

WIRRAL COUNCIL

STANDARDS COMMITTEE

16 APRIL 2012

SUBJECT:	New Members' Code of Conduct and Arrangements for dealing with Standards Complaints
WARD/S AFFECTED:	All
REPORT OF:	Director of Law, HR and Asset Management

1.0 EXECUTIVE SUMMARY

1.1 This report seeks the approval of the Standards Committee in relation to:

- (i) changes to the Article 9 (Terms of Reference of the Standards Committee (and its Panels)) of the Council's Constitution set out at Appendix 1;
- (ii) the draft Members' Code of Conduct set out at Appendix 2;
- (iii) the draft Protocol: Arrangements for Investigating and Making Decisions in relation to allegations made under the Members' Code of Conduct set out Appendix 3;
- (iv) the draft Complaint Form to be used in relation to complaints relating to the Members' Code of Conduct set out at Appendix 4; and
- (v) authorising the Monitoring Officer to make arrangement to enable the Council to appoint 'Independent Persons' to support the effective administration of standards complaints and decisions, in accordance with the requirements of the Localism Act 2011.

1.2 Subject to the approval of the Standards Committee, the proposed changes to Standards Committee's Terms of Reference and the draft Members' Code of Conduct require the approval of Council.

2.0 BACKGROUND AND KEY ISSUES

2.1 The Localism Bill was published on 13 December 2010 and received Royal Assent on 15 November 2011. As reported to this Committee in January 2011, the Localism Bill, as it was then, sought to devolve greater power and freedoms to councils and neighbourhoods, establish powerful new rights for communities, revolutionise the planning system, and give communities control over housing decisions. The reform covers four broad areas:

- Strengthening local democracy;
- Community empowerment;
- Reform of the planning system; and
- Social housing reform.

2.2 The Coalition Agreement 'Our Programme for Government' included the commitment to "abolish the Standards Board regime". The Government has stated that it considers

the Standards regime, consisting of a centrally prescribed model code of conduct, standards committees with the power to suspend a Council Member and regulated by a central quango, is inconsistent with the principles of localism and that the regime can be a vehicle for vexatious or politically motivated complaints.

- 2.3 On the 15 November 2011, the Localism Bill received Royal Assent and became the Localism Act 2011 ("the Localism Act"). The relevant provisions relating to standards matters are set out in Chapter 7 and Schedule 4 of the Localism Act.
- 2.4 Standards for England was abolished on 31 March 2012. The current 'standards regime' remains in force until 30 June 2012. Accordingly, the new standards regime as detailed within the Appendices (subject to approval) needs to take effect as from 1 July 2012.
- 2.5 Appendix 5 is an Explanatory Note detailing the key implications of the Localism Act 2011 on the Standards Regime. The Note was previously provided to the Standards Committee at its meeting on 26 January 2012; however it has been updated.
- 2.6 The Standards Committee at its meeting on 26 January 2012 resolved:
 - (1) *the Explanatory Note and Counsel's Advice set out at Appendices 1, 2 and 4 to the report be noted*
 - (2) *a Standards Committee Working Group be established in accordance with the Terms of Reference set out at Appendix 3 to this report but to also include the use and review of the existing Members' Code of Conduct and written arrangements as the basis of any proposed changes (if required);*
 - (3) *the Membership of the Working Group at (2) above comprise of Councillors C Blakeley, W Davies, L Rowlands, J Salter and P Williams and Mr K Harrison; and*
 - (4) *the Director of Law, HR and Asset Management be requested to update the Members' Code of Conduct in accordance with the decision at (2) above as a starting point for the development of a new framework for the Standards regime.*
- 2.7 The Standards Committee Working Group met on 1 and 28 March. The initial meeting enabled a discussion to take place in relation to the difficulties experienced and concerns of Members in relation to the current standards regime. The Working Group provided a steer on key areas for revision. The minutes of the Standards Committee Working Group meeting on 1 March are set out at Appendix 6.
- 2.8 The Working Group specifically identified the need to ensure that a more open, transparent, efficient and cost effective standards regime was introduced. It also needed to be capable of adapting to change and sufficiently flexible so as to allow 'common sense' to prevail without undermining the standards regime and the duty upon the Council to promote and maintain high standards of conduct.
- 2.9 The Standards Committee Working Group on 28 March reviewed the initial drafts of the new draft Members' Code of Conduct; draft Terms of Reference for the Standards Committee; and draft Protocol for dealing with complaints against Members/Co-opted Members (all of which are set out in the Appendices). The drafts attached incorporate the Working Group's amendments and comments.

Draft Members' Code of Conduct (Appendix 2)

- 2.10 With regards the draft Members' Code of Conduct, the Association of Council Secretaries and Solicitors (ACSeS) draft model code was used as the basis of the new Code of Conduct. This draft model code is being used by many neighbouring local authorities.
- 2.11 The Standards Committee is asked to note that the LGA, on 10 April, circulated its own draft code of conduct to assist local authorities decide what new code (if any) they wished to adopt. The LGA draft code was unfortunately received after the last meeting of the Working Group; it is therefore set out at Appendix 6 for consideration by the Standards Committee.
- 2.12 Subject to Council approval, the Council is required, under the Act, to publicise the adoption of the new Members' Code of Conduct within the Borough. If approved, in May 2012, the Code will be advertised in at least one local newspaper and will be publicised on the Council's website.

Legal Requirements

- 2.13 The Localism Act 2011 ('the Act') states that :

- a. the Council "must promote and maintain high standards conduct by Member and Co-opted Members" of the Council (section 27(1) of the Act);
- b. The Council must adopt a code dealing with the conduct that is expected of Members and Co-opted Members of the Council when they are acting in that capacity. (section 27(2) of the Act);
- c. the Council to have in place arrangements under which:
 - (i) allegations that the Members' Code of Conduct has been breached can be *investigated*; and
 - (ii) *decisions* can be made in relation to those allegations.(section 28(6) of the Act).
- d. The arrangements referred to at (c) above, must include provision for the appointment by the Council of at least one 'Independent person'. (section 28(8) of the Act).
- e. Members and Co-opted Members of the Council have a legal obligation to notify the Council's Monitoring Officer of any "disclosable pecuniary interest" for the purposes of inclusion within the register of Interests.

- 2.14 Further details of the legal requirements and framework are set out in the updated Explanatory Note at Appendix 5.

Standards Committee and its' Panels (Appendix 1)

- 2.15 Under the proposed new arrangements, the Council will retain a Standards Committee; however the Committee will have two sub-committees: a 'Standards Panel' and a 'Standards Appeal Panel'. The revised Terms of Reference for the Standards Committee and its Panels are set out at Appendix 1.

- 2.16 The Standards Committee must now be politically balanced and will not include any Independent Members. Under the Localism Act 2012, the 'Independent Member' has been replaced by the 'Independent Person' who does not sit on the Standards Committee (or any of its Panels). The Council must appoint at least one 'Independent Person'. Unfortunately, the definition in the Act of 'Independent Person' prevents the current Independent Members being appointed to this role.
- 2.17 There is an obligation under the Act, which imposes a positive obligation to seek the views of the 'Independent Person' before a decision is made in relation to a complaint that is being investigated. The views of the 'Independent Person' may also be sought where a complaint is not being investigated but relates to a Member's behaviour. The new arrangements, as detailed in the Protocol, address this issue.
- 2.18 With regards the Panels, they will consist of three Members (one member from each political groups) and will be made up of Members of the Standards Committee unless other Members are nominated by party spokespersons to sit on the Panels. Where such a nomination is made the Members nominated will only be allowed to sit on the Panels providing they have undertaken all requisite standards training. The respective roles of the Panels are explained in more detail below.

New Arrangements (Appendix 3)

- 2.19 The full details of the arrangements for dealing with investigating and making decisions in relation to standards complaints are set out in the "Protocol: Arrangements for Investigating and Making Decisions in relation to allegations made under the Members' Code of Conduct" (set out at Appendix 3). The Protocol does not require Council approval; however will be approved and reviewed periodically by the Standards Committee.

- 2.20 A summary of the key features of the new arrangements are set out below:

- a. Any action/steps taken, discretion exercised and/or decisions made pursuant to the Protocol, must promote the following:
 - a. Fairness to all parties and in proceedings;
 - b. Accountability;
 - c. Transparency of decision making;
 - d. Efficiency; and
 - e. Value for money.

- b. *Notification of a Complaint*

Where a valid complaint has been received:

The Member against whom a complaint is made ('Subject Member') will be promptly provided details of the complainant and the complaint (unless there is good reason why such information should be withheld).

- c. *Preliminary Assessment and Evaluation*

Monitoring Officer will assess and evaluate every complaint to determine whether it:

- (i) can be dealt with by local resolution;

If the complaint is considered suitable for local resolution then this course of action will be pursued.

- (ii) is frivolous and/or vexatious;

If this is the view of the Monitoring Officer, the complaint will not be progressed.

- (iii) can be dealt with by adopting another approach that is considered more effective and/or efficient;

This enables alternative options to be considered and pursued, thereby enabling the new regime to be adaptable to change and flexible so as to allow 'common sense' to prevail.

- (iv) is appropriate to be referred for investigation.

This option ensures that more serious matters are dealt with appropriately.

The Monitoring Officer when undertaking the assessment and evaluation of a complaint must take into account of (i) the views of the Independent Person; (ii) the public interest, (iii) the comments of all three Political Group Leaders; (iii) any guidance provided by Standards Committee; and (iv) promote (a) above.

d. *Obligation to Co-operate with Investigations*

Where an investigation is undertaken, the Subject Member will be required to co-operate with the investigation and make him/herself available for interview within 21 days of the investigator's request for interview. Where there is an unjustifiable delay caused by the Subject Member, the Monitoring Officer can direct that the investigation progresses without any input from the Subject Member.

e. *No breach found by Investigator*

Where the Investigator concludes that the Members' Code of Conduct has not been breached, no further action will be taken in relation to the complaint. Unless otherwise requested by Subject Member, the Monitoring Officer shall arrange for a Council media statement to be published on the Council's website in relation to the complaint and the findings/outcome of the investigation.

f. *Standards Panel*

Where the Investigator has concluded that there has been a breach of the Members' Code of Conduct, the matter will be considered by the Standards Panel within 20 working days. The Panel may decide to agree with the findings and conclusions of the Investigator; or reach an alternative decision

(such as decide there has been no breach and decide that no further action be taken).

All relevant parties shall be entitled to attend the meeting of the Standards Panel. The Panel will afford all relevant parties the opportunity to make representations in support of their respective positions. Whilst the parties will not be entitled to cross-examine each other, they will be entitled to challenge and rebut any evidence adduced or representations made by the other. (This applies equally to the Standards Appeal Panel).

g. Appeal Rights

If either the Complainant or Subject Member(s) is dissatisfied with the decision of the Standards Panel, he/she may seek permission to appeal to the Standards Appeal Panel against the decision. Any request seeking permission to appeal must be made to the Monitoring Officer in writing within 21 days of receipt of the Standards Panel decision notice.

A request seeking permission to appeal will only be valid and accepted providing:

- (i) it confirms the procedural, legal and/or evidential issues relied upon in support of the request; and
- (ii) the Monitoring Officer is satisfied, having considered the views of the Independent Person, that (a) significant and/or important procedural, legal and/or material evidential issue has been raised; and/or (b) it is considered reasonable and equitable in the circumstances that the request for appeal be permitted.

h. Standards Appeal Panel

The Standards Appeal Panel will consider, within 20 working days, any appeal that is allowed by the Monitoring Officer. The Panel may decide to agree with the findings and conclusions of the Investigator; or reach an alternative decision.

There is no further right of appeal in relation to a standards complaint.

i. Confidentiality

The Subject Member will be provided with the name of the complainant and a summary of the complaint promptly unless the Monitoring Officer believes to do so would:

- (i) put the complainant at risk of bullying, harassment or intimidation;
- (ii) put other witnesses at risk of bullying, harassment or intimidation;
- (iii) prejudice any investigation;
- (iv) prejudice any other action from being taken;

- (v) not be in the public interest; and/or
- (vi) not be consistent with guidance provided by the Standards Committee or Secretary of State.

or, a request for confidentiality has been made by the complainant and the Monitoring Officer determines that the request should be approved.

Unless otherwise permitted under the Protocol or required by legislation, a Standards Complaint (and all associated information, documents, information) shall not be disclosed in the public domain until such time that the Monitoring Officer, or Standards Committee, or the Standards Panel or the Standards Review Panel, consider it appropriate (if at all) to disclose them in the public domain.

This approach will help ensure that standards complaints can be dealt with fairly, promptly and effectively; and without any potential investigation or Panel hearing being undermined or prejudiced.

The Council's Access to Information Rules shall apply to meetings of the Standards Panel and Standards Appeal Panel.

Sanctions

- 2.21 One area of particular focus by the Working Group was the sanctions that would be available under the new standards regime. Under the Act, where a Member or Co-opted Member of the Council has been found to have breached the Members' Code of Conduct (whether or not the finding is made following an investigation), the Council **may** have regard to the failure in deciding (a) whether to take action in relation to the Member or Co-opted Member, and (b) what action to take.
- 2.22 The 2011 Act does **not** prescribe the range of 'actions' that the Council can take; but does envisage that some action **can** be taken against a Member or Co-opted Member who fails to comply with the Members' Code of Conduct.
- 2.23 The Working Group recognised that in the absence of the range of sanctions available under the current regime, it was imperative that all Members, particularly senior political figures within the respective political groups, understood their obligations to lead, support and actively promote high standards of conduct.
- 2.24 Accordingly, the Working Group considered the following sanctions should be available to either the Standards Panel or Standards Appeal Panel where they have determined that the Members' Code of Conduct has been breached:
 - (i) instruct the Monitoring Officer to write a formal warning letter to the Member reminding him/her of the need to comply with the Members' Code of Conduct; and/or
 - (ii) require the Member(s) to apologise to the complainant (whether verbally or in writing) for breaching the Members' Code of Conduct. Should the Member in question fail or refuse to do so promptly, the Monitoring Officer shall report this fact to the Member's Political Group Leader*; and/or

- (iii) report the Panel's decision to a public meeting of the Standards Committee for reference/consideration; and/or
- (iv) recommend to the Member's Political Group Leader* that disciplinary action should be taken against the Member in question and/or that he/she be removed from all (or some) outside bodies to which the Member has been appointed; and/or
- (v) instruct the Monitoring Officer to arrange training for the Member in question who shall be required to attend. Should the Member fail to attend the training arranged, the Monitoring Officer shall report this fact to the Member's Political Group Leader*.

* In the event that the Member in question is the Political Group Leader, the recommendation shall be referred to the relevant Deputy Political Group Leader; in the event that the Members in question are both the Political Group Leader and Deputy Political Group Leader, the recommendation shall be referred to the next most relevant senior Political Group Official/Spokesperson.

2.25 The timescales within which actions need to be taken are detailed with the Protocol.

Independent Member

2.26 The Council will need to appoint at least one 'Independent Person', to comply with the Act. It is proposed however that at least three such persons be appointed as this will help mitigate against any conflicts of interest, illness and other circumstances that may arise which prevents an 'Independent Person' being able to deal with a complaint.

2.27 The Committee is therefore asked to authorise the Monitoring Officer make the necessary arrangements to appoint at least three 'Independent Persons'. The Committee is further recommended to agree that the appointment arrangements, criteria and process be determined by the Monitoring Officer in consultation with the all three political party spokespersons. Under the Act, any vacancy for the appointment of an 'Independent Person' must (i) be advertised; (ii) require the submission of an application to fill the vacancy; and (iii) be approved by the majority of the Members of the Council.

2.28 The Council may pay an allowance or expenses to any appointed Independent Person. The Act expressly states that by doing so, this does not mean that the person appointed ceases to be independent. At this time, it is proposed that the reasonable and valid expenses incurred by a person when undertaking the role of 'Independent Person' be met by the Council.

Register of Interests

2.29 Under the Act the Monitoring Officer must establish and maintain a 'Register of Interests'.

2.30 The Monitoring Officer shall write to all Members requesting that they review and update their respective interests for inclusion on the Register of Interests, which will be established and maintained through the Council's Modern.Gov System.

Dispensations

2.31 All requests for dispensations seeking to relieve a Member or Co-opted Member from either (a) participating, or participating further, in any discussion of the matter at the meeting, or (b) participating in any vote, or further vote, taken on the matter at the

meeting, must be made to the Monitoring Officer who shall refer all such requests to the Standards Committee for determination. The remit of the Standards Committee, which is detailed in the draft Terms of Reference, addresses this issue.

Consultation

- 2.32 Unfortunately, due to the Act receiving Royal Assent much later than expected, it has not been possible to seek the views and opinions of all Members in relation to the proposed new standards regime as outlined in this report and the appendices.
- 2.33 The Working Group however was clear that it was important that Members took 'ownership' of the Council's duty to promote and maintain high standards of conduct.
- 2.34 Accordingly, it is proposed that a comprehensive consultation exercise with Members be undertaken between 1 July 2012 and October 2012 which affords them the opportunity to consider and comment upon the new Members' Code of Conduct and arrangements for dealing with and determining standards complaints. The consultation responses will be referred to and considered by the Standards Committee (along with any other suggested improvements) and changes/amendments would be made as considered appropriate by the Standards Committee/Council (as applicable).

3.0 RELEVANT RISKS

- 3.1 The Council is required to comply with the provisions of the Act with regards the arrangements for dealing with standards matters. Should it fail to do so, the Council exposes itself to risk of challenge and reputational harm.

4.0 OTHER OPTIONS CONSIDERED

- 4.1 The Working Group considered and debated various issues and options with regards the arrangements for dealing with standards matters.
- 4.2 The Committee is invited to consider the draft Code of Conduct proposed by the LGA (as set out at Appendix 6).

5.0 CONSULTATION

- 5.1 The consultation undertaken has been through the Standards Committee Working Group which is a cross-party working group.
- 5.2 Further consultation will be undertaken as outlined in the report.

6.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

- 6.1 There are no such implications arising.

7.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

- 7.1 The proposed changes and arrangements to deal with standards matters are considered to be more effective and efficient in dealing with standards complaints/matters. Accordingly, it is anticipated that the level of resources and time spent on dealing with standards matters will reduce. However, the resource implications are (and have always been) predominantly affected and determined by the conduct and behaviour of Members.

8.0 LEGAL IMPLICATIONS

8.1 The legal implications have been set out in the report.

9.0 EQUALITIES IMPLICATIONS

9.1 Has the potential impact of your proposal(s) been reviewed with regard to equality?

(a) Yes and impact review is attached.

<http://www.wirral.gov.uk/my-services/community-and-living/equality-diversity-cohesion/equality-impact-assessments/eias-2010-0>

10.0 CARBON REDUCTION IMPLICATIONS

10.1 There are no such implications arising.

11.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

11.1 There are no such implications arising.

12.0 RECOMMENDATION/S

12.1 That the Standards Committee:

- (i) Recommends to Council for approval:
 - a. the changes to Article 9 (Terms of Reference of the Standards Committee (and its Panels)) (as set out at Appendix 1) to take effect from 1 July 2012; and that the Council's Constitution be amended accordingly;
 - b. the draft Members' Code of Conduct (as set out at Appendix 2) to take effect from 1 July 2012; and that the Council's Constitution be amended accordingly.
- (ii) approves the draft "Protocol: Arrangements for Investigating and Making Decisions in relation to allegations made under the Members' Code of Conduct" (set out Appendix 3) to take effect from 1 July 2012;
- (iii) approves the draft Complaint Form (set out at Appendix 4) and its use as from 1 July 2012; and
- (iv) authorises the Monitoring Officer to undertake, in consultation with the three political party spokespersons, such steps necessary to enable the Council to appoint 'Independent Persons' to support the effective administration of standards complaints and decisions, in accordance with the requirements of the Localism Act 2011.
- (v) authorises the Monitoring Officer to undertake, in consultation with the three political party spokespersons, a consultation exercise with all Members of the Council (and any other persons/bodies considered appropriate) with regards (i), (ii) and (iii) above.

13.0 REASON/S FOR RECOMMENDATION/S

13.1 The Council is required to comply with the provisions of the Localism Act 2011 and the recommendations enable this to be achieved.

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APPENDICES

Appendix 1 - Draft Article 9 – Terms of Reference of the Standards Committee and its Panels

Appendix 2 - Draft Members' Code of Conduct

Appendix 3 - Draft Protocol: Arrangements for Investigating and Making Decisions in relation to allegations made under the Members' Code of Conduct

Appendix 4 – Draft Complaint Form

Appendix 5 – Updated Explanatory Note: Localism Act and the Standards Regime

Appendix 6 – Minutes of the Standards Committee Working Group

Appendix 7 - LGA Draft Code of Conduct

REFERENCE MATERIAL

ACSeS Website and circulars
Guidance on the Localism Act 2011

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Standards Committee	26 January 2012