Appendix E

Procedure for Local Determination of Allegations

The Localism Act 2011

1. Introduction

1.1 The procedure referred to in this document sets out the process which will be followed in the local determination of allegations of misconduct made against either a district councillor or parish/town councillor, where West Berkshire Council is the responsible authority. The purpose of the procedure is to ensure that every effort is made to deal with the complaint as smoothly as possible and to ensure that complaints are dealt with in accordance with the relevant legislation and within the agreed timescales. All allegations will be dealt with objectively, fairly and consistently. The Monitoring Officer will also have regard to what is in the public interest and the Council's fiduciary duty to the tax payers.

1.2 Arrangements for dealing with complaints against councillors underwent significant changes following the introduction of the Localism Act 2011. West Berkshire Council's new arrangements came into effect on the 01 July 2012 and were reviewed in December 2013.

1.3 As part of the revised Standards regime all complaints are received by the Monitoring Officer who has delegated authority to take an initial decision on whether a complaint requires investigation, some other form of action, should be referred to the Director of Public Prosecution or the Police or whether no further action is required.

1.4 Within this procedure references to the "Monitoring Officer" also refers to their duly appointed representative(s).

1.5 Within this procedure references to the "Head of Strategic Support" also refers to their duly appointed representative(s).

1.6 The person making the complaint is referred to as the *complainant* and the district/town or parish councillor being complained about is referred to as the *subject member*.

2. Process for Dealing with Complaints – Initial Assessment

2.1 A flowchart summarising the procedure that will be followed when a complaint is received is attached at Appendix A to this procedure.

2.2 Once the Monitoring Officer has received a formal complaint they need to

ensure that it is acknowledged within five working days of receipt.

2.3 All complaints must be submitted in writing (electronic submissions are acceptable). The Monitoring Officer also needs to ensure that the complaint complies with the Council's **Assessment Criteria** i.e.

- it is a complaint against one or more named councillors of the authority or an authority covered by West Berkshire Council as responsible authority;
- the subject member was in office at the time of the alleged conduct and the relevant Code of Conduct was in force at the time;
- the complaint, if proven, would be a breach of the Code under which the councillor was subject at the time of the alleged misconduct.

2.4 If the complaint fails one or more of these tests it cannot be investigated as a breach of the Code, and the complainant will be informed that no further action will be taken in respect of the complaint.

2.5 A complaint can also be rejected if :

- the complainant fails to provide enough information to base a decision on;
- the subject member is no longer a councillor of the authority (although if they are a member of another authority the Monitoring Officer could refer the complaint to that authority);
- the complaint has been the subject of an investigation or other action relating to the Code of Conduct or the complaint has been the subject of an investigation by other regulatory authorities;
- the complaint is about something that happened so long ago that there would be little benefit in taking action now;
- the complaint is too trivial to warrant further action;
- the complaint appears to be simply malicious, politically motivated or tit-for-tat;
- the complainant appears to be submitting persistent or prolific complaints.

2.6 Following receipt of a complaint that meets the agreed Assessment Criteria the complainant will be asked if there is any additional information they wish to submit and they may also be asked to clarify any issues that they have raised.

2.7 A copy of the complaint will also be sent to the subject member (unless the complainant has asked to keep their identity confidential – see Requests for Confidentiality) for written comment. The subject member will also have the opportunity to submit any additional information that they feel will support their submission. This can include written witness statements.

2.8 Both the subject member and the complainant can consult one of the Council's Independent Persons directly to seek advice. The Council has therefore appointed two Independent Persons to ensure that a conflict situation does not arise i.e. once they have been consulted the Independent

Person will not be involved in the decision making process.

2.9 The Monitoring Officer will also collate any additional information (e.g. minutes and agendas of meetings, information on websites, the applicable Code of Conduct, Standing Orders and any other relevant policies, background information including correspondence and witness statements) that will assist the initial assessment process.

2.10 An Initial Assessment meeting will take place usually within 20 *clear working days of receipt of the complaint. The Monitoring Officer will consult the Independent Person at this meeting. As this is not a public meeting neither the subject member nor the complainant, nor members of the press or public will have the opportunity to attend or speak at the meeting. In accordance with the Localism Act 2011, following the Initial Assessment the Monitoring Officer (in consultation with the Independent Person) is able to decide on one of the following four outcomes:

- no further action will be taken on the complaint;
- some form of informal resolution will be sought;
- the matter will be referred to the Director of Public Prosecution or the Police where it is suspected that some form of criminal conduct has occurred in relation to interests that have not been disclosed;
- the complaint will be investigated fully by an independent investigator.

*(*clear working days do not include weekends, bank holidays, the date of receipt of the complaint and the day of the meeting)*

2.11 The subject member, complainant and if appropriate the clerk to the relevant town or parish council will be notified of the outcome of the Initial Assessment meeting usually within three clear working days of the meeting taking place. Details of the discussion will be included in an Initial Decision Notice which will be sent to the subject member, the complainant and the relevant parish or town clerk if appropriate.

3. Requests for Confidentiality

3.1 In the interests of fairness and in compliance with the rules of natural justice, district, town and parish councillors who are complained about have a right to know who has made the complaint and the substance of the allegation(s) made against them.

3.2 Complainants do however have the right to request that their identity is not revealed to the subject member and the Monitoring Officer, in consultation with the Independent Person, may grant such requests at their discretion in exceptional circumstances. The Monitoring Officer is unlikely to withhold a complainant's personal details or the details of the complaint unless they consider there to be good reasons to believe that a complainant has justifiable grounds for anonymity/confidentiality.

3.3 When considering a request for confidentiality the Monitoring Officer, in consultation with the Independent Person, will consider any such request alongside the substance of the complaint itself and apply the following criteria:

- the complainant has reasonable grounds for believing that they will be at risk of physical harm from, or that they may be victimised or harassed by the subject member(s) against whom they are submitting the complaint (or from or by a person associated with the subject member(s));

- the complainant is an officer of a relevant authority who fears the consequences as regards their employment if their identity is revealed;

- the complainant works closely with the subject member, and is therefore afraid of the consequences to their employment or of losing their job;

- there is a medical risk to the complainant's health if their identity is revealed and is this supported by medical evidence;

- the complainant has reasonable grounds for the belief that they may receive less favourable treatment from the Council because of the identity and/or seniority of the subject member(s) in terms of any existing Council service provision or any tender/contract that they may have or are about to submit to the Council; or

- other exceptional circumstances?

3.4 When considering a request for confidentiality against these criteria the Monitoring Officer 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.

3.5 If the Monitoring Officer, in consultation with the Independent Person, decides to refuse a request for confidentiality they may decide to offer the complainant the opportunity to withdraw their complaint. When deciding whether to allow a complaint to be withdrawn the Monitoring Officer must consider whether the public interest in proceeding with an investigation outweighs the complainant's wish to have their identity withheld from the subject member.

4. Outcome of Initial Assessment – No Further Action

4.1 If, following the Initial Assessment, the Monitoring Officer, in consultation with

the Independent Person, decides that no further action should be taken on a complaint then this will be the end of the matter.

4.2 Under the previous regime if the complainant disagreed with this outcome they could appeal to the Review Sub-Committee of the Standards Committee. The Localism Act 2011 does not provide any appeals mechanism. However the decision could be open to Judicial Review by the High Court should they wish to take up this option. The complainant would be advised to seek independent legal advice about taking up this option.

5. Outcome of Initial Assessment – Informal Resolution or Other Action

5.1 If, following the Initial Assessment, the Monitoring Officer, in consultation with the Independent Person, decides that other action should be taken on the complaint the nature, format and timescales for this action needs to be articulated in the Initial Assessment Notice.

5.2 If other action is determined as appropriate and either party declines to comply, this will be reported to the Monitoring Officer who may decide to treat the facts as a further complaint.

5.3 Under the previous regime if the complainant or subject disagreed with this outcome they could appeal to the First Tier Tribunal of the Standards Board. The Localism Act 2011 does not provide any appeals mechanism. However the decision could be open to Judicial Review by the High Court should they wish to take up this option. The complainant or subject member would be advised to seek independent legal advice about taking up this option

6. Outcome of the Initial Assessment – Referred to the Director of Public Prosecution or the Police

6.1 If, following the Initial Assessment, the Monitoring Officer, in consultation with the Independent Person, decides that the matter needs to be referred to the Director of Public Prosecution or the Police both the subject member and the complainant and if appropriate the town or parish clerk will be informed.

6.2 The Monitoring Officer will pass to the Police or Director of Public Prosecutions any relevant evidence relating to the allegations received which disclose behaviour that may constitute a criminal offence, whether under the ethical standards provisions of the Localism Act or otherwise.

6.3 If potential criminal offences are identified and the complaint is referred for investigation with a view to prosecution the appropriate procedures of the Police or Council will be followed so as to protect the integrity of the investigation.

7. Outcome of the Initial Assessment – Investigation by Appointed Person

7.1 If, following the Initial Assessment, the Monitoring Officer, in consultation with the Independent Person, decides that if the allegations were substantiated they may constitute a breach of the Code of Conduct of the relevant authority, they can refer the complaint for investigation.

7.2 The Monitoring Officer will usually appoint an external independent investigator to undertake an investigation on behalf of the Standards Committee. The Council will notify the complainant and subject member of the details of the investigator who will contact them to arrange an interview with them. In addition the investigator may wish to interview additional witnesses. All information provided to the Standards Committee already will be given to the investigator.

7.3 Once the investigation is concluded (preferably within three months of receipt of instruction) the investigator will be required to produce a written report setting out their findings. The Monitoring Officer, subject member, the complainant and the Independent Person(s) will all be provided with an opportunity to comment on the initial report.

7.4 The subject member and the complainant will be asked to complete a form articulating any areas of the report they disputed. All comments would need to be received within 10 clear working days of receipt of the draft report. The complainant will also be given an additional three days to comment on any of the subject member's comments on the draft report.

8. Process for Dealing with Complaints – Advisory Panel

8.1 The report, including the comments from the relevant parties, would initially be assessed by the Standards Committee's Advisory Panel. The Panel can refer the report back to the investigator where additional detail or clarity is required. The Monitoring Officer should ensure that the Panel meeting takes place within 20 clear working days of receipt of the final investigator's report, but must allow the relevant parties adequate time to consider and respond to the report.

8.2 **No Evidence of Breach** – Where the investigator has concluded that there was no evidence of a breach of the Code of Conduct the Advisory Panel must consider if it concurs with the investigator's finding(s). If the Panel concurs that no breach has occurred the matter will considered to be closed and relevant parties will be informed of the outcome within three clear working days of the meeting. The Advisory Panel meeting is not a public meeting and there will be no requirement to publish any of the findings.

8.3 As this meeting is not a public meeting neither the subject member nor the complainant will have the opportunity to attend or speak at the meeting.

8.4 The Localism Act does not provide any appeals mechanism. However the decision could be open to Judicial Review by the High Court should the complainant wish to take up this option. The complainant would need to seek independent legal advice about taking up this option.

8.5 If the Advisory Panel disagrees with the finding that no breach has occurred they can refer the complaint to the Standards Committee for determination. They should set out any issues they disputed and their recommendation can include an opinion on a suitable sanction should the Standards Committee concur with their opinion.

8.6 The relevant parties will be informed of the outcome within three clear working days of the Advisory Panel meeting.

8.7 **Evidence of Breach** – Where the investigator has concluded that there was evidence that a breach of the relevant Code of Conduct had occurred, the Advisory Panel must decide if it concurs with the investigator's finding.

8.8 The Advisory Panel must then make a recommendation to the Standards Committee. The recommendation must set out whether or not they concur with the investigator's findings, any issues they disputed and can include a recommendation setting out their opinion on a suitable sanction if they agree that a breach of the Code of Conduct has occurred. The relevant parties will be informed of the recommendation within three clear working days of the Advisory Panel meeting. As this meeting is not a public meeting neither the subject member nor the complaint will have the opportunity to attend or speak at the meeting and the findings will not be published.

9. Arranging the Meeting of the Standards Committee

9.1 The meeting of the Standards Committee must be held within 15 clear working days of the Advisory Panel meeting or as soon as practicably possible after the meeting. The Head of Strategic Support shall arrange a time and date for the Standards Committee to meet and consider the matter.

9.2 At least 5 clear working days before the date of the meeting of the Standards Committee, the Head of Strategic Support shall notify the subject member, complainant and any relevant witnesses of the date, time and place of the meeting and the membership of the Standards Committee at which the matter will be considered.

9.3 At least 5 clear working days before the day of the meeting of the Standards Committee, the Head of Strategic Support will send to each member of the Standards Committee, to the subject member and the complainant and to the Monitoring Officer, a copy of the paperwork for the meeting. The paperwork will include the agenda for the meeting of the Committee, a copy of the investigator's report, a copy of any written statement in response to the report which has been received from the subject member, complainant and Independent Person and the recommendation from the Advisory Panel.

9.4 The Monitoring Officer may make the provision of any such copy conditional upon an appropriate undertaking of confidentiality until such time as the Head of Strategic Support makes the report available to the press and public or the Standards Committee agree that the press and public shall not be excluded from the meeting.

9.5 At the same time the Head of Strategic Support will write to the subject member and complainant and advise them that, at the commencement of the meeting, the Standards Committee will consider whether the press and public should be excluded from the meeting. There will be an assumption that the majority of hearings should take place in public.

9.6 All paperwork associated with the Standards Committee meeting will be subject to the Council's Access to Information Procedure Rules (see Part 8 of the Constitution).

10. Procedure at the Meeting

10.1 Attendance of the Subject Member and Complainant

(i) The subject member and complainant may arrange to be accompanied at the meeting at their own expense by a solicitor, counsel or friend.

(ii) Where the subject member or complainant opt to be accompanied at the meeting by a solicitor, counsel or friend they must notify the Monitoring Officer of their intention to do so at least three clear working days before the meeting.

(iii) If the subject member or complainant are not present at the start of the meeting, the Committee shall adjourn to enable them to attend, unless they are satisfied that there is sufficient reason for their failure to attend, in which case the Committee may resolve to proceed in their absence. Where the Committee proceeds in their absence, the procedure for the meeting shall be adapted as necessary, giving any representative of the subject member or complainant who is present such rights as would otherwise be accorded to them.

10.2 Order of business

The order of business at the meeting shall be as follows:

(i) elect a person to preside if the Chairman or Vice-Chairman are not present;

(ii) receive apologies for the inability to attend the meeting;

(iii) approve the Minutes of the last meeting;

(iv) receive any Declarations of Interest from Members;

(v) consideration as to whether to adjourn or to proceed in the absence of the subject member or complainant;

(vi) introduction of the Committee, Monitoring Officer (or their representative), Independent Person, independent investigator, the

legal adviser to the Committee (if appropriate) the clerk, the subject member, complainant and any other witnesses present.

(vii) any representation from the Monitoring Officer, or his representative and/or the subject member as to reasons why the Committee should exclude the press and public and determination as to whether to exclude the press and public. Where the Committee decides that it will not exclude press and public, the clerk shall at this point provide copies of the agenda and reports to any members of the press and public who are present.

(viii) consideration of the complaints in the order in which they have been received.

10.3 Speaking

(i) Presentation by the Monitoring Officer or the independent investigator of the investigator's report.

(ii) Committee's questions to the Monitoring Officer/ independent investigator. (There shall be no cross-examination by the subject member, but the subject member may request the Chairman of the Meeting to direct appropriate questions to the Monitoring Officer).

(iii) The Monitoring Officer may introduce any witnesses required to substantiate any matter contained in the report that the complainant and subject member have disputed.*

(iv) Committee's questions to the Monitoring Officer's witnesses. (There shall be no cross-examination by the subject member, but the subject member may request the Chairman of the Meeting to direct appropriate questions to the Witnesses).

(v) Opportunity for the complainant or their representative to raise any issues in the report which they have disputed in their written submission. (The legal advisor shall ensure that the Committee are aware of any written submissions.)

(vi) Committee's questions to the complainant. (There shall be no cross-examination by the subject member, they will have the opportunity to raise any issues when they address the Committee)

(vii) The complainant may introduce any witnesses required to substantiate any matter contained in the report that they have disputed.

(viii) Committee's questions to the complainant's witnesses. (There shall be no cross-examination by the subject member, they will have the opportunity to raise any issues when they address the Committee)

(ix) Presentation by the subject member or their representative. They should only raise any issues in the report which they have disputed in their written submission. (The legal advisor shall ensure that the Committee are aware of any written submissions.)

(x) Committee's questions to the subject member.

(xi) The subject member may introduce any witnesses required to substantiate any matter contained in the report that they have disputed.

(xii) Committee's questions to the subject member's witnesses

(xiii) The Committee may at any time seek legal advice from its legal advisor. Such advice will on all occasions be given in the presence of the subject member (or their representative) and complainant (or their representative).

*(*Where the subject member or complainant seeks to dispute any matter not included in their written statement, the Monitoring Officer or clerk should draw this to the attention of the Committee. The Committee may then decide:*

(a) not to admit the information but to proceed to a decision on the basis of the information contained in the report;

(b) to admit the dispute, but invite the Monitoring Officer to respond or recall any witness as necessary; or

(c) to adjourn the meeting to enable the Monitoring Officer to investigate and report on the dispute and/or to arrange for the attendance of appropriate witnesses as to the disputed information.)

10.4 Making a Decision

(ix) At the conclusion of the presentation by the last speaker, the Chairman will ask the Monitoring Officer whether there was any matter raised during the course of meeting which was not addressed in the investigator's report or in the information submitted by the complainant or subject member disputing elements of the report. The Monitoring Officer will then have an opportunity to respond to any such new matter, or may request the Committee to adjourn to enable the Monitoring Officer to investigate and report on that new matter and/or to secure the attendance of witnesses as to the new matter;

(x) If no adjournment is requested, the Committee is then required to come to a decision as to whether the subject member has breached the relevant Code of Conduct. The Committee needs to satisfy themselves that they have sufficient information upon which to take that decision. In the event that they require additional information they may question the Monitoring Officer, the subject member, complainant or any witness present in order to obtain sufficient information to enable the Committee to come to a decision on this issue.

(xi) The Committee will then adjourn into another room where they will consider in private session whether the subject member has acted in breach of the relevant Code of Conduct. Should they require any additional clarity they will raise matters with those present. Any advice will be sought from the clerk or legal advisor as to process or legislative provisions.

(xii) At the conclusion of their consideration, the Committee will return and the Chairman will advise the complainant and the subject member of their decision as to whether a breach of the Code of Conduct has occurred, and the reasons for that decision.

(xiii) If the Committee conclude that the subject member has acted in breach of the Code of Conduct, the Committee will then hear

representations from the Monitoring Officer and the subject member as to whether the Committee should take any action against the Councillor and what form any sanction should take. Members of the Committee may ask questions of the Monitoring Officer and the subject member and seek legal advice in order to satisfy themselves that they have the information upon which to take a proper decision.

(xiv) The Committee will then adjourn into another room where they will consider in private session whether to take any action in respect of the subject member and what form any sanction should take. The sanctions available to the Committee are set out in Appendix A to this procedure. The Committee will then return and the Chairman will advise the subject member of their decision as to whether any action would be taken and what sanctions, if any, would be applied and the reasons for those decisions.

(xv) The Committee can also consider in open session whether there are any recommendations which the Committee should make to the authority of which the subject member is a member arising from their consideration of the allegation.

11. Reporting of Decision of Standards Committee

11.1 As soon as reasonably practicable (usually within three clear working days) after the Committee has made its determination in respect of an allegation, the Monitoring Officer shall take reasonable steps to give written notice of that determination and the reasons for such determination to the complainant, subject member, the investigator, Independent Person and if appropriate the relevant parish/ town clerk.

11.2 Where the Committee determines that there has not been a breach of the Code of Conduct the notice shall:

(i) state that the Committee found that the subject member concerned had not failed to comply with the code of conduct of the authority concerned or the code of conduct of any other authority concerned and shall give its reasons for reaching that finding; and

(ii) not be published in summary in one or more local newspapers unless the subject member requests that it is.

11.3 Where the Committee determines that there has been a failure to comply with the Code of Conduct the notice shall:

(i) state that the Committee found that the subject member concerned had failed to comply with the Code of Conduct of the authority;

(ii) specify the details of the failure;

(iii) give reasons for the decision reached by the Committee; and

(iv) specify the sanction imposed if any.

(v) state that the disclosure is for the purpose of criminal proceedings and the information in question was not obtained as a result of personal enquiries of the person subject to the criminal proceedings (if appropiate0.

11.4 Where the Committee determines that there has been a failure to comply with the Code of Conduct but no action is required, the notice shall:

(i) state that the Committee found that the subject member concerned had failed to comply with the Code of Conduct of the authority;

(ii) specify the details of the failure;

(iii) give reasons for the decision reached by the Committee.