

LOCAL ASSESSMENT PROCEDURE

Adopted by Arun District Council – 8 November 2017
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1 BACKGROUND

- 1.1 Under Section 28 of the Localism Act 2011, the Council must have in place “arrangements” under which allegations that an Elected or co-opted Councillor of the authority or of a Town or Parish Council within the authority’s area (herein after referred to as the ‘Subject Member’) has failed to comply with the authority’s Code of Conduct can be investigated and decisions made on such allegations.
- 1.2 These arrangements provide for the Council to appoint at least one Independent Person¹ whose views must be sought by the Council before it takes a decision on whether an allegation should be investigated, and whose views can be sought by the Council at any other stage, or by the Subject Member against whom an allegation has been made.
- 1.3 The Council has adopted a Code of Conduct for Councillors, which is published on the Council’s website and is available for inspection on request from the Council’s office (see below).
- 1.4 Each Town and Parish Council is also required to adopt a Code of Conduct. If you wish to inspect a Town or Parish Council’s Code of Conduct, it should be available on their website, or you can make enquiries of their Town or Parish Clerk.
- 1.5 All Parish councils within the Arun District, and Arundel Town Council, have signed up to Arun District Council’s Code of Conduct. Bognor Regis and Littlehampton Town Councils have developed their own Code of Conduct.

2 HOW TO MAKE A COMPLAINT

- 2.1 If you wish to make a complaint against a Councillor, please complete the online complaint form which can be found on our website (<http://www.arun.gov.uk/complaints-against-councillors>) or write to:

The Monitoring Officer
Arun District Council
Arun Civic Centre
Maltravers Road
Littlehampton
West Sussex
BN17 5LF

Or by email to monitoring.officer@arun.gov.uk

- 2.2 The Monitoring Officer is a senior officer of the Council who has statutory responsibility for maintaining the register of Councillors’ interests and who is responsible for administering the system for complaints of Councillor misconduct.

¹ The Independent Person is a person who has applied for the post and is appointed by Councillors of the Council. The definition of an Independent Person can be found in Section 28 of the Localism Act 2011.

- 2.3 Please provide your name and address and contact details so that we can acknowledge receipt of your complaint and keep you informed of progress. Anonymous complaints will not be accepted.
- 2.4 As a matter of fairness and natural justice, the Subject Member will usually be told who has complained about them and receive details of the complaint. However, the Monitoring Officer may withhold your identity if he/she can be satisfied that there are reasonable grounds for doing so, e.g. belief that the complainant or any witness to the complaint may be at risk of physical harm or intimidation, or that their employment may be jeopardised if their identity is disclosed.

3 WILL MY COMPLAINT BE INVESTIGATED?

- 3.1 The Code of Conduct applies to Councillors whilst they are acting in their official capacity as a Councillor, or give the impression that they are acting in this capacity. The Code does not apply when they are acting in their capacity as a private individual.
- 3.2 If the Monitoring Officer is of the view that your complaint does not fundamentally relate to a code of conduct matter, then he/she will decline to progress it further under this procedure. For example, it is generally considered that complaints relating to the consideration of planning applications will not be dealt with under this procedure if there is an alternative legal remedy. You will be advised if this is the case.
- 3.3 Complaints which identify criminal conduct or breach of other regulations by any person, will be referred by the Monitoring Officer to Sussex Police for consideration, in accordance with an agreed protocol as set out in Appendix 4, or any other regulatory agency.
- 3.4 If the Subject Member is no longer a Councillor, or resigns/is removed from office at any point during the investigation, the Monitoring Officer has the power to withdraw the complaint and take no further action. A record of the complaint will be kept on file in the event that the Subject Member returns to office in the future and a subsequent complaint is lodged against them.
- 3.5 In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the Councillor accepting that his/her conduct was unacceptable and offering an apology, or other remedial action. Where a reasonable proposal for local resolution is proposed, but you are not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether your complaint merits formal investigation.
- 3.6 If your complaint relates to a Parish Councillor, the Monitoring Officer will seek the views of the Town/Parish Clerk about the complaint. Their view will be recorded in the investigation report and taken into account when a decision on whether to investigate is made.

4 WHEN WILL A COMPLAINT NOT BE ACCEPTED?

- 4.1 The resources involved in carrying out a formal investigation can be considerable and must be balanced by the severity of the complaint and the sanctions available to the Assessment Panel (see Appendix 2), should a breach of the code be found.
- 4.2 The Monitoring Officer has the discretion not to proceed with complaints, including those:-
- a) Containing no or insufficient evidence to demonstrate a breach of the Code;
 - b) Where there are alternative, more appropriate, remedies that should be explored first;
 - c) Where you and the Subject Member have agreed a local resolution e.g. a written or verbal apology, mediation;
 - d) Where the complaint is by one Councillor against another, a greater allowance for robust political debate (but not personal abuse or “unparliamentary” language) may be given;
 - e) That are malicious, politically motivated, or ‘tit for tat’;
 - f) Where an investigation would not be in the public interest or the matter would not warrant any sanction (see Appendix 2);
 - g) Where a substantially similar complaint has previously been considered and no new material evidence has been submitted;
 - h) Relating to allegations concerning a Councillor’s private life;
 - i) Relating to conduct in the distant past (over six months before);
 - j) Relating to dissatisfaction with a Council (or Parish Council) decision; and
 - k) About someone who is no longer a member of the Council (or relevant Parish Council) or who is seriously ill (see 3.4 above)

5. HOW IS THE INVESTIGATION CONDUCTED? – INITIAL ASSESSMENT - STAGE 1

- 5.1 On the basis that your complaint is accepted, the Monitoring Officer will acknowledge receipt of your complaint within 5 working days, confirm that it will be investigated and will keep you informed as the complaint investigation progresses.
- 5.2 The Monitoring Officer will appoint an Investigating Officer (IO), who may be another senior officer of the same authority, an Officer of another authority, or an external investigator.
- 5.3 The IO will decide whether or not they need to meet with you to further clarify the detail of your complaint, and/or for you to explain your understanding of events. There may also be a discussion about what supporting documents may need to be provided and who else the IO may need to interview.
- 5.4 The IO will write to the Councillor against whom the complaint has been made, providing them with a copy of the complaint (unless the right to anonymity has been agreed – see 2.4 above) and ask them to provide their explanation of the event(s), to suggest what other supporting documents may be required and who else the IO may wish to interview. If your complaint relates to a Town or Parish Councillor, the IO will also advise the Town/Parish Clerk.

- 5.5 At the end of the investigation, the IO will produce a draft report and provide copies for both you and the Subject Member to respond to within 14 days.
- 5.6 Both you and the Subject Member will be given the opportunity to comment on the draft report, and indicate agreement (or otherwise) with the content.
- 5.7 The IO will then send a copy of the report – having taken account of any comments from you and/or the Subject Member – to the Monitoring Officer for reviewing.
- 5.8 The Monitoring Officer will consult with an Independent Person to decide whether to:-
 - a) Take no action if there is clear evidence that there has been no breach of the Code of Conduct
 - b) Resolve the matter informally by asking the Subject Member to:-
 - i. take part in mediation with you in order to settle the complaint, providing both parties are willing to do so, and/or
 - ii. send a written apology to you, which is acceptable to the Monitoring Officer and the Chairman of the Standards Committee; and/or
 - iii. attend training, and/or
 - iv. correct an entry in the Register of Interests or correct a declaration made; OR
 - c) Progress to Stage 2 where the complaint is considered by the Assessment Panel

6 ASSESSMENT PANEL HEARING – STAGE 2

(If the Monitoring Officer and Independent Person support the complaint going forward)

- 6.1 The Assessment Panel will consist of 3 members of the Council's Standards Committee, plus an Independent Person.
- 6.2 The Monitoring Officer will also attend to present the report from the IO.
- 6.3 The Hearing will be called within a maximum period of 4 months from receipt of the complaint and the Panel will be selected from available Members of the Standards Committee. Councillors representing the ward where you live will not be permitted to sit on the Panel, nor will any Councillor who has any connection with the Subject Member.
- 6.4 Panel Members will be provided with copies of the original complaint, the IO report, any additional information or comments provided by you and/or the Subject Member, or statements from witnesses to the event.
- 6.5 Unless it is not practical, reasonable or is not likely to assist the Assessment Panel in its consideration of the Complaint, the Panel will follow the process outlined in Appendix 1.

- 6.6 Following the hearing and an agreed outcome being reached, the Panel shall prepare and sign a written decision for the Monitoring Officer to send to:
- the Subject Member
 - you
 - all Independent Persons (via a report to Standards Committee)
 - all District Councillors (via a report to Standards Committee)
 - all members of the Council's Senior Management Team (when the decision notice is published) where the complaint is about an Arun District Councillor
 - the Clerk and Chairman of the Town/Parish Council at the same time that the report is presented to the Standards Committee where the complaint is about a Town or Parish Councillor.
- 6.7 Separately, the Panel may provide the Monitoring Officer with any lessons to be learnt from the Complaint and any actions the Panel wish to suggest the Council to consider.
- 6.8 The Monitoring Officer shall publish the decision on the Council's website and that decision shall remain on the website for up to a period of 12 months unless the Standards Committee has requested a longer timeframe.
- 6.9 The Monitoring Officer shall place a report before the next meeting of the Standards Committee, for the Committee to ask questions about the decision of the Panel and discuss:
- any lessons learnt identified by the Panel
 - any actions the Panel has suggested the Council consider

and make any recommendations it feels are appropriate for Full Council to consider.

In order to avoid unnecessary printing of paper, generally the report will only include a summary of the Panel's decision and Councillors are requested to bring the full copy of the decision they have been sent, with them to the meeting of the Standards Committee and Full Council.

7 DECISION

- 7.1 The Panel can reach a finding of:
- (i) no breach of the Code of Conduct
 - (ii) the Complaint relates to an offence under Section 34 Localism Act 2011 [Offences] and the Panel will refer the Complaint and all evidence the Council is aware of to the Police. Such offences arise from failure, without reasonable excuse, to disclose a Pecuniary Interest or participation in the debate and/or votes on a matter in which the Subject Member has a Pecuniary Interest and has not been granted a dispensation.
 - (iii) a breach of the Code of Conduct that Arun District Council, or the relevant Town or Parish Council, is responsible for dealing with

- (iv) to take no action on the Complaint because, even though a breach of the Code of Conduct has occurred, the Panel is of the view that it would not serve the public interest to pursue the consideration of the Complaint
 - (v) to take no action on the Complaint because, the Subject Member is no longer a Councillor or co-opted Councillor of the Local Authority and the Panel is of the view that it would not serve the public interest to pursue the consideration of the Complaint (if the Councillor has resigned during the course of the investigation, the complaint would have been rejected at the initial assessment stage)
- 7.2 The Panel shall specify the period that its decision shall remain on Arun District Council's website, which shall be no longer than 12 months, unless the Standards Committee has carried out a further review and requested a longer timeframe.
- 7.3 Where the Panel is dealing with a Complaint against a Parish or Town Councillor or co-opted Councillor, and reaches a finding that the Subject Member has breached the Code of Conduct adopted by the Parish or Town Council, the Panel shall write to the Chairman and Clerk of that Parish or Town Council and inform them of its finding and request that the Parish or Town Council considers what action to take in relation to the Subject Member.
- 7.4 In order to assist the Parish or Town Council, the Panel may identify what action it would have taken had the Subject Member been an Arun District Councillor in breach of Arun District Council's Code of Conduct.
- 7.5 It is noted that, although Arun District Council is the 'relevant authority' and it may have regard to the Subject Member's failure when deciding what action to take, in practical terms Arun District Council cannot enforce that such action is taken and therefore it is for the Parish or Town Council to make a decision about what action to take and how to achieve compliance.
- 7.6 Arun District Council suggests to the Parish or Town Councils within its district that those Councils seek individual undertakings from each of their Councillors; that the Councillor agrees to abide by their responsibilities under the Localism Act 2011, the Parish or Town Council Code of Conduct and to comply with any consequential request made to the Member by the Parish or Town Council.

8 RIGHT OF REVIEW

- 8.1 If either you or the Subject Member considers the decision of the Panel was not fair, or proportionate, they can appeal by asking for a Review within 20 working days from the date of the covering letter sent to them with the Decision Notice, stating why they consider the Assessment Panel decision was not fair or proportionate.
- 8.2 The request must be in writing to the Monitoring Officer.

- 8.3 The Monitoring Officer will check the reasons given in the request for the Review and if those reasons are not clear the Monitoring Officer will contact the party requesting the Review and ask for clarification.
- 8.4 The Review will be referred to the Standards Committee for a decision via a report presented by the Monitoring Officer.
- 8.5 There are no further rights of appeal within the Council's Local Assessment Procedure.

9 PUBLICATION OF DECISION

- 9.1 As soon as reasonably practicable after the Panel have reached a decision, the Monitoring Officer will prepare a formal decision notice (in consultation with the Chairman of the Standards Committee) and send a copy to you, the Subject Member, and any Town or Parish Council concerned.
- 9.2 The Monitoring Officer will make the decision notice available for public inspection and report the decision to the next appropriate Standards Committee meeting.

APPENDIX 1 – ASSESSMENT PANEL HEARING PROCEDURES

Introductory Stage

1. Quorum of the Panel is three Elected Members, plus an Independent Person.
2. Hearings of the Panel will be held in closed session.
3. The Panel will elect a Chairman, who will be an Elected Member.
4. The Chairman will invite all attendees to introduce themselves.
5. The Chairman will explain the purpose of the Hearing and why it has been called.
6. The Monitoring Officer will outline the case and explain why they believe that the Subject Member has breached, or failed to follow, the Code of Conduct.

Assessment Stage 1 – the complainant

7. The Monitoring Officer will call the complainant, any other witnesses, and Investigating Officer into the hearing.
8. The Chairman will introduce those present and summarise the complaint and the process followed thus far, and the procedure for the Panel Hearing.
9. The complainant will explain why they feel that the Subject Member has breached/failed to follow the Code of Conduct.
10. The Panel Members may ask questions of the Monitoring Officer, Investigating Officer, complainant and any other witnesses.
11. The complainant and Monitoring Officer will be asked to give closing remarks.
12. The complainant and any other witnesses will leave the hearing to allow the Panel to continue their assessment.

Assessment Stage 2 – the Subject Member

13. The Monitoring Officer will call the Subject Member, any other witnesses, and the Investigatory Officer into the hearing.
14. The Chairman will introduce those present and summarise the complaint and the process followed thus far, and the procedure for the Panel Hearing.
15. The Subject Member will explain why they feel they have not breached/failed to follow the Code of Conduct.
16. The Monitoring Officer and Panel Members may ask questions of the Investigating Officer, Subject Member and their witnesses.

17. The Subject Member and Monitoring Officer will be asked to give closing remarks.
18. The Subject Member and any other witnesses will leave the hearing to allow the Panel to continue their assessment.

Decision Stage

19. The Independent Person will be invited to make comments.
20. The Panel will strive to reach a decision at that time, but may need further time to deliberate or seek further information.
21. If the Panel are able to conclude their deliberations on the day, the Chairman will call separately the complainant and then the Subject Member back into the room and announce the decision of the Panel.
22. If the Panel need further time to deliberate, they will agree a deadline and advise the complainant and the Subject Member of the decision in writing.
23. If the Panel decide that no breach has taken place, the hearing will close.
24. If the Panel decide that a breach has taken place, the Subject Member will be invited to comment on any mitigating circumstances.
25. The Monitoring Officer may comment on appropriate/suitable sanction.
26. The Independent Person will be invited to give further comment.
27. The Panel Members will consider an appropriate sanction.
28. The Chairman will advise separately the complainant and the Subject Member of the chosen sanction.
29. Panel Hearing closes.

Notes:-

- The Chairman has discretion to revise this procedure at a Hearing
- The Panel may proceed with the Hearing in the absence of the Subject Member and the complainant where no satisfactory explanation for their absence has been provided
- The Panel may adjourn the Hearing at any time

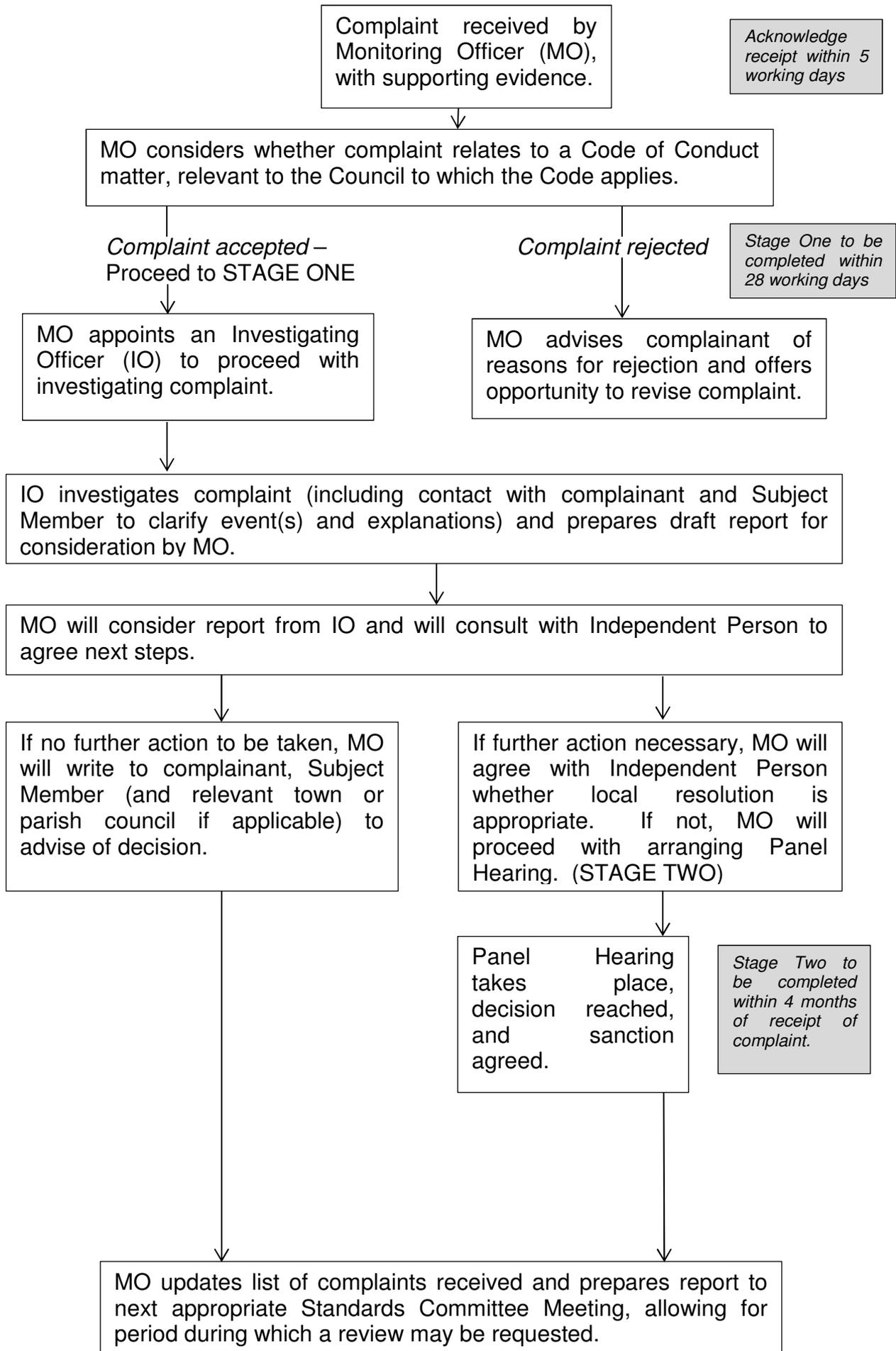
APPENDIX 2 – AVAILABLE SANCTIONS

The Panel may choose one or more of the following sanctions (or make recommendation of a sanction to the Town or Parish Council that the Subject Member represents):-

1. Censure or reprimand the Subject Member
2. Publish the findings in respect of the Subject Member's conduct
3. Report the findings to Council for information
4. Recommend to the Subject Member's Group Leader that he/she be removed from any or all Committees or Sub-Committees of the Council
5. Instruct the Monitoring Officer to arrange training for the Subject Member
6. Remove the Subject Member from all outside appointments to which he/she has been appointed or nominated by the Council
7. Withdraw facilities provided to the Subject Member, such as computer, website and/or email and internet access for an agreed period
8. Exclude the Subject Member from the Council's offices or other premises for an agreed period
9. Restrict the Subject Member's access to the Council's Officers for an agreed period
10. Recommend suitable training, mediation/conciliation be given
11. Accept a written apology from the Subject Member
12. Remind the Subject Member of the undertaking signed at the point of their election, in relation to the Members Code of Conduct (to comply with the Localism Act 2011)
13. Remind the Subject Member of the need to declare their pecuniary interests via the Register of Interests form – to be updated at regular intervals when requested or when circumstances alter – and at the beginning of any committee meeting where that interest relates to an Agenda item

The Panel has no power to suspend or disqualify the Subject Member.

APPENDIX 3 - PROCEDURE FLOWCHART



APPENDIX 4 - PROTOCOL BETWEEN ARUN DISTRICT COUNCIL'S MONITORING OFFICER AND SUSSEX POLICE

This protocol is in place for the reporting of potential criminal offences arising under Section 34 of the Localism Act 2011 concerning the registration and/or disclosure of disclosable pecuniary interests as defined in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. The protocol will work on the following basis:

1. In the event that Arun's Monitoring Officer receives a complaint regarding a potential disclosable pecuniary interest offence, they will make immediate contact with Sussex Police through the Chief Inspector, Arun and Chichester Commander. Current contacts are:

Name	Kris Ottery, Acting Chief Inspector
Email	Kris.Ottery@sussex.pnn.police.uk
Tel	101 Ext. 580223

2. Similarly if Sussex Police receives a complaint, they will inform the Monitoring Officer at Arun District Council, currently

Name	Liz Fatcher, Group Head of Council Advice & Monitoring Officer
Email	liz.fatcher@arun.gov.uk
Tel	01903 737610

3. Sussex Police will register the complaint and conduct an initial assessment but may approach Arun's Monitoring Officer for background information on the complaint.
4. If Sussex Police decide not to prosecute the matter, they will normally pass the relevant evidence to Arun's Monitoring Officer so that consideration can be given to an investigation under the Members Code of Conduct Local Assessment Procedure. In the event that Arun District Council's Standards Committee decides to pursue an investigation through the Local Assessment Procedure, they will inform Sussex Police of their decision.
5. Both Arun's Monitoring Officer and Sussex Police will endeavour to keep complainants regularly updated as to the progress of their complaint.

APPENDIX 5 – REVISIONS LOG

Revision Log		
Version Number	Date	Revision
1.0	8 November 2017	Procedure adopted at Full Council
1.1	7 March 2018	Police Protocol adopted at Full Council – attached as Appendix 4