the Standards Sub-Committee and will advise the complainant and the subject member accordingly. The complainant and subject member will be provided with a copy of the hearing procedure and will be asked to advise the Monitoring Officer:
 - Whether they dispute the investigating officer's recommendation (in the case of the complainant)

- Whether they wish to be represented at the hearing and, if they do, by whom
- Whether they wish to produce witnesses at the hearing and, if they do, who the witnesses will be
- Whether they wish to produce documentary evidence at the hearing (and, if they do, they will be asked to provide a copy of the same for circulation to the Standards Sub-Committee members and the other party prior to the hearing)
- Whether they object to the hearing taking place in public
- The Monitoring Officer will document the responses received to the above enquiries and will share this with both the complainant and the subject member at least 5 working days before the hearing

7.5 If the investigating officer's report recommends that there has not been a breach of the member code of conduct:

- Within 10 working days of receipt of the investigating officer's report, the Monitoring Officer will confer with the Chair of Standards Committee and an independent person to determine whether the investigating officer's recommendation is to be accepted.
- If the investigating officer's report is accepted, the Monitoring Officer will send the subject member and the complainant a decision notice within 5 working days to confirm the finding of no failure to comply with the member code of conduct (and if the complaint relates to a member of Altham Parish Council, a copy of the decision notice will also be sent to the clerk together with a copy of the investigation report).
- If the Monitoring Officer considers it appropriate, after discussion with the Chair of Standards Committee and an independent person, the Monitoring Officer will refer the matter for hearing before the Standards Sub-Committee and will advise the complainant and the subject member accordingly. The procedure set out in paragraph 7.4 will then apply.

8. **Informal Resolution**

8.1 The complainant may indicate that they will be happy with informal resolution of their complaint, or the Monitoring Officer or Assessment Panel may determine that this is appropriate in all the circumstances of the complaint.

8.2 Informal resolution may take many forms including: provision of an apology, provision of training to the subject councillor, provision of advice to the subject councillor as to their future conduct or mediation.

8.3 If the subject member refuses to co-operate with attempts at informal resolution the complaint may instead be referred for formal investigation.

9 **Standards Sub-Committee Hearings**

- 9.1 The Standards Sub-Committee will usually meet to consider the complaint within one month of the Monitoring Officer receiving the final report. Where the complaint relates to a member of Altham Parish Council the Sub-Committee will include at least 1 of the parish members co-opted to the Standards Committee. However, a complaint may also be heard by the Standards Committee as a whole if, having regard to all the circumstances, the Chair of the Standards Committee agrees that this is reasonable and proportionate having regard to the principles in paragraph 1.2 above. This procedure applies to hearings before Standards Committee in the same way as it applies to hearings before the Standards Sub-Committee.
- 9.2 The Standards Sub-Committee will follow the hearing procedure attached at Appendix 5. In deciding whether to hold the meeting in public the Sub-Committee will have regard to the guidance attached at Appendix 6.
- 9.3 The Standards Sub-Committee will make its decision regarding breach of the member code of conduct on the balance of probability.
- 9.4 The Standards Sub Committee may make one of the following findings:
 - (a) that the subject councillor has not failed to follow the member code of conduct
 - (b) that the subject councillor has failed to follow the member code of conduct but no action needs to be taken
 - (c) that the subject councillor has failed to follow the member code of conduct and that a sanction should be imposed.
- 9.5 Any sanction imposed must be reasonable and proportionate to the subject councillor's behaviour. When deciding upon a sanction the Sub-Committee should consider the following, along with all other relevant circumstances:
 - (a) what was the subject councillor's intention? Did the subject councillor know that he or she was failing to follow the code of conduct?
 - (b) did the subject councillor get advice from officers in respect of the matter? Was that advice acted on in good faith?
 - (c) has there been a breach of trust?
 - (d) has there been financial impropriety?
 - (e) how serious was the incident?
 - (f) what was the result of the failure to follow the code of conduct?
 - (g) does the subject councillor accept he/she was at fault?
 - (h) did the subject councillor apologise to the relevant people?
 - (i) has the subject councillor previously been warned or reprimanded for similar misconduct?
 - (j) has the subject councillor failed to follow the code of conduct before?
 - (k) is the subject councillor likely to do the same thing again?

9.6 The Sub-Committee may impose any one or more of the following sanctions if satisfied that this is reasonable and proportionate:

- Report its findings in respect of the subject member's conduct to the Council (or Altham Parish Council);
- Recommend to the Council (or Altham Parish Council) that the subject member is censured;
- Request the subject member to attend training and instruct the Monitoring Officer to arrange the same;
- Request the subject member to apologise to the complainant;
- Recommend to the Council that the subject member be removed from any or all committee, sub-committee and outside body appointments;
- Recommend to the Leader of the Council that the subject member be removed from the Cabinet or have portfolio responsibilities withdrawn;
- Withdraw facilities provided to the subject member by the Council, such as computer, internet or email access;
- Exclude the subject member from the Council's offices, or parts of the same, with the exception of access to attend Council, committee and sub-committee meetings.

9.7 Within two weeks of the date of the hearing the Hearing Sub-Committee will publish a decision notice and a copy of that decision notice will be sent to the following:

- (a) the subject councillor
- (b) the complainant
- (c) Altham Parish Council, if the subject councillor is a member of the Parish Council

9.8 The Hearing Sub-Committee will arrange for the decision notice to be published on the Council's website for a period of one month.

10 Appeals

Subject to Judicial Review, or a decision of the Local Government Ombudsman, there is no right of appeal against a decision of the Monitoring Officer, Standards Assessment Panel or Standards Sub-Committee.

Appendix 1

COMPLAINT FORM:

CODE OF CONDUCT FOR MEMBERS

(HYNDBURN BOROUGH COUNCIL AND ALTHAM PARISH COUNCIL)

(Please read the “Guidance Note For Potential Complainants” before completing this form)

Your details

1. Please provide us with your name and contact details

Title:	
First name:	
Last name:	
Address:	
Daytime telephone:	
Evening telephone:	
Mobile telephone:	
Email address:	

Your address and contact details will not usually be released to the councillor you are complaining about.

Your complaint will be considered by the Council’s Monitoring Officer and she may tell the following people that you have made this complaint:

- the members of the Council’s Standards Assessment Panel
- the member(s) you are complaining about
- the clerk of Altham Parish Council (if applicable)

The Monitoring Officer will tell the above your name and give them a summary of your complaint where necessary or appropriate to be able to deal with it. If you have serious concerns about your name and a summary, or details of your complaint being released, please complete section 6 of this form.

2. Please tell us which complainant type best describes you:

- member of the public
- An elected or co-opted member of the Council or Altham Parish Council
- An independent member of the Standards Committee
- Member of Parliament
- Council employee
- Other

3. Equality monitoring questions

Your Racial origin:								
0 – White	British		Irish		Other			
1 – Black or Black British	Caribbean		African		Other			
2 – Asian or Asian British	Indian		Pakistani		Kashmiri		Bangladeshi	
3 – Mixed Race	White/Black Caribbean		White/ Black African		White/ Indian		White/ Pakistani	
4 - Chinese/ other group	Chinese		Other					
5 – Prefer not to answer								

Making your complaint

4. Please provide us with the name of the member(s) you believe have breached the code of conduct and the name of the Council or authority they belong to:-

Title	First name	Last name	Council or authority name

5. Please explain in this section (or on separate sheets) what the member has done that you believe breaches the code of conduct. If you are complaining about more than one member you should clearly explain what each individual person has done that you believe breaches the code of conduct.

It is important that you provide all the information you wish to have taken into account when we decide whether to take any action on your complaint. For example:

- You should be specific, wherever possible, about exactly what you are alleging the member said or did. For instance, instead of writing that the member insulted you, you should state what it was they said.
- You should provide the date of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide any relevant background information and any documentary evidence you have to support your complaint

Please provide us with the details of your complaint. **Continue on a separate sheet if there is not enough space on this form.**

A large, empty rectangular box with a thin black border, occupying the upper half of the page. It is intended for the user to provide details about their complaint.

Please can you let us know what remedy you are seeking in respect of your complaint ?

A large, empty rectangular box with a thin black border, occupying the lower half of the page. It is intended for the user to specify the remedy they are seeking.

Only complete this next section if you are requesting that your identity is kept confidential

6. In the interests of fairness and natural justice, we believe members who are complained about have a right to know who has made a complaint about them. We also believe they have a right to be provided with a summary of the complaint. We are unlikely to withhold your identity or the details of your complaint unless you have good reason to believe that:
- you will be at risk of physical harm if your identity is revealed; or
 - you are an officer of the Council who fears the consequences for your employment if your identity is revealed; or
 - there is a medical risk to your health if your identity is revealed and this is supported by medical evidence.

Please note that requests for confidentiality or requests for suppression of complaint details will not automatically be granted. We will consider the request alongside the substance of your complaint. We will then contact you with the decision. If your request for confidentiality is not granted, we will usually allow you the option of withdrawing your complaint.

However, it is important to understand that in certain exceptional circumstances where the matter complained about is very serious, we can proceed with an investigation or other action and disclose your name even if you have expressly asked us not to.

For further information please refer to the Standards Committee Complaints Procedure which is available on the Council's website (www.hyndburnbc.gov.uk, following the link "Comments, Compliments and Complaints") or from the Council's Monitoring Officer at the address given at the end of this form.

Please provide us with details of why you believe we should withhold your name and/or the details of your complaint:

7. Complaints must be submitted in writing, whether by letter or email. However, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing.

We can also help if English is not your first language.

If you need any support in completing this form, please contact the Council's Monitoring Officer as soon as possible:

Jane Ellis
Monitoring Officer
Hyndburn Borough Council
Scaitcliffe House
Ormerod Street
Accrington
BB5 0PF

Tel: 01254 388111

Email: Jane.Ellis@hyndburnbc.gov.uk

What you should do if you wish to make a complaint

- Talk to/raise the matter with the Council's Monitoring Officer for general advice.
- Fully complete this complaint form (or ensure your letter of complaint addresses, in full, all of the issues covered in the complaint form).
- Submit the written complaint by post, e-mail or fax to the address below.

Jane Ellis
Monitoring Officer
Hyndburn Borough Council
Scaitcliffe House
Ormerod Street
Accrington
BB5 OPF

Tel: 01254 388111

e-mail: Jane.Ellis@hyndburnbc.gov.uk

Appendix 2

HYNDBURN BOROUGH COUNCIL

CODE OF CONDUCT FOR MEMBERS

GUIDANCE NOTE FOR POTENTIAL COMPLAINANTS

Are you using the correct form?

The points listed below will help you decide whether this is the correct form to use when making your complaint. You may speak to the Council's Monitoring Officer if you are not clear if the Standards Committee can consider your complaint.

- Your complaint must be about one or more named members (i.e councillors) of Hyndburn Borough Council or Altham Parish Council.
- Your complaint must be that the member(s) has, or may have, breached the code of conduct for councillors. A copy of the code of conduct for Hyndburn Council and Altham Parish Council is available on the Council's website.
- Your complaint must be about conduct that occurred while the member(s) complained about were in office. Conduct of an individual before they were elected, co-opted or appointed to the Council or Parish Council, or after they have resigned or otherwise ceased to be a councillor, cannot be considered.
- The Standards Committee is not responsible for dealing with complaints about Council employees, Council services or Council procedures. If this is what you want to complain about you should use the Council's general complaints procedure. Complaint forms are available on the Council's website (www.hyndburnbc.gov.uk, following the link to "Comments, Compliments and Complaints").
- Your complaint must be in writing. If a disability prevents you from making your complaint in writing you may contact us for assistance.

How should I set out my complaint?

It is very important that you set your complaint out fully and clearly, and provide all the information you can at the outset. You should also provide any documents or other material that you wish us to consider, where possible (e.g. screenshots of relevant social media posts if your complaint relates to remarks made on social media)

We recommend that you use our complaint form or provide a covering note summarising what you are complaining about, especially if your complaint includes a lot of supporting documentation. You should tell us exactly what each person you are complaining about said or did that has caused you to complain. If you are

sending supporting documentation please cross-reference it against the summary of your complaint where possible.

You should be as detailed as possible and substantiate your complaint where you can. Although you are not required to prove your complaint at this stage, you do have to demonstrate that you have reasonable grounds for believing that the councillor(s) complained about has breached the code of conduct.

Please note that the Council does not generally accept anonymous complaints or complaints made under a false name.

If you do not want the councillor concerned to be told that you are the complainant you will need to make a request for your name to be withheld and explain the reasons for this on the complaint form. Generally, we take the view that fairness requires councillors to be told the identity of the complainant as this may be relevant to their response to the complaint. If we decide to reject your request for confidentiality we will let you know before we progress your complaint and you will usually have the opportunity to withdraw your complaint at this point if you wish to do so (although if your complaint contains allegations of very serious misconduct or illegality, we may be obliged to continue to look into the complaint in the public interest).

What happens once you submit your complaint?

When you submit your complaint we will write to you to let you know we have received it. Unless we are satisfied that there are exceptional circumstances, we will also tell the councillor that you are complaining about that we have received your complaint, who made the complaint and the relevant paragraphs of the code of conduct that it is alleged may have been breached.

The Monitoring Officer will consider your complaint and, where possible and appropriate, the Monitoring Officer will seek to resolve your complaint informally (for example by the provision of advice and / or training to the councillor you are complaining about). The Monitoring Officer may however decide to refer your complaint to the Standards Assessment Panel if she considers that the Panel should decide how the complaint is dealt with.

Meetings of the Assessment Panel are 'closed', which means that neither you nor the councillor you are complaining about will be able to attend. It is therefore very important that you set your complaint out clearly and provide at the outset all the information you wish to Assessment Panel to consider.

The Assessment Panel will decide to do one of the following things:

- ask you for more information to enable it to make a decision; or
- refer your complaint for informal resolution by the Council's Monitoring Officer; or
- refer your complaint for formal investigation; or

- decide to take no action.

The criteria that will be used to assess your complaint and decide whether it should be formally investigated are available on the Council's website, or a copy can be obtained on request from the Council's Monitoring Officer.

We will contact you within 5 working days of the Assessment Panel meeting to advise you of its decision. At the same time we write to you, we will also write to the councillor(s) you have complained about and the parish clerk (if applicable).

If the Assessment Panel decides to take no action on your complaint it will give you the reasons for this decision. If the Assessment Panel refers your complaint for formal investigation we will contact you to explain what will happen next (but you can find a copy of our full member complaint process on our website if you want to find out more now)

Appendix 3

Standards Committee

PROTOCOL ON PUBLICITY FOR COMPLAINTS OF BREACH OF THE CODES OF CONDUCT MADE TO THE STANDARDS COMMITTEE

The purpose of this Protocol is to ensure that the member complaints process operates fairly and in accordance with the principles of natural justice. The aim is to ensure that:

- the process is fair to both the subject member and the complainant;
- complainants are not deterred from making valid complaints for fear of exposure in the press or media;
- neither the complainant or subject member are subject to trolling or intimidation as a result of press or social media exposure;
- the complaint gets a fair hearing without being aired and / or pre-judged in the press or on social media

There is no statutory mechanism preventing those making a complaint to the Standards Committee (or those the subject of such a complaint) making the nature of the allegation known to the press and public, or making public comment on the allegation. However, any such comments would be subject to the general law of defamation, and either the complainant or the subject member could seek a court injunction and / or damages in respect of the publication of defamatory material.

The Council has therefore adopted this Protocol.

Guidance to complainant / subject member

- Please do not discuss the complaint on social media or contact the press in respect of the same until the complaint process has concluded.
- The subject councillor is advised not to discuss the complaint in any forum, such as a meeting that is open to the public and not to discuss the complaint or in such a manner as is reasonably likely to cause the complaint to be made known to the public.
- It is recognised that both the complainant and subject councillor may wish to seek advice about the complaint from a third party. In such cases, they are advised to ensure that any person(s) in whom they confide agrees not to make the information known to the press and/or public or to other councillors,

However, despite the best efforts of the complainant and / or subject member, a complaint may become known to the public through the press or some other medium. In these circumstances, this Guidance does not preclude subject councillor or complainant from making a public comment, although it is recommended that they carefully consider the appropriateness of so doing.

Appendix 4

HYNDBURN COUNCIL STANDARDS COMMITTEE

CRITERIA FOR THE ASSESSMENT OF COMPLAINTS

- A. **Circumstances where the Assessment Panel may decide that no action should be taken in respect of the allegation or may decide that the matter should be resolved informally by the Monitoring Officer**
- A1 Where the information provided by the complainant is not sufficient to enable the Panel to make a decision as to whether the complaint should be referred for investigation.
- A2 Where a substantially similar allegation has previously been made by the complainant to the Standards Committee, or the complaint has been the subject of an investigation by another regulatory authority. The Panel will only refer the complaint for investigation or other action if it considers that there is a compelling reason to do so.
- A3 Where the complaint is about something that happened so long ago that those involved are unlikely to remember it clearly enough to provide credible evidence, or where the lapse of time means there would be little benefit or point in taking action now. It is acknowledged, however, that where a delay has arisen as a result of criminal or other legal proceedings, it may be appropriate to refer the complaint for investigation or other action.
- A4 Where the allegation is anonymous, unless it includes documentary or photographic evidence indicating an exceptionally serious or significant matter. The Panel will have regard to the Standards Committee Policy On The Handling Of Anonymous Complaints About Member Conduct when assessing such complaints.
- A5 Where the allegation discloses a potential breach of the Code of Conduct, but the Panel considers that the complaint is not serious enough to warrant further action and:
1. the member and officer resource needed to investigate and determine the complaint is wholly disproportionate to the matter complained about; or
 2. in all the circumstances there is no overriding public benefit in carrying out an investigation.

- A6 Where the complaint appears to be malicious, politically motivated or tit-for-tat.
- A7 Where the complaint ought more properly to be made to the police or another regulatory authority because of its nature and/or seriousness, no action will generally be taken until the outcome of that investigation.

B. **Circumstances where the Assessment Panel may decide to refer the allegation to the Monitoring Officer for Formal Investigation**

- B1 Where the allegation discloses a potential breach of the Code of Conduct that the Committee considers sufficiently serious to justify the cost of an investigation.

Appendix 5

Standards Committee

Procedure For Hearings

1. Welcome

The Chair will welcome everyone and introduce the Committee, legal advisor and Member Services officer.

The Chair will explain the role of the Independent Person

The Chair will ask the investigator to introduce themselves and anyone they have brought with them.

The Chair will ask the subject councillor to introduce themselves and anyone they have brought with them.

2. Declaration of interests by the Committee

3. Non-attendance by the subject councillor

If the subject councillor is not present the Committee will consider whether to proceed in their absence or whether to adjourn to give an opportunity for attendance.

4. Exclusion of the press and public

The Chair will ask both the investigator and the subject councillor whether they are seeking the exclusion of the press and public and, if they are, on what grounds.

The Committee will consider any representations made and will determine whether the press and public are to be excluded.

5. Procedural matters

The Chair will check that all present have a copy of this procedure.

The Chair will ask whether anyone has any questions about the procedure.

The Chair will ask whether there are any procedural issues to be determined before the hearing proceeds.

NB: the Committee may agree to vary this procedure if it is satisfied that this is necessary in the interests of fairness and transparency

NB: the Committee may limit the number of witnesses if they consider this is appropriate for the efficient conduct of the hearing (for example, because multiple witnesses are present to give evidence on the same points or because there are multiple character witnesses)

6. Presentation of the investigation report

The investigator will present their report and may call witnesses.

The Committee may ask questions of the investigator and their witnesses.

The subject councillor, or their representative, may through the Chair, ask questions of the investigator and their witnesses.

The subject councillor, or their representative, may make representations in respect of the investigation report and may call witnesses.

The Committee may ask questions of the subject councillor and their witnesses.

The investigator may, through the Chair, ask questions of the subject councillor and their witnesses.

The Chair will invite the investigator to sum up.

The Chair will invite the subject councillor, or their representative, to sum up.

NB: the Committee may decide to adjourn if it wishes to hear from a witness who is not in attendance at the meeting.

NB: although questions may be put to the witnesses, the witness are not required to answer.

7. Determination of facts and decision as to breach of the code of conduct

The investigator, the subject councillor and any representative, the witnesses and the press and public (if present) will withdraw while the Committee makes its findings of fact and reaches a decision in respect of breach of the code of conduct.

The investigator and subject councillor etc will be invited back into the meeting room and the Chair will read out the decision of the Committee on questions of fact and on breach of the code of conduct.

8. Decision as to sanction

If the Committee has determined that there has been a breach of the code of conduct, the Chair will ask both the investigator and the subject councillor (or their representative) to make representations as to possible sanction(s).

The investigator, the subject councillor and any representative, the witnesses and the press and public (if present) will withdraw while the Committee makes its decision as to sanction(s).

The investigator and subject councillor etc will be invited back into the meeting room and the Chair will read out the decision of the Committee as to the sanction(s), if any, to be made.

Appendix 6

HYNDBURN BOROUGH COUNCIL

Excluding the public from Standards Sub-Committee hearings

Hearings should be held in public where possible to make sure that the hearing process is open and fair. However, there may be some circumstances where parts of the hearing should be held in private.

1. If the Hearing Sub-Committee considers that 'confidential information' is likely to be revealed during the hearing, the Committee must exclude the public by law. For this purpose 'Confidential information' means information that has been provided by a Government department under the condition that it must not be revealed, and information that the law or a court order says cannot be revealed.
2. The Hearing Sub-Committee may also exclude the public if it considers that 'exempt information' is likely to be revealed during the hearing. The categories of exempt information include the following:-
 - Information relating to a particular employee, former employee or applicant to become an employee of, or a particular office-holder, former office-holder or applicant to become an office-holder under, the authority
 - Information relating to any particular occupier or former occupier of, or applicant for, accommodation provided by or at the expense of the authority
 - Information relating to any particular applicant for, or recipient or former recipient of, any service provided by the authority
 - Information relating to any particular applicant for, or recipient or former recipient of, any financial assistance provided by the authority
 - Information relating to the financial or business affairs of any particular person (other than the authority)
 - The amount of any expenditure proposed to be incurred by the authority under any particular contract for the acquisition of property or the supply of goods or services
 - Any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract for the acquisition or disposal of property or the supply of goods or services
 - The identity of the authority (as well as of any other person, by virtue of paragraph 7 above) as the person offering any particular tender for a contract for the supply of goods or services
 - Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any

labour relations matters arising between the authority and employees of the authority

- Any instructions to counsel and any opinion of counsel (whether or not in connection with any proceedings) and any advice received, information obtained or action to be taken in connection with:
 - (a) any legal proceedings by or against the authority; or
 - (b) the determination of any matter, affecting the authority.

(whether in either case, proceedings have been commenced or are in contemplation)

- Information which, if disclosed to the public, would reveal that the authority proposes:
 - (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
 - (b) to make an order or direction under any enactment
- Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime
- The identity of a protected informant
- Information relating to the personal circumstances of any person
- Information which is subject to any obligation of confidentiality
- Information which relates in any way to matters concerning national security

3. When considering whether to exclude the press and public on the basis of “exempt information” the Committee / Sub-Committee has a duty to act fairly and in line with the rules of natural justice. In accordance with Section 1 and Schedule 1 Human Rights Act 1998 the Committee / Sub-Committee must also comply with article 6 of the European Convention on Human Rights, which gives people the right to a fair trial and public hearing by an independent and unbiased tribunal. Article 6 says that the public may be excluded from all or part of the hearing if it is in the interests of:

- (a) morals;
- (b) public order;
- (c) justice;
- (d) national security in a democratic society; or
- (e) protecting young people under 18 and the private lives of anyone involved.

4. There should be a public hearing unless the Committee / Sub-Committee decides that there is good reason, which falls within one of the five categories above (3a to e), for the public to be excluded.
5. The Committee / Sub-Committee must also consider Article 8 of the European Convention on Human Rights. Article 8 says that everyone has the right to respect for their private and family life, home and correspondence. It says that no public authority (such as the Committee / Sub-Committee) may interfere with this right unless it is:
 - (a) in line with the law; and
 - (b) necessary in a democratic society in the interests of:
 - (i) national security;
 - (ii) public safety;
 - (iii) the economic wellbeing of the country;
 - (iv) preventing crime or disorder;
 - (v) protecting people's health and morals (which would include protecting standards of behaviour in public life); or
 - (vi) protecting people's rights and freedoms.

There is a clear public interest in promoting the probity, integrity and honesty of public authorities and public confidence in them. For these reasons the hearing should be held in public unless the Committee / Sub-Committee decides that protecting the privacy of anyone involved is more important than the need for a public hearing.

6. In relation to people's rights under both Articles 6 & 8 of the European Convention on Human Rights, it should be remembered that any interference with or restriction of those rights must be 'necessary in a democratic society'. A measure will only be 'necessary' if it meets 'a pressing social need', and any restriction on people's rights must be 'proportionate'.