



## Standards and Constitutional Oversight Committee

<b>Date:</b>	<b>Wednesday, 17 July 2013</b>
<b>Time:</b>	<b>6.00 pm</b>
<b>Venue:</b>	<b>Committee Room 1 - Wallasey Town Hall</b>

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### AGENDA

**1. MEMBERS' CODE OF CONDUCT - DECLARATIONS OF INTEREST**

Members of the Committee are asked to consider whether they have any disclosable pecuniary or non pecuniary interests in connection with any item(s) on this agenda and, if so, to declare them and state the nature of the interest.

**2. MINUTES (Pages 1 - 2)**

To approve the accuracy of the minutes of the Standards Committee held on 18 March, 2013.

**3. REVIEW AND UPDATE ON THE COUNCIL'S ETHICAL FRAMEWORK (Pages 3 - 92)**

**4. ANY OTHER URGENT BUSINESS APPROVED BY THE CHAIR**

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## STANDARDS COMMITTEE

Monday, 18 March 2013

<u>Present:</u>	Councillor Bill Davies (Chair)	
	Councillors	RL Abbey M McLaughlin
		J Salter T Harney
<u>Deputies</u>	Councillors	S Mountney J Hale M Hornby S Foulkes

### 21 MEMBERS' CODE OF CONDUCT - DECLARATIONS OF INTEREST

No declarations of interest were received.

### 22 MINUTES

#### RESOLVED:

That the minutes of the meeting of the Committee held on 19 November 2012 be confirmed as a correct record.

### 23 MINUTES OF THE STANDARDS WORKING GROUP

The Acting Director of Law, HR and Asset Management introduced the minutes of the Standards Working Group held on 4 February 2013.

Members were informed that the group had discussions around the Members ICT policy and suggested amendments were displayed in the minutes.

The Acting Director stated that under the new regime only two complaints had been received and regarded this as being very encouraging.

A discussion was had about the future of the Standards Committee and information was circulated detailing which neighbouring authorities operate a Standards Committee. The Acting Director informed members that there is no legal requirement for the Council to have a Standards Committee and there is scope for work conducted by this Committee to be combined with another Committee or group.

Comments were made by Members about the advantages of Independent Persons being appointed to this Committee and the need for work of the Standards Committee to be transparent. It was also expressed that under the localism act high standards need to be promoted and maintained, members agreed that this would be the appropriate forum to achieve this.

The Committee agreed unanimously that the Standards Committee should remain in place pending consideration of the issue at the next Working Group.

24 **MEMBERS' ICT POLICY**

The Acting Director of Law, HR and Asset Management presented a revised report of the Members ICT Policy.

Some discussion was had about the formatting of the document and the importance of highlighting requirements mandatory or advisory.

**RESOLVED: That Members agree to the revised ICT code with suggested amendments**

## WIRRAL COUNCIL

### STANDARDS AND CONSTITUTIONAL OVERSIGHT COMMITTEE

17 JULY 2013

<b>SUBJECT:</b>	<b><i>REVIEW AND UPDATE ON THE COUNCIL'S ETHICAL FRAMEWORK</i></b>
<b>WARD/S AFFECTED:</b>	<b><i>ALL</i></b>
<b>REPORT OF:</b>	<b><i>MONITORING OFFICER</i></b>
<b>RESPONSIBLE PORTFOLIO HOLDER:</b>	<b><i>CLLR ANN MCLACHLAN</i></b>
<b>KEY DECISION?</b>	<b>NO</b>

#### 1.0 EXECUTIVE SUMMARY

1.1 This report provides a review of the Council's Ethical Framework relating to Member conduct.

1.2 Council on 16 April 2012 approved:

- (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 Members' Code of Conduct set out at Appendix 2;
- (iii) the Protocol: Arrangements for Investigating and Making Decisions in relation to allegations made under the Members' Code of Conduct set out Appendix 3; and
- (iv) the Complaint Form to be used in relation to complaints relating to the Members' Code of Conduct set out at Appendix 4.

("the Standards Regime")

1.3. The Standards Regime was developed by a cross-party Member Standards Working Group.

1.4. On 16 July 2012, Council appointed Professor R S Jones, Mr C Jones, Mr D Burgess-Jones and Mr B Cummings as 'Independent Persons' for a period of 4 years to support the effective administration of standards complaints and decisions, in accordance with the requirements of the Localism Act 2011.

1.5. Council on 30 April 2013 amended the Council's Constitution which included changes to the terms of the reference of this Committee. The revised terms of reference are attached at Appendix 5 to this report.

## **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. In summary, the Localism Act 2011 enables greater devolution power and freedoms to Councils and neighbourhoods, establishes greater rights for communities, changes the planning system, and gives communities control over housing decisions. The reform brought about by the 2011 Act covers four broad areas:

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

2.2 When the Localism Bill was being debated, Government was of the opinion that the arrangements concerning standards matters, 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, was inconsistent with the principles of localism agenda and that the arrangements existing at the time could be used as 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 'old' standards regime remained in force until 30 June 2012. The current Standards Regime came into effect from 1 July 2012.

2.5 Appendix 6 is an Explanatory Note detailing the key implications of the Localism Act 2011 on the Standards Regime.

### Standards and Constitutional Oversight Committee (Appendix 5)

2.6 Under the Standards Regime, the Council in essence retains its 'Standards Committee'. The Committee has two sub-committees: a 'Standards Panel' and a 'Standards Appeal Panel'.

2.7 The Standards Committee must be politically balanced (unless a 'nem con vote' is taken).

2.8 Under the Localism Act 2012, the 'Independent Member' was replaced by the 'Independent Person'. The Council must appoint at least one 'Independent Person'. The Council agreed to co-opt all 4 Independent Persons onto the Committee (with no voting rights).

2.9 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, addresses this issue.

2.10 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 and Constitution Oversight 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)

2.11 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 it will be approved and reviewed periodically by this Committee.

2.12 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.

a. *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

- 2.13 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.
- 2.14 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.
- 2.15 It was recognised by the cross-party Members Standards Working Group that in the absence of the range of sanctions available under the previous 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.
- 2.16 Accordingly, the following sanctions were defined and made available to either the Standards Panel or Standards Appeal Panel where they 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.

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

#### Dispensations

2.18 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.

#### **Current Position**

2.19 The new Standards Regime has now been in place for a little over 12 months. It would seem an opportune time for this Committee to review the arrangements and consider whether any amendments should be made or alternative arrangements considered given the Council's statutory duty to promote and maintain high standards of conduct amongst Members.

2.20 By way of summary, five complaints have been received under the new Standards Regime (i.e. since 1 July 2012) of which there remains two 'live' matters. A summary of the complaints is attached at Appendix 8 to this report.

2.21 Committee is asked to consider whether a cross-party Standards Working Party should again be established to undertake the review of the Standards Regime and report back any recommendations to this Committee for consideration. Proposed Terms of Reference of the Working Group are set out at Appendix 7 to this report for the Committee consideration.

#### *Merseyside Waste Disposal Authority Request*

2.22 A request has been received from the Merseyside Waste Disposal Authority ("MWDA") that the Council's Members' Code of Conduct be amended to include a requirement that members appointed to outside bodies (such as the MWDA) be required to comply with any relevant Codes of Conduct of those outside bodies. Details of the resolution passed by the MWDA, its' Code of Conduct and procedure for handling complaints made under their Code is attached at Appendix 9.

2.23 The MWDA does fall within the definition of a 'relevant authority' under the Localism Act 2011 and therefore does not have the same legal duties and responsibilities as the Council.

2.24 The Committee can of course decide whether to recommend to Council that the Members' Code of Conduct be amended to require Members who are appointed to outside bodies to comply with any relevant Codes of Conduct of those outside bodies (and be subject to the applicable arrangements/procedures dealing with any complaints made). Alternatively, it may be an issue that the Working Group is asked to consider the request by MWDA (assuming the Committee agrees to establish the Working Group).

### **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. A review of the current Standards Regime provides a further opportunity for Members to consider revised/alternative arrangements.

### **5.0 CONSULTATION**

5.1 The consultation with Members should be undertaken in relation to any revisions/alternative arrangements (if applicable).

### **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 Standards Regime is more effective and efficient in dealing with standards complaints/matters. 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) No – not applicable

### **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 Committee:

- a. Notes this report;
- b. Determines whether to establish a cross-party Member Working Group in accordance with the Terms of Reference set out at Appendix 7 to review the current Standards Regime and report back its recommendation to this Committee for consideration.
- c. Subject to b. above, determine whether Council be recommended to amend the Members' Code of Conduct to include an obligation that Members who are appointed to an outside body be required to comply with any relevant Code of Conduct of that outside body (and be subject to the body's arrangements/procedures dealing with any complaints made under the Code).

## **13.0 REASON/S FOR RECOMMENDATION/S**

13.1 The Council is required to comply with the provisions of the Localism Act 2011 and ensure appropriate arrangements are in place to promote and maintain high standards of conduct by Members.

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## **APPENDICES**

Appendix 1 - Terms of Reference of the Standards Committee and its Panels (16 April 2012)

Appendix 2 - Members' Code of Conduct

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

Appendix 4 – Complaint Form

Appendix 5 - Terms of Reference of the Standards and Constitutional Oversight Committee

Appendix 6 – Explanatory Note: Localism Act and the Standards Regime

Appendix 7 – Proposed Terms of Reference for the Cross-party Standards Committee Working Group

Appendix 8 – Summary of Standards Complaints between 1 July 2012 and 9 July 2013

Appendix 9 – Merseyside Waste Disposal Authority arrangements for Member conduct.

**REFERENCE MATERIAL**

**SUBJECT HISTORY (last 3 years)**

<b>Council Meeting</b>	<b>Date</b>

# Article 9 - The Standards Committee

## 9.1 Standards Committee

The Council meeting will establish a Standards Committee.

## 9.2 Composition

### (a) Membership

The Standards Committee will be composed of:

- nine Members, not more than one of whom is a member of the Executive (other than the Leader) and
- three persons who are not Members or officers of the Council (independent persons).

### (b) Independent persons

Independent members will not be entitled to vote at meetings.

### (c) Chairing the Committee

The committee chairperson shall be determined by the Standards Committee at its first meeting in the Municipal Year.

## 9.3 Role and Function

The Standards Committee will:-

- promote and maintain high standards of conduct by Members, Co-Opted Members and church and parent governor representatives;
- to advise and recommend to Council the adoption, revision or replacement of the Code(s)\_of Conduct for Members, Co-Opted Members and Officers.
- assist the Members and Co-Opted Members and church and parent governor representatives to observe the [Members' Code of Conduct](#);
- monitor and review the complaints made under the Members Code of Conduct; including the operation of the [Members' Code of Conduct](#);
- advise, train or arrange to train Members, Co-Opted Members and church and parent governor representatives on matters relating to the [Members' Code of Conduct](#);
- establish, amend or revise arrangements under which allegations that an elected or co-opted Member of the Council has failed, or may have failed, to comply with the Council's Code of Conduct for Members can be investigated (which shall include but not limited to developing and adopting procedures and protocols and authorising the Council's Monitoring Officer to make such changes to the arrangements as are

considered necessary for the effective and timely investigation of allegations.

- (g) establish, amend or revise arrangements under which decisions on allegations that an elected or co-opted Member of the Council has failed, or may have failed, to comply with the Members' Code of Conduct can be made (which shall include but not limited to developing and adopting procedures and protocols and authorising the Council's Monitoring Officer to make such changes to the arrangements as are considered necessary for effective and timely decision making.
- (h) support the Monitoring Officer in the exercise of that Officer's ethical standards functions, in particular the duty to establish and maintain registers of interests for the Council.
- (j) in relation to Members or Co-Opted Members or church and/or parent governor representatives with pecuniary interests, putting in place arrangements to grant dispensations, in appropriate cases, from the restrictions on speaking and/or voting.
- (j) to exercise all other functions of the Council in relation to ethical standards, in particular those under Chapter 7 of the Localism Act 2011.
- (k) monitoring and reviewing as necessary the operation of whistle-blowing procedures;
- (l) considering reports arising from external inspections, audit investigations, Ombudsman investigations where maladministration is found, legal challenges and other sources which cast doubt on the honesty or integrity of the Council or its Members;
- (m) to consider and make recommendations on such other matters as the Committee itself thinks appropriate or which are referred to it by Council, which further the aim of promoting and maintaining the highest standards of conduct within the Council;
- (n) approve the payment of compensation involving sums in excess of £5,000 (or less, if considered appropriate) to settle complaints of maladministration.
- (o) establishing such sub-committees and/or panel as are required to discharge its role and the functions as set out in these Terms of Reference.

#### 10.0 **Establishment of Panels**

- (a) The Standards Committee will establish a:
  - (i) Standards Panel; and a
  - (ii) Standards Appeals Panel



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## Terms of Reference of the Standards Panel

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1. The Standards Panel will:
  - (a) Consider only those allegations that an elected or co-opted Member of the Council has failed, or may have failed, to comply with the Council's Code of Conduct for Members that are specified in the arrangements established under paragraph 9.3(f) above.
  - (b) Consider and take into account the views of at least one independent person before making a decision on an allegation (falling within its remit) that the Members' Code of Conduct has been breached.
  - (b) The Standards Panel after consideration of a complaint may (pursuant to paragraph 9.3(g) above):-
    - (i) ask for additional information on the allegation before reaching a decision;
    - (ii) determine that no action should be taken in respect of the allegation(s) made;
    - (iii) determine that the Members' Code of Conduct has been proved to have been breached;
  - (c) Where the Standards Panel determines that the Members' Code of Conduct has been breached, it may:
    - (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.

- (d) Where the Standards Panel determines that the Members' Code of Conduct has NOT been breached, it may:
  - (i) recommend, subject to the agreement of the Member against whom the allegation(s) has been made, that a Council media statement be issued upon the Council's website detailing the nature and outcome of the investigation into the allegations made and the decision of the Panel.
  - (ii) subject to the agreement of the Member against whom the allegation(s) has been made, report the Panel's decision to a public meeting of the Standards Committee;
- (e) The Standards Panel shall also consider under Sections 1 and 2 of the Local Government and Housing Act 1989: -
  - (a) any application received from any officer of the Council for exemption from political restriction in respect of the post held by that officer and may direct the Council that the post shall not be considered to be a politically restricted post and that the post be removed from the list maintained by the Council under Section 2(2) of that Act; and
  - b) upon the application of any person or otherwise, consider whether a post should be included in the list maintained by the Council under Section 2(2) of the 1989 Act, and may direct the Council to include a post in that list.

## 6. **Composition**

The Standards Panel shall comprise of 3 Members (one Member from each of the three main political parties) who shall be members of the Council's Standards Committee (unless an Alternate Member is nominated (see below)).

The spokesperson for each political group may nominate an 'Alternate Member' from his/her political group to sit on a Standards Panel, providing that the Member nominated has undertaken the requisite training on the Members' Code of Conduct (and any other training required by the Standards Committee).

No Member shall sit on the Standards Panel where he/she has a conflict of interest.

## 7. **Chairperson**

The Chairperson shall be appointed by the Standards Panel at each meeting.

Where the Standards Panel is considering an allegation of a breach of the Members' Code of Conduct, the Chairperson shall not be a Member of the

same political party of the Member against whom the allegation(s) have been made.

8. **Quorum**

The quorum for a meeting of the Standards Panel shall be the 3 Members that make up its composition.

9. **Frequency of Meetings** - The Standards Panel will only meet when required to undertake its role and discharge its functions as set out in these Terms of Reference.

10. **Access to Information** – Where the Standards Panel is considering allegations that an elected or co-opted Member of the Council has failed, or may have failed, to comply with the Council’s Code of Conduct for Members under 1 (a) above, the matter shall be exempt from disclosure under paragraph 7C of the Council Access to Information Procedure Rules unless the Standards Panel at its meeting considers that the public interest in lifting the exemption outweighs maintaining the continued application of the exemption.

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**B. Terms of Reference of the Standards Appeal Panel**

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1. Where a complainant or Member or Co-opted Member is dissatisfied with the determination of a complaint by the Standards Panel, the Standards Appeal Panel will convene to re-consider the complaint providing that:

a. A request for permission to appeal is first made in writing, within 14 days of receipt of the Standards Panel’s Decision Notice, to the Monitoring Officer which details the procedural, legal and/or evidential issues relied upon in support of the request for permission; and

b. The Monitoring Officer being satisfied, having considered the views of the independent person, that (i) the request for permission raises valid procedural, legal and/or evidential issues and matters not previously considered by the Standards Panel, and/or that (ii) it is reasonable and equitable in all the circumstances of the case that permission to appeal be granted.

2. Where the Standards Appeal Panel has been convened pursuant to paragraph 1 above, the Standards Appeal Panel shall:

i. Consider the complaint/allegations that an elected or co-opted Member of the Council has failed, or may have failed, to comply with the Council’s Code of Conduct for Members.

ii. Consider and take into account the views of at least one independent person before making a decision on an allegation (falling within its remit) that the Members’ Code of Conduct has been breached.

3. (a) The Standards Appeal Panel after consideration of a complaint may (pursuant to paragraph 9.3(g) above:-

- (i) ask for additional information on the allegation before reaching a decision;
  - (ii) determine that no action should be taken in respect of the allegation(s) made;
  - (iv) determine that the Members' Code of Conduct has been proved to have been breached;
- (b) Where the Standards Appeal Panel determines that the Members' Code of Conduct has been breached, it may:
- (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.

- (c) Where the Standards Appeal Panel determines that the Members' Code of Conduct has NOT been breached, it may:
- (iii) recommend, subject to the agreement of the Member against whom the allegation(s) has been made, a Council press release be issued detailing the nature and outcome of the investigation into the allegations and the decision of the Panel.
  - (iv) subject to the agreement of the Member against whom the allegation(s) has been made, report the Panel's decision to a public meeting of the Council and/or the Standards Committee;

4. **Composition**

The Standards Appeal Panel shall comprise of 3 Members (one Member from each of the three main political parties) who shall be members of the Council's Standards Committee (unless an Alternate Member is nominated (see below)).

The spokesperson for each political group may nominate an 'Alternate Member' from his/her political group to sit on a Standards Appeal Panel, providing that the Member nominated has undertaken the requisite training on the Members' Code of Conduct (and any other training required by the Standards Committee).

No Member shall sit on (or otherwise attend, engage or interfere with) the Standards Appeal Panel where he/she has a conflict of interest.

5. **Chairperson** – The Chairperson shall be appointed by the Standards Appeal Panel at each meeting. Where the Standards Appeal Panel is considering an allegation of a breach of the Members' Code of Conduct, the Chairperson shall not be a member of the same political party of the Member against whom the allegation(s) have been made.

7. **Quorum**

The quorum for a meeting of the Standards Panel shall be the 3 Members that make up its composition.

9. **Frequency of Meetings** - The Standards Appeal Panel will only meet when required to undertake its role and discharge its functions as set out in these Terms of Reference.

10. **Access to Information** – Where the Standards Appeal Panel is considering allegations that an elected or co-opted Member of the Council has failed, or may have failed, to comply with the Council's Code of Conduct for Members under 1 (a) above, the matter shall be exempt from disclosure under paragraph 7C of the Council Access to Information Procedure Rules unless the Standards Panel at its meeting considers that the public interest in lifting the exemption outweighs maintaining the continued application of the exemption..

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## WIRRAL COUNCIL

### MEMBERS' CODE OF CONDUCT

#### **Introduction**

The Localism Act 2011 requires the Council to adopt a Members' Code of Conduct with effect from 1 July 2012.

You are a representative of this Council and the public will view you as such therefore your actions impact on how the Council as a whole is viewed and your actions can have both positive and negative impacts on the Council.

This Code is based upon the "Nolan Principals-the seven principles of public life" which are set out at Schedule 1.

#### **Interpretation**

In this Code:-

"Meeting" means any meeting of:

- (a) the Council;
- (b) the executive of the Council;
- (c) any of the Council's or its executive's committees, sub-committees, joint committees or area committees;

whether or not the press and public are excluded from the meeting in question.

"Member" includes an appointed Member and Co-Opted Member.

#### **General Obligations**

1. When acting in your role as a Member of the Council:

- 1.1 **DO** treat others with respect;
- 1.2 **DO NOT** conduct yourself in a manner which is contrary to the Council's duty to promote and maintain high standards of conduct of Members;
- 1.3 **DO NOT** disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where-
  - (i) you have the consent of a person authorised to give it;
  - (ii) you are required by law to do so;

- (iii) the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or
- (iv) the disclosure is-
  - (a) reasonable and in the public interest; and
  - (b) made in good faith and in compliance with the reasonable requirements of the authority; and
  - (c) you have consulted the Monitoring Officer prior to its release.

1.4 **DO NOT** prevent another person from gaining access to information to which that person is entitled by law.

2. When using or authorising the use by others of the resources of the authority-

- 2.1. **DO** act in accordance with the Council's reasonable requirements including the requirements of the Council's ICT policy and the policies (attached to the Council's Constitution), copies of which have been provided to you and which you are deemed to have read;
- 2.2. **DO** make sure that such resources are not used improperly for political purposes (including party political purposes); and
- 2.3. **DO** have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986 (as amended).

### Interests

- 3. As a public figure, your public role may, at times, overlap with your personal and/or professional life and interests however when performing your public role as a member, **DO** act solely in terms of the public interest and **DO NOT** act in a manner to gain financial or other material benefits for yourself, your family, your friends, your employer or in relation to your business interests.
- 4. You are required to register "pecuniary and other interests" (these will be laid out in Regulations subject to these not being sensitive). Failure to declare or register a pecuniary interest will be a criminal offence if this is done without a reasonable excuse. If you knowingly or recklessly provide false or misleading information about a pecuniary interest this will also be a criminal offence.

You are required to update your register of interests within 28 days of the date a disclosable pecuniary and other registerable interest arises.



5. Whilst there is no statutory requirement for you to declare or register any gifts or hospitality you receive (or benefit from) in your role as Councillor, you are required by the Council to declare or register any such gift or hospitality which has (or is estimated to have) a value in excess of twenty five pounds (£25.00). (This requirement is however is subject to change by future Regulations).

#### Disclosure and participation

6. At a meeting where such issues arise, **DO** declare any personal and/or professional interests relating to your public duties and **DO** take steps to resolve any conflicts arising in a way that protects the public interest.
7. Certain types of decisions, including those relating to a permission, licence, consent or registration for yourself, your friends, your family members, your employer or your business interests, are so closely tied to your personal and/or professional life that your ability to make a decision in an impartial manner in your role as a member may be called into question and in turn raise issues about the validity of the decision of the authority. **DO NOT** become involved in these decisions any more than a member of the public in the same personal and/or professional position as yourself is able to be and **DO NOT** vote in relation to such matters. (Further clarification is provided in Schedule 2 of this Code).
8. **DO NOT** improperly use knowledge gained solely as a result of your role as a member for the advancement of yourself, your friends, your family members, your employer or your business interests.
9. Where you disclose a disclosable pecuniary interest, you must withdraw from the meeting room, including from the public gallery, during the whole consideration of any item of business in which you have an interest, except where you are permitted to remain as a result of a grant of a dispensation.

#### Pre-determination or bias

10. Where you have been involved in campaigning in your political role on an issue which does not impact on your personal and/or professional life you should not be prohibited from participating in a decision in your political role as member, however **DO NOT** place yourself under any financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.
11. When making a decision, **DO** consider the matter with an open mind and on the facts before the meeting at which the decision is to be taken.

**Interests arising in relation to overview and scrutiny committees (subject to Localism Act provisions)**

12. In relation to any business before an overview and scrutiny committee of the Council (or of a sub-committee of such a committee) where-

- 12.1 that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and
- 12.2 at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph 11.1 and you were present when that decision was made or action was taken; or
- 12.3 that business relates to a decision made (whether implemented or not) or action taken by you (whether by virtue of the Authority's Constitution or under delegated authority from the Leader):

**You may attend a meeting of the overview and scrutiny committees of the Council or of a sub committees of such a committee but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purposes, whether under a statutory right or otherwise.**

## THE SEVEN PRINCIPLES OF PUBLIC LIFE

### SELFLESSNESS

Holders of the public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

### INTEGRITY

Holders of the public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

### OBJECTIVITY

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

### ACCOUNTABILITY

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

### OPENNESS

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

### HONESTY

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

### LEADERSHIP

Holders of public office should promote and support these principles by leadership and example.

## Schedule 2

Where the decision referred to in Clause 7 above relates to one of the functions of the authority set out below, and the condition which follows that function does not apply to you when making that decision, you may participate in the decision:

- (i) housing, where you are a tenant of your authority *unless* those functions relate particularly to your tenancy or lease;
- (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or a parent governor of a school *unless* it relates particularly to the school which the child attends,
- (iii) statutory sick pay under Part XI of the School Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of such pay;
- (iv) an allowance, payment or indemnity given to members;
- (v) any ceremonial honour given to members; and
- (vi) setting council tax or a precept under the Local Government Finance Act 1992

# **MEMBERS' CODE OF CONDUCT**

## **PROTOCOL**

Arrangements for Investigating and Making Decisions in relation  
to allegations made under the Members' Code of Conduct

**July 2012**

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## **1. Interpretation**

- 1.1 'Chairperson' refers to the relevant person presiding at the Standards Committee or the Standards Panel or Standards Appeal Panel.
- 1.2 'Complainant' means the person who is making the Standards Complaint.
- 1.3 'Investigator' means the Monitoring Officer or other person nominated by the Monitoring Officer (or his/her representative) to investigate a complaint.
- 1.4 'Legal Advisor' means the officer responsible for providing legal advice to the Standards Panel and/or Standards Appeals Panel. This may be the Monitoring Officer, another legally qualified officer of the Council, or someone appointed for this purpose from outside the Council.
- 1.5 'Member(s)' includes all Elected Members of Wirral Council and all non-elected Co-Opted Members of any committee (including the Standards Committee and any Overview and Scrutiny Committee) (or any sub-committee) irrespective of whether they have any voting rights and also the Member's nominated representative.
- 1.6 'Monitoring Officer' means the employee appointed to this role by the Council pursuant to section 5 of the Local Government and Housing Act 1989 ('the 1989 Act'). (The Monitoring Officer has responsibility for ensuring that the Council acts lawfully and properly in everything it does.) 'Monitoring Officer' includes any Deputy Monitoring Officer appointed by the Monitoring Officer, whether generally or for a specific purpose, in accordance with the 1989 Act; and any person authorised by the Monitoring Officer to act on his/her behalf.
- 1.7 'Standards Complaint' means (i) a complaint made against a Subject Member alleging a potential breach of the Members' Code of Conduct/misconduct that is accepted by the Monitoring Officer as a valid complaint; and (ii) has been made in writing using the prescribed 'complaint form template' set out at Appendix 1 to this Protocol (unless otherwise accepted by the Monitoring Officer).
- 1.8 'Subject Member(s)' means the Member(s) of the Council who is the subject of an allegation(s) made under a Standards Complaint unless stated otherwise or the context so requires.

## **2. Introduction and Summary**

- 2.1 This Protocol has been developed and established pursuant to paragraphs 9.3(f),(g) and (j) of the Terms of Reference of The Standards Committee set out at Article 9 of the Constitution.
- 2.2 Any action/steps taken, discretion exercised and decisions made pursuant to this 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.

### **3. What Can Be Dealt With Under This Local Protocol**

- 3.1 Complaints about the behaviour/conduct of a Member(s) must be made in writing using the prescribed 'complaint form template' set out at Appendix 1 to this Protocol (unless otherwise accepted by the Monitoring Officer) which is obtainable from Committee Services (or the Council's website), and addressed to the Monitoring Officer. In line with the requirements of the Equality Act 2010 (and other related legislation), the Council can make reasonable arrangements to assist people if they have a disability that prevents them from making a Standards Complaint in writing.
- 3.2 In order to avoid unnecessary use of public resources, the Complainant must specify on the complaint form template what the Subject Member(s) is alleged to have said or done, any corroborating evidence or details of people who will be able to provide it, and a copy of any documentary evidence the Complainant seeks to rely on.
- 3.3 Standards Complaints must be about a Member(s) breaking any part of the Council's Members' Code of Conduct. This includes:
- Unlawfully discriminating against someone.
  - Failing to treat people with respect.
  - Doing something to prevent those who work for the Council from being unbiased.
  - Revealing information that was given in confidence, or stopping someone getting information they are entitled to by law.
  - Damaging the reputation of their office or Council.
  - Using their position improperly to their own or someone else's advantage or disadvantage.
  - Misusing the Council's resources.
  - Allowing the Council's resources to be misused for the activities of a registered political party.
  - Failing to register a disclosable pecuniary interest or other relevant interest(s).
  - Failing to reveal a disclosable pecuniary interest at a meeting.
  - Failing to register any gifts or hospitality they have received in their role as a member, worth over £25.00.

### **4. What Cannot Deal With Under This Local Protocol**

- 4.1 There are some complaints that are not legally capable of being dealt with under this Protocol, such as:
- Complaints about policy or decisions made.
  - Complaints where a Member(s) is not named.
  - Complaints that are not in writing (with the exception set out in paragraph 6.1 below or otherwise agreed by the Monitoring Officer).
  - Incidents or actions that are not covered by the Members' Code of Conduct or one of the Council's local protocols.
  - Incidents that are about a fault in the way the Council has or has not done something. This is known as maladministration and may be a matter for the Local Government Ombudsman.
  - Complaints about people employed by the Council – they will be dealt with through the Corporate Complaints Procedures or the Council's disciplinary procedures.
  - Complaints about the way in which the Council conducts and records its meetings - these should be referred directly to the Council's Monitoring Officer.



## **5. Acknowledging Receipt of a Standards Complaint**

- 5.1 Unless paragraph 6.1 applies, within five working days of receipt, the Complainant shall be sent a written acknowledgement of the Standards Complaint.
- 5.2 Subject to the application of paragraphs 22.2, 22.4 and 22.6 below, within five working days of receipt of the Standards Complaint, the Subject Member(s) shall be sent a written notification and summary of the Standards Complaint received.
- 5.3 The Subject Member(s) shall not disclose (except to his/her advisor(s) confidentially) any information provided to him/her under paragraph 5.2 above to any other person/body without the express written consent of the Monitoring Officer.
- 5.4 Where a 'complaint' has been received which does not allege a potential breach of the Members' Code of Conduct/misconduct by a Member(s) or provides insufficient information to enable the 'complaint' to be progressed under this Protocol, the Monitoring Officer will inform the Complainant of this issue within five working days of receipt of the 'complaint' and advise the Complainant to either raise his/her issue through an alternative and more appropriate route (if available); or request that the Complainant provides further information in connection with the 'complaint'.
- 5.5 In the event that further information is provided by the Complainant, pursuant to paragraph 5.4 above, that enables the 'complaint' to be accepted as a Standards Complaint, paragraphs 5.1 and 5.2 above shall apply.
- 5.6 Where no further information is provided by the Complainant, pursuant to paragraph 5.4, no further action shall be taken in relation to the 'complaint' and the Monitoring Officer shall inform the Complainant accordingly.

## **6. Anonymous Complaints**

- 6.1 No action shall be taken in respect of any anonymous 'complaints' received unless in the opinion of the Monitoring Officer to do so would be in the public interest. For example, if an allegation is made of a criminal nature and evidence is provided to support the allegation, the matter may be referred to the Police or the matter raised should be considered under the Council's Whistleblowing Policy.
- 6.3 Details of such allegations will be retained on file by the Monitoring Officer for future reference and monitoring purposes.

## **7. Pre-Assessment Reports and Enquiries**

- 7.1 Upon receipt of a Standards Complaint, the Monitoring Officer may, if it is considered appropriate and/or necessary, ask the Complainant for clarification or additional information in relation to the complaint. The Monitoring Officer shall be entitled to undertake such preliminary enquiries as he/she considers necessary in order to carry out the Preliminary Assessment and Evaluation referred to in paragraph 7.2 below.
- 7.2 The Monitoring Officer shall, as soon as practicably possible after receipt of a Standards Complaint (and after receiving any clarification/information requested under paragraph 7.1 above), assess and evaluate the Standards Complaint to determine whether:

- (i) it can be dealt with by local resolution;
  - (ii) it is frivolous and/or vexatious;
  - (iii) it can be dealt with by adopting another approach that is considered more effective and/or efficient; or
  - (iv) it is appropriate to be referred for investigation (see paragraph 8 below)
- ("Preliminary Assessment and Evaluation").

7.3 The Preliminary Assessment and Evaluation carried out by the Monitoring Officer under 7.2 above, 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) paragraph 2.2 above.

[\*In the event that the Subject Member is the Political Group Leader, the Monitoring Officer shall seek the views of the relevant Deputy Political Group Leader; in the event that the Subject Members are both the Political Group Leader and Deputy Political Group Leader, the Monitoring Officer shall seek the views of the next most relevant senior Political Group Official/Spokesperson.]

7.4 The suitability of an alternative course of action to an investigation of a Standards Complaint will be heavily influenced by the nature of the complaint. Certain Standards Complaints may indicate that there is a wider underlying problem/trend. Deciding to deal pro-actively with such a matter in a positive way that does not involve an investigation can be a sensible way of resolving the matter/Standards Complaint. This may be the simplest and most cost effective way of (i) getting the matter/Standards Complaint resolved promptly; (ii) helping the Council work more effectively; and (iii) avoiding similar complaints in the future.

7.5 The Monitoring Officer, in carrying out the assessment and evaluation under paragraph 7.2 above, may consider that it is appropriate and proportionate that an alternative course of action is taken in relation to Standards Complaint as it (i) enables a more satisfactory resolution to be achieved for all parties concerned; (ii) enables working practices or policies to be amended in light of the issues raised; and/or (iii) allows a better understanding of Members knowledge of the Members' Code of Conduct and/or Council procedures to be gauged. Evidence of this may include:

- (a) a number of Members failing to comply with the same part(s) of the Code;
- (b) officers giving incorrect advice;
- (c) failure to adopt the Code; or
- (d) inadequate or incomplete protocols.

Other action may also be appropriate where a breakdown in relationships within the Council is apparent; evidence of this may include:

- (a) a pattern of allegations of disrespect, bullying or harassment;
- (b) factionalised groupings within the Council;
- (c) a series of 'tit-for-tat' allegations; or

- (d) ongoing employment issues, which may include resolved or ongoing employment tribunals, or grievance procedures.

7.6 The Monitoring Officer should, as part of any Preliminary Assessment and Evaluation, take a practical approach to considering other action, taking into account the needs of the Council.

7.7 Unless otherwise stated within this Protocol, Standards Complaints that are referred for investigation under paragraph 7.2 (iv) above, will not be referred to the Standards Panel in the event that the other action undertaken has (or is perceived to have) failed due to no fault or reason on the part of the Subject Member(s). To do so in such circumstances is considered unfair to the Subject Member(s).

#### Local Resolution

7.8 If, following Preliminary Assessment and Evaluation, the Monitoring Officer is of the opinion that a local resolution of the complaint is possible and appropriate, he/she shall approach the Subject Member(s) and ask whether the he/she admits, denies or otherwise wishes to comment on the allegation made in the Standards Complaint; and whether he/she would be prepared to offer an apology or undertake other remedial action conducive to achieving a local resolution.

7.9 If the Subject Member(s) agrees to offer an apology or undertake other remedial action, and duly does so, the Standards Complaint shall not be progressed any further. In such circumstances there shall be no reporting of the Standards Complaint and/or its outcome to the Council or any Committee of Council other than as part of a periodic anonymous summary to the Standards Committee for monitoring and review purposes.

7.10 If the Monitoring Officer, whilst seeking local resolution of the Standards Complaint, is of the opinion that:

- (i) local resolution is unlikely to be achieved at all or within an acceptable timescale; and/or
- (ii) the Subject Member fails to offer an apology or undertake the agreed remedial action within the timescales agreed or within a reasonable time; and/or
- (iii) there has been a material change in circumstances (i.e. further information coming to light and issues being raised) since the Monitoring Officer undertook the Preliminary Assessment and Evaluation under paragraph 7.2;

then the Monitoring Officer shall refer the Standards Complaint and the additional information for investigation and the investigation report produced shall be considered by the Standards Panel.

#### Frivolous/Vexatious

7.11 If, following the Preliminary Assessment and Evaluation, the Monitoring Officer is of the opinion that the Standards Complaint is frivolous and/or vexatious, he/she shall inform the Complainant of his/her view and the reasons for reaching that conclusion. The Standards Complaint shall not be progressed any further and nor will there be a right of appeal against the decision of the Monitoring Officer in such circumstances.

### Alternative approach

- 7.12 If, following the assessment and evaluation outlined above, the Monitoring Officer is of the opinion that an alternative approach exists that could achieve a more effective and efficient resolution of the Standards Complaint than that outlined in paragraphs 7.8 and 7.9 above, he/she shall adopt that approach accordingly and endeavour to achieve a resolution of the Standards Complaint.
- 7.13 If the Monitoring Officer, whilst seeking resolution of the Standards Complaint by adopting an alternative approach, under paragraph 7.12, is of the opinion that:
- (i) a resolution of the Standards Complaint is unlikely to be achieved at all or within an acceptable timescale; and/or
  - (ii) the Subject Member fails to co-operate or undertake the agreed remedial action within the timescales agreed or within a reasonable time; and/or
  - (iii) there has been a material change in circumstances (i.e. further information coming to light and issues being raised) since the Monitoring Officer undertook the Preliminary Assessment and Evaluation under paragraph 7.2;

then the Monitoring Officer shall refer the Standards Complaint and any other relevant information for investigation; and the investigation report produced shall be considered by the Standards Panel.

## **8. Referral of a Complaint for Investigation**

- 8.1 Where the Monitoring Officer has determined that the Standards Complaint should be referred for investigation, he/she may undertake the investigation in person; or alternatively, (i) appoint another person (including the Deputy Monitoring Officer); or (ii) another appropriate officer (having regard to the nature of the allegations); or (iii) a Monitoring Officer/Deputy Monitoring Officer of another local authority; or (iv) an external Investigator of appropriate experience and standing, (an 'Investigator'), to undertake the investigation.
- 8.2 Within five working days of the Monitoring Officer's decision that the Standards Complaint should be investigated, he/she will:
- (i) begin to investigate the matter personally; or
  - (ii) appoint an Investigator and instruct him/her to conduct an investigation of the Standards Complaint and to report his/her findings to the Monitoring Officer and subsequently to the Standards Panel.
- 8.4 The Monitoring Officer may appoint another person (or other persons) to assist him/her or the Investigator in the conduct of his/her functions.
- 8.5 The investigation will be carried out having regard to any guidance provided by the Standards Committee and/or the Monitoring Officer; and shall normally be completed (i.e. a final report produced) within twelve weeks from the date the decision was made that the Standards Complaint should be investigated. The timescale for investigation may take longer when dealing with complex complaints or where there are large numbers of

witnesses. In such cases the Monitoring Officer will ensure that the process is dealt with in a timely manner; concluded as soon as reasonably practicable; and that the Complainant, Subject Member(s) and Chairperson of the Standards Committee are kept informed as to progress.

- 8.6 The Monitoring Officer shall ensure that the investigation is conducted in a manner that is appropriate to the seriousness of the complaint and compliant with natural justice and human rights. The Monitoring Officer shall have regard to all relevant considerations, including: the extent to which allegations are supported by any evidence; the Council's financial position; and the public interest.

## **9. Production of Documents, Information and Explanations**

- 9.1 In the course of the investigation, the Investigator (and any person authorised on his/her behalf) may make such enquiries of any person (and/or request any person to provide any document, information or explanation), as he/she thinks necessary for the purposes of carrying out the investigation.

## **10. Interviews**

### **10.1 Timescale**

The Investigator will make arrangements for interviews with relevant persons within ten working days of being appointed. If it subsequently becomes apparent that there needs to be further interviews (or other evidence provided) this will be dealt with as soon as reasonably practicable.

### **10.2 Requesting attendance**

- (i) In the course of the investigation the Investigator may request any person to attend and appear before him/her or otherwise provide advice or information, as he/she thinks necessary for the purposes of carrying out the investigation.
- (ii) The Complainant, Subject Member and other relevant Members (as determined by the Investigator) shall co-operate fully with the Investigator and make themselves available for interview within a reasonable period of time (which must not exceed 21 days) of the Investigator requesting a convenient time and date for interview.
- (iii) In the event that the Complainant or Subject Member(s) fail to respond to a request for interview or fail to make him/herself available for interview within 21 days of the Investigator request for interview or fail to co-operate fully with the Investigator thereby leading to unnecessary and/or unacceptable delay, the Monitoring Officer shall be entitled, after seeking the views of the Independent Person, to instruct the Investigator to complete the investigation and final report without interviewing the Complainant or Subject Member(s).

### **10.3 Representation**

Any person who is interviewed by the Investigator may be accompanied (at their own expense) by one friend/adviser provided that that person is not a witness in the same investigation.

#### 10.4 Notes of interviews

Where reasonably practicable, following the interview the Investigator will produce a written note of the material points of the interview, provide two copies of that note to the person interviewed and ask him/her to return one copy signed as a correct record of the interview, with such corrections or amendments as they may feel necessary for that purpose.

### 11. Investigator's Report

- 11.1 The Investigator will decide whether it is appropriate to produce a draft report or to produce a final report without first producing a draft report; a draft report will only be produced in the case of unusually lengthy or complex investigations. In either event, the Investigator may wish to confirm the accuracy of parts of the report directly with the Complainant and/or any other persons interviewed during the investigation.
- 11.2 The draft report will be marked "Confidential" and "Draft". It will also make clear that the draft report does not necessarily represent the Investigator's final findings and that a final report will be presented to the Standards Panel once the Investigator has considered any comments received on the draft report.
- 11.3 The Investigator will then send a copy of his/her draft report to the Complainant and Subject Member(s), who will be afforded the opportunity to make comments on the draft report for consideration by the Investigator. All such comments shall be made by the Complainant and Subject Member(s), to the Investigator, within ten working days of receipt of the draft report.
- 11.4 The Investigator shall, upon receipt of any comments received under paragraph 11.3 above, will consider such comments when preparing his/her final report.

### 12. Rights and Responsibilities of Members and the Investigator

- 12.1 Depending upon the seriousness of the allegations and the available evidence, the Investigator may also interview other persons named by the Subject Member(s) or the Complainant if the Investigator considers such persons may assist the investigation. Neither the Subject Member(s) nor the Complainant shall seek to interview any person who may be of assistance to the investigation.
- 12.2 The Subject Member(s) and Complainant may provide the Investigator with any documents and information they would like the Investigator to examine as part of the investigation, or the contact details of persons they would like the Investigator to interview.
- 12.3 The Complainant and Subject Member(s) will normally be interviewed face-to-face by the Investigator. Other witnesses may be interviewed by telephone or invited to make written submissions, as the Investigator considers appropriate. The Subject Member(s) will normally be given an opportunity to comment upon all evidence submitted by the Complainant (or others) to substantiate the complaint.
- 12.4 It is a breach of the Members' Code of Conduct to attempt to intimidate the Investigator or Members of the Standards Committee, or any witness, potential witness or any other person in relation to the Standards Complaint and any investigation. Neither the Complainant nor Subject Member(s) should attempt to discuss or otherwise

communicate matters and issues relating to a Standards Complaint in which they are involved with Members of the Standards Committee. Should the Complainant or Subject Member(s) have any queries or concerning in respect of the Standards Complaint or investigation, then he/she should raise them directly with the Monitoring Officer in writing.

12.5 Anyone involved with the investigation will be advised that they may be compromising their position if they communicate with the media on matters relevant to the investigation whilst the investigation is ongoing and that any communication that is made should emanate from the Council's communication team.

12.6 It is the responsibility of the Investigator to seek to discover the facts in an impartial and thorough manner. It is the responsibility of the Standards Panel (and Standards Appeal Panel) to determine the facts and decide whether there has been a failure to comply with the Code of Conduct.

### **13. Processing the Investigator's Report**

13.1 Within five working days from receipt of the Investigator's report the Monitoring Officer shall send a copy of the Investigator's final report to both the Complainant and the Subject Member(s).

13.2 In the event that the Investigator in his/her final report concludes that the Members' Code of Conduct has not been breached (and the Monitoring Officer is satisfied, after seeking the views of the Independent Person, with the investigation and the Investigator's final report), then no further action shall be taken in respect of the Standards Complaint and the matter shall be closed. The Monitoring Officer shall, with agreement of the Subject Member(s), arrange for a Council media statement to be issued in relation to the Standards Complaint and the findings/outcome of the investigation.

13.3 Where the Investigator has concluded in his/her final report that the Members' Code of Conduct has been breached, the Monitoring Officer shall, within 10 working days of receipt of the Investigator's final report, write to the Complainant and Subject Member requesting that they complete relevant forms to enable the Standards Panel to be convened at a convenient time and date to all parties to consider the Investigator's Report. Responses must be returned to the Monitoring Officer within ten working days of the request being made. Should either the Complainant or Subject Member(s) fail to reply, a reminder will be sent to him/her allowing a further five working days to reply. Should a reply still not be received, the Monitoring Officer shall be entitled to assume that the Complainant or Subject Member(s) (as applicable) does not dispute the findings and conclusions of the Investigator's final report and does not wish to participate in the Standards Panel hearing.

### **14. Confidentiality of Information gathered during an Investigation**

14.1 Information gathered during an investigation will be treated as confidential until it is reproduced in the form of a final report. Anyone involved in the investigation or is interviewed will be required to maintain confidentiality and any Member (including the Subject Member) will be reminded of his/her obligation under part 1.3 of the Members' Code of Conduct not to disclose information they have received in confidence.

14.2 If a draft report is issued in relation to the outcome of the investigation, it will be marked "confidential", to preserve the integrity of the final report or any further investigation that may need to be carried out, and must not be disclosed by the recipient to another person

(unless disclosure is to his/her advisor(s) confidentially).

## 15. Role of Investigator and the Panels

- 15.1 The function of the Investigator is to ensure, as far as possible, that all the information which is relevant to the allegation is identified and presented to the Standards Panel (and the Standards Appeals Panel as applicable), to assist it in determining whether the Subject Member has failed to comply with the Members' Code of Conduct as alleged in the Standards Complaint.
- 15.2 It is essential that the Investigator acts, at all times, in a manner that is impartial and fair to all parties.
- 15.3 The Standards Panel (and the Standards Appeals Panel as applicable) shall act in an inquisitorial manner seeking the truth in relation to the conduct of the Subject Member and on the balance of probabilities reach a decision having regard to all relevant representations, evidence and information adduced.

## 16. Standards Panel

- 16.1 Where a Standards Complaint has been referred for investigation and a finding of a breach has been found by the Investigator, the Standards Panel shall be convened within 20 working days of the Monitoring Officer receiving the Investigator's final report.
- 16.2 The Standards Committee shall consider and/or have regard to:
- (i) the Investigator's final report;
  - (ii) the views of the Independent Person;
  - (iii) material factors, relevant issues and evidence;
  - (iv) relevant representations made by the parties,
  - (v) available guidance and advice; and
  - (iii) any aggravating and/or mitigating factors (as considered appropriate).

It will then reach one of the following decisions in respect of the complaint:

- (a) Agree with findings and conclusions of the Investigator as set out in the Investigator's final report; or
  - (b) Reach an alternative decision as permitted under its Terms of Reference.
- 16.3 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 to the Panel 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.
- 16.4 Sanctions  
If the Standards Panel determines that the Members' Code of Conduct has been breached, it may impose one or more of the sanctions detailed within its terms of reference.
- 16.5 The Standards Panel may commission further investigation/s or request additional information as necessary to enable it make a decision in relation to the Standards



Complaint; and accordingly adjourn the consideration of a Standards Complaint to another meeting.

## **17. Notification of Standards Panel Decision and Right of Appeal**

17.1 The Standards Panel decision and its reasons shall be confirmed in writing to the Complainant and the Subject Member(s) within normally five working days of the Standards Panel meeting. The Complainant and Subject Member(s) have a right to seek permission to appeal to the Standards Appeal Panel against the decision of the Standards Panel in accordance with paragraph 18 below.

## **18. Request for permission to Appeal**

18.1 If 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 on the grounds set out below.

18.2 Any request seeking permission to appeal must be made in writing to the Monitoring Officer within 21 working days of receipt of the Standards Panel's decision.

18.3 The Monitoring Officer shall acknowledge any request seeking permission to appeal made under paragraph 18.2 within 5 working days of receipt.

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

- (i) it confirms the procedural, legal and/or evidential issues are 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 material evidential issues have been raised; and/or (b) it is considered reasonable and equitable in the circumstances that the request for appeal be permitted.

The Monitoring Officer shall make a decision in respect of the request within 5 working days and promptly notify the Complainant and Subject Member of his/her decision.

## **19. Review Panel**

19.1 The Monitoring Officer shall convene a meeting of the Standards Appeal Panel to consider the appeal within 20 working days (or as soon as practicable thereafter) of his/her decision to allow an appeal under paragraph 18.4 above.

19.2 The Monitoring Officer shall, within 10 working days of allowing the appeal, write to the Complainant and Subject Member requesting that they complete relevant forms to enable the Standards Appeal Panel to be convened at a convenient time and date to all parties to hear the appeal. Responses must be returned to the Monitoring Officer within ten working days of the request being made. Should either the Complainant or Subject Member(s) fail to reply, a reminder will be sent to him/her allowing a further five working days to reply. Should a reply still not be received, the Monitoring Officer shall be entitled to assume that the Complainant or Subject Member(s) (as applicable) does not dispute

the findings and conclusions of the Investigator's final report and does not wish to participate in the Standards Appeal Panel hearing.

19.3 The Standards Appeal Panel will consider and/or have regard to:

- (iv) the Investigator's report;
- (v) the views of the Independent Person;
- (vi) material factors, relevant issues and evidence;
- (iv) relevant representations made by the parties,
- (v) available guidance and advice; and
- (iii) any aggravating and/or mitigating factors (as considered appropriate).

The decision and reasons of the Standards Panel relating to the Standards Complaint shall not be disclosed to the Standards Appeal Panel.

The Standards Appeal Panel will then reach one of the following decisions in respect of the appeal:

- (a) Agree with findings and conclusions of the Investigator as set out in the Investigator's final report; or
- (b) Reach an alternative decision as permitted under its Terms of Reference.

19.4 All relevant parties shall be entitled to attend the meeting of the Standards Appeal Panel. The Panel will afford all relevant parties the opportunity to make representations to the Panel 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.

#### 19.5 Sanctions

If the Standards Appeal Panel determines that the Members' Code of Conduct has been breached, it may impose one or more of the sanctions detailed within its terms of reference.

19.6 The Standards Appeals Panel may commission further investigation/s or request additional information as necessary to enable it make a decision in relation to the appeal; and accordingly adjourn the consideration of the appeal to another meeting.

### 20. **Notification of Review Panel Decision**

20.1 The Standards Appeal Panel decision and its reasons shall be confirmed in writing to the Complainant and the Subject Member, within normally five working days of the Standards Appeal Panel considering the Standards Complaint. The Complainant and Subject Member do not have a right to of appeal against the decision of the Standards Appeal Panel.

### 21. **Access to Meetings and Decision Making**

21.1 Where the Standards Panel or Standards Appeals Panel is considering allegations that a Subject Member has failed, or may have failed, to comply with the Members' Code of Conduct, the Standards Complaint and all associated reports, documents, information and the like shall be exempt from disclosure under paragraph 7C of the Council Access to Information Procedure Rules unless the Standards Panel or the Standards Appeals

Panel at its meeting considers that the public interest in lifting the exemption outweighs the public interest in maintaining the exemption.

- 21.2 Agendas and papers for meetings of the Standards Panel and Standards Appeals Panel shall be distributed in accordance with the Council's Access to Information Procedure Rules.
- 21.3 The publication of Standards Panel and Standards Appeals Panel decisions and associated information shall be kept for six years from the date of the decision.

## **22. Confidentiality**

- 22.1 Unless otherwise permitted under this Protocol or required by legislation, a Standard Complaint (and all associated information, documents, information) shall remain confidential 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 the Standards Complaint (and all associated information, documents, information) in the public domain.
- 22.2 The Subject Member(s) will (unless otherwise stated in this Protocol) be sent a summary of the complaint within five working days of receipt unless the Monitoring Officer believes to do so would:
- (a) put the complainant at risk of bullying, harassment or intimidation;
  - (b) put other witnesses at risk of bullying, harassment or intimidation;
  - (c) prejudice any investigation;
  - (d) prejudice any other action from being taken;
  - (e) not be in the public interest; and/or
  - (f) not be consistent with guidance provided by the Standards Committee or Secretary of State.
- 22.3 The Subject Member shall not disclose (except to his/her advisor(s) in confidence) any information provided to him/her under paragraph 22.2 above without the express written consent of the Monitoring Officer.
- 22.4 Any request by the Complainant to keep his/her name confidential will be considered by the Monitoring Officer within five working days of receipt of any such request and the decision (with reasons) communicated to the Complainant in writing. Where the request is refused, the complainant may be afforded the opportunity to withdraw the Standards Complaint. However, where the Standards Complaint relates to a serious matter, the Monitoring Officer reserves the right to progress the Standards Complaint in accordance with this Protocol.
- 22.5 In exceptional circumstances, despite the Monitoring Officer agreeing to the Complainant's identity being kept confidential under paragraphs, 22.1, 22.2 and/or 22.4 above, the confidential details in question may still become known in the public domain or have to be provided for other reasons and purposes which disclosing them in the public domain.

22.6 The Subject Member will not be informed/notified of the Standards Complaint and/or the identity of the Complainant, in accordance with paragraph until after the Monitoring Officer has considered the Standards Complaint and made a determination in relation to any request for confidentiality made under paragraph 22.4 above.

### **23. Conflicts of Interest**

23.1 Members and officers shall not take part in meetings of the Standards Panel or Standards Appeal Panel where any of the following circumstances apply:

- (a) The complaint is likely to affect the well-being or financial position of that Member or officer or the well-being or financial position of a friend, family member of person with whom they have a close association.
- (b) The Member or officer is directly or indirectly involved in the Standards Complaint and/or investigation in any way.
- (c) A family member, friend or close associate of the Member or officer is involved in the Standards Complaint and/or investigation.
- (d) The Member or officer has an interest in any matter relating to the Standards Complaint and/or investigation. For example, it concerns a Member's failure to declare an interest in a planning application in which the Member or officer has an interest. This is despite the fact that the outcome of any investigation or other action could not affect the decision reached on the application.

### **24. Monitoring and Review**

24.1 For monitoring and review purposes, the Monitoring Officer shall provide the Standards Committee, at each of its meetings (unless otherwise directed by the Standards Committee), an anonymous summary (unless the information is already in the public domain) of all Standards Complaints received, their progress, outcome and any costs incurred.

### **25. Failure to Comply with the Requirements of this Protocol**

25.1 Failure by a Member to comply with the reasonable requirements of the Investigator, or this Protocol, may result in a complaint being made to or by the Monitoring Officer under the Members' Code of Conduct.

### **26. Modification of Procedure**

26.1 The Monitoring Officer, in consultation with the Chairperson of the Standards Committee and Political Group Leaders (or their nominated spokesperson), may vary the procedures and practices detailed in this Protocol where the variation is considered (i) necessary to ensure the effective and timely administration, investigation and/or determination of a Standards Complaint; and (ii) it is fair and equitable to do so. Any such variation shall be recorded in writing (which shall include the reasons for the variation) and be signed by the Chairperson of the Standards Committee.



# Complaint Form

## Members' Code of Conduct

<b>Title:</b>	
<b>First name:</b>	
<b>Last name:</b>	

<b>Address:</b>	
<b>Daytime telephone:</b>	
<b>Evening telephone:</b>	
<b>Mobile telephone:</b>	
<b>Email address:</b>	

<b>Date of Complaint</b>	
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Your address and contact details will not usually be released unless necessary or to deal with your complaint.

However, it will be necessary (unless otherwise determined by the Monitoring Officer) to inform the following people that you have made this complaint:

- the Member(s) you are complaining about;
- the Monitoring Officer authorised representatives/advisors; and if necessary
- any investigator appointed; and/or
- witnesses involved in the investigation.

Please note that (unless otherwise determined by the Monitoring Officer) your name and a summary of your complaint (or in some cases where justified a full copy of your complaint) will be provided to those persons mentioned above.

If you have serious concerns about your name and a summary (or full copy of your complaint), or any details of your complaint being disclosed, please complete section 5 of this form.

1. Please tell us which statement best describes you:

- Member of the Public
- Elected or Co-Opted Member of an authority
- Member of Parliament
- Local Authority Monitoring Officer
- Other Council Officer or Council employee
- Other ( )

2. Equality monitoring questions - please fill in the monitoring form attached to this complaint form.

### Making your complaint

On receipt of your complaint the Monitoring Officer will be considered in accordance with the Council's Protocol: Arrangements for Investigating and Making Decisions in relation to allegation made under the Members' Code of Conduct.

Please return your completed complaint form to the Council's Monitoring Officer, by post or email, at the address shown at section 11 of this form.

3. Please provide us with the name of the Member(s) you believe have breached the Members' Code of Conduct and the name of their authority:

Title	First name	Last name	Council or authority name

4. Please explain in this section (or on separate sheets) what the Member(s) has done that you believe amounts to a breach of the Members' Code of Conduct.

If you are complaining about more than one Member you should clearly explain what each individual Member has done that you believe amounts to a breach of the Members' Code of Conduct.

It is important that you provide all the information you wish to have taken into account by the Monitoring Officer when he/she undertakes his/her Preliminary Assessment and Evaluation of your complaint. For example:

- You should be specific, wherever possible, about exactly what you are alleging the Member(s) said or did. For instance, instead of writing that the Member insulted you, you should state what was actually said.

- You should provide the dates 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 or other relevant documentary evidence to support your allegation.
- If the conduct alleged took place over three months before submitting this complaint please explain why the complaint was not made sooner.

**DETAILS OF YOUR COMPLAINT:**

(Please note that the box will automatically expand as required)

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

In the interests of fairness and in compliance with the rules of natural justice, we believe a Member(s) who is complained about has a right to know who has made the complaint and the substance of the allegation(s) made against him/her. We are, therefore, unlikely to withhold your personal details or the details of your complaint unless you have good reasons to believe that you have justifiable grounds, for example:

- to believe you may be victimised or harassed by the Member(s) against whom you are submitting a written complaint (or by a person associated with the same);
- the matter is the subject of an investigation by another public body e.g. the Police and that investigation may be prejudiced as a result of disclosure; or
- you believe that you may receive less favourable treatment from the Council because of the seniority of the Member(s) against whom you are making the complaint.

Please note that requests for confidentiality or requests for suppression of complaint details will not automatically be granted. The Monitoring Officer will consider the request alongside the substance of your complaint, and will then contact you with the decision. If your request for confidentiality is not granted, you will usually be afforded the opportunity of withdrawing your complaint.

However, it is important to understand that in certain exceptional circumstances where the matter complained about is serious, the Monitoring Officer can proceed with an investigation or other action and disclose your name even if you have expressly asked that it remains confidential.

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

(Please note that the box will automatically expand as required)

## 6. Remedy Sought

Please indicate the remedy or remedies you are looking for or hoping to achieve by submitting this complaint.

**Please provide details of the remedy sought:**

(Please note that the box will automatically expand as required)

## 7. Additional Help

Complaints must be submitted in writing. This includes fax and electronic submissions. However, in line with the requirements of the Equality Act 2010, reasonable adjustments will be made to assist you, should 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 Monitoring Officer as soon as possible.

## 8. Process from here

Once a valid complaint relating to an alleged breach of the Members' Code of Conduct has been received by the Monitoring Officer, it will be assessed and



evaluated by the Monitoring Officer in accordance with the Council's Protocol: Arrangements for Investigating and Making Decisions in relation to allegation made under the Members' Code of Conduct.

The Monitoring Officer may seek clarification or further information from you.

The Monitoring Officer will decide whether the complaint:

- (i) should be dealt with by local resolution;
- (ii) is frivolous and/or vexatious;
- (iii) can be dealt with by adopting another approach that is considered more effective and/or efficient; or
- (iv) is appropriate to be referred for investigation.

You will be informed of the Monitoring Officer's decision in writing and any applicable next steps in the process.

(Please note that the Council's Protocol: Arrangements for Investigating and Making Decisions in relation to allegation made under the Members' Code of Conduct, is available on the Council's website and details the process and procedures for dealing with complaints).

## 10. Contact Details:

**Surjit Tour**  
Monitoring Officer

Wirral Council  
Town Hall  
Brighton Street  
Wallasey  
Wirral  
CH44 8ED

Tel: 0151 691 8498  
Fax: 0151 691 8482  
E-mail: [surjittour@wirral.gov.uk](mailto:surjittour@wirral.gov.uk)

**Improving Access to Services Monitoring Form****Why is the council asking you for information?**

We want to ensure that all Wirral residents can access all of our services, and to ensure you all receive an appropriate and relevant service dependent upon your needs.

We need your help in order for us to do that.

We are asking you to provide us with vital personal information, which will be anonymous and cannot be attached to your name or address. We need this information to build a picture of who uses our services. This will also help us to identify which local communities are not accessing our services and why.

The information you provide is voluntary, you do not have to complete some or all of the questions.

However, the more information you provide the more we can ensure continuous improvements to our services.

**1. Which council service are you enquiring about?****2. Your Gender**

Male

Female

(please tick one box)

YES / NO Is your gender identity the same as the gender you were assigned at birth? (please delete as appropriate)

**3. Your Age**

Please state your date of birth

#### **4. Your Ethnicity**

(Please tick one box or state your ethnicity)

##### **A. White**

- English
- Other British
- Irish
- ] Any other White background (please state)

##### **B. Mixed**

- White & Black Caribbean
- White & Black African
- White & Asian
- ] Any other Mixed background (please state)

##### **C. Asian or Asian British**

- Indian
- Pakistani
- Bangladeshi
- Chinese
- ] Any other Asian background (please state)

##### **D. Black or Black British**

- Caribbean
- African
- ] Any other Black background (please state)

##### **E. Other Ethnic Group**

- Arab
- Gypsy / Romany / Irish Traveller
- ] Any other Ethnic Group (please state)

### **5. Your Disability**

Do you consider yourself to be a disabled person?

YES / NO (please delete as appropriate)

### **6. Your Sexual Orientation**

- Heterosexual
- Lesbian or Gay
- Bisexual

(please tick one box)

### **7. Your Religion or Belief**

What is your religion?

- None
- Christian (including Church of England, Catholic, Protestant & all other Christian denominations)
- Buddhist
- Hindu
- Jewish
- Muslim
- Sikh
- ] Any other religion (please state)

What is your belief?

- Humanist
- Atheist
- Agnostic
- Pagan
- ] Any other belief (please state)

**Thank you very much for completing this form**

# Article 9 - The Standards and Constitutional Oversight Committee

## 9.1 Standards and Constitutional Oversight Committee

The Council meeting will establish a Standards and Constitutional Oversight Committee, to be known as the Standard and Constitutional Oversight Committee.

## 9.2 Composition

### (a) Membership

The Standards and Constitutional Oversight Committee will be composed of:

- nine Members, not more than one of whom is a member of the Executive (other than the Leader) and
- four persons who are not Members or officers of the Council (independent persons).

### (b) Independent persons

Independent members will not be entitled to vote at meetings.

### (c) Chairing the Committee

The committee chairperson shall be determined by the Standards and Constitutional Oversight Committee at its first meeting in the Municipal Year.

## 9.3 Role and Function

The Standards and Constitutional Oversight Committee will:-

- (a) promote and maintain high standards of conduct by Members, Co-Opted Members and church and parent governor representatives;
- (b) to advise and recommend to Council the adoption, revision or replacement of the Code(s)\_of Conduct for Members, Co-Opted Members and Officers.
- (c) assist the Members and Co-Opted Members and church and parent governor representatives to observe the Members' Code of Conduct;

- (d) monitor and review the complaints made under the Members Code of Conduct; including the operation of the Members' Code of Conduct;
- (e) advise, train or arrange to train Members, Co-Opted Members and church and parent governor representatives on matters relating to the Members' Code of Conduct;
- (f) establish, amend or revise arrangements under which allegations that an elected or co-opted Member of the Council has failed, or may have failed, to comply with the Council's Code of Conduct for Members can be investigated (which shall include but not limited to developing and adopting procedures and protocols and authorising the Council's Monitoring Officer to make such changes to the arrangements as are considered necessary for the effective and timely investigation of allegations.
- (g) establish, amend or revise arrangements under which decisions on allegations that an elected or co-opted Member of the Council has failed, or may have failed, to comply with the Members' Code of Conduct can be made (which shall include but not limited to developing and adopting procedures and protocols and authorising the Council's Monitoring Officer to make such changes to the arrangements as are considered necessary for effective and timely decision making.
- (h) support the Monitoring Officer in the exercise of that Officer's ethical standards functions, in particular the duty to establish and maintain registers of interests for the Council.
- (i) in relation to Members or Co-Opted Members or church and/or parent governor representatives with pecuniary interests, putting in place arrangements to grant dispensations, in appropriate cases, from the restrictions on speaking and/or voting.
- (j) to exercise all other functions of the Council in relation to ethical standards, in particular those under Chapter 7 of the Localism Act 2011.
- (k) monitoring and reviewing as necessary the operation of whistle-blowing procedures;
- (l) considering reports arising from external inspections, audit investigations, Ombudsman investigations where maladministration is found, legal challenges and other sources which cast doubt on the honesty or integrity of the Council or its Members;

- (m) to consider and make recommendations on such other matters as the Committee itself thinks appropriate or which are referred to it by Council, which further the aim of promoting and maintaining the highest standards of conduct within the Council;
- (n) approve the payment of compensation involving sums in excess of £5,000 (or less, if considered appropriate) to settle complaints of maladministration.
- (o) establishing such sub-committees and/or panel as are required to discharge its role and the functions as set out in these Terms of Reference;-
- (p) To keep the councils constitutional arrangements under review and to make such recommendations to the council as it considers appropriate for ways in which it should be amended in order better to achieve the purposes set out in Article 1, (set out below at paragraph 2.23).
- (q) To oversee and agree such minor and consequential changes to the councils constitutional arrangements as are recommended by the Monitoring officer from time to time.

#### 10.0 Establishment of Panels

- (a) The Standards and Constitutional Oversight Committee will establish a:  
Standards Panel; and a  
Standards Appeals Panel

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#### **Terms of Reference of the Standards Panel**

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1. The Standards Panel will:
  - (a) Consider only those allegations that an elected or co-opted Member of the Council has failed, or may have failed, to comply with the Council's Code of Conduct for Members that are specified in the arrangements established under paragraph 9.3(f) above.
  - (b) Consider and take into account the views of at least one independent person before making a decision on an allegation (falling within its remit) that the Members' Code of Conduct has been breached.
  - (b) The Standards Panel after consideration of a complaint may (pursuant to paragraph 9.3(g) above):-
    - (i) ask for additional information on the allegation before reaching a decision;

- (ii) determine that no action should be taken in respect of the allegation(s) made;
  - (i) determine that the Members' Code of Conduct has been proved to have been breached;
- (c) Where the Standards Panel determines that the Members' Code of Conduct has been breached, it may:
- (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 and Constitutional Oversight 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.

- (d) Where the Standards Panel determines that the Members' Code of Conduct has NOT been breached, it may:
- (i) recommend, subject to the agreement of the Member against whom the allegation(s) has been made, that a Council media statement be issued upon the Council's



website detailing the nature and outcome of the investigation into the allegations made and the decision of the Panel.

- (ii) subject to the agreement of the Member against whom the allegation(s) has been made, report the Panel's decision to a public meeting of the Standards and Constitutional Oversight Committee;

(e) The Standards Panel shall also consider under Sections 1 and 2 of the Local Government and Housing Act 1989: -

- (a) any application received from any officer of the Council for exemption from political restriction in respect of the post held by that officer and may direct the Council that the post shall not be considered to be a politically restricted post and that the post be removed from the list maintained by the Council under Section 2(2) of that Act; and
- b) upon the application of any person or otherwise, consider whether a post should be included in the list maintained by the Council under Section 2(2) of the 1989 Act, and may direct the Council to include a post in that list.

## 6. **Composition**

The Standards Panel shall comprise of 3 Members (one Member from each of the three main political parties) who shall be members of the Council's Standards and Constitutional Oversight Committee (unless an Alternate Member is nominated (see below)).

The spokesperson for each political group may nominate an 'Alternate Member' from his/her political group to sit on a Standards Panel, providing that the Member nominated has undertaken the requisite training on the Members' Code of Conduct (and any other training required by the Standards and Constitutional Oversight Committee).

No Member shall sit on the Standards Panel where he/she has a conflict of interest.

## 7. **Chair**

The Chair shall be appointed by the Standards Panel at each meeting.

Where the Standards Panel is considering an allegation of a breach of the Members' Code of Conduct, the Chair shall not be a Member of the same political party of the Member against whom the allegation(s) have been made.

8. **Quorum**  
The quorum for a meeting of the Standards Panel shall be the 3 Members that make up its composition.
9. **Frequency of Meetings** - The Standards Panel will only meet when required to undertake its role and discharge its functions as set out in these Terms of Reference.
10. **Access to Information** – Where the Standards Panel is considering allegations that an elected or co-opted Member of the Council has failed, or may have failed, to comply with the Council’s Code of Conduct for Members under 1 (a) above, the matter shall be exempt from disclosure under paragraph 7C of the Council Access to Information Procedure Rules unless the Standards Panel at its meeting considers that the public interest in lifting the exemption outweighs maintaining the continued application of the exemption.

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**B. Terms of Reference of the Standards Appeal Panel**

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1. Where a complainant or Member or Co-opted Member is dissatisfied with the determination of a complaint by the Standards Panel, the Standards Appeal Panel will convene to re-consider the complaint providing that:
  - a. A request for permission to appeal is first made in writing, within 14 days of receipt of the Standards Panel’s Decision Notice, to the Monitoring Officer which details the procedural, legal and/or evidential issues relied upon in support of the request for permission; and
  - b. The Monitoring Officer being satisfied, having considered the views of the independent person, that (i) the request for permission raises valid procedural, legal and/or evidential issues and matters not previously considered by the Standards Panel, and/or that (ii) it is reasonable and equitable in all the circumstances of the case that permission to appeal be granted.
2. Where the Standards Appeal Panel has been convened pursuant to paragraph 1 above, the Standards Appeal Panel shall:
  - i. Consider the complaint/allegations that an elected or co-opted Member of the Council has failed, or may have failed, to comply with the Council’s Code of Conduct for Members.
  - ii. Consider and take into account the views of at least one independent person before making a decision on an

allegation (falling within its remit) that the Members' Code of Conduct has been breached.

3. (a) The Standards Appeal Panel after consideration of a complaint may (pursuant to paragraph 9.3(g) above:-
  - (i) ask for additional information on the allegation before reaching a decision;
  - (ii) determine that no action should be taken in respect of the allegation(s) made;
  - (ii) determine that the Members' Code of Conduct has been proved to have been breached;
- (b) Where the Standards Appeal Panel determines that the Members' Code of Conduct has been breached, it may:
  - (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 and Constitutional Oversight 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.

(c) Where the Standards Appeal Panel determines that the Members' Code of Conduct has NOT been breached, it may:

(iii) recommend, subject to the agreement of the Member against whom the allegation(s) has been made, a Council press release be issued detailing the nature and outcome of the investigation into the allegations and the decision of the Panel.

(iv) subject to the agreement of the Member against whom the allegation(s) has been made, report the Panel's decision to a public meeting of the Council and/or the Standards and Constitutional Oversight Committee;

#### 4. **Composition**

The Standards Appeal Panel shall comprise of 3 Members (one Member from each of the three main political parties) who shall be members of the Council's Standards and Constitutional Oversight Committee (unless an Alternate Member is nominated (see below)).

The spokesperson for each political group may nominate an 'Alternate Member' from his/her political group to sit on a Standards Appeal Panel, providing that the Member nominated has undertaken the requisite training on the Members' Code of Conduct (and any other training required by the Standards and Constitutional Oversight Committee).

No Member shall sit on (or otherwise attend, engage or interfere with) the Standards Appeal Panel where he/she has a conflict of interest.

5. **Chairperson** – The Chairperson shall be appointed by the Standards Appeal Panel at each meeting. Where the Standards Appeal Panel is considering an allegation of a breach of the Members' Code of Conduct, the Chairperson shall not be a member of the same political party of the Member against whom the allegation(s) have been made.

#### 7. **Quorum**

The quorum for a meeting of the Standards Panel shall be the 3 Members that make up its composition.

9. **Frequency of Meetings** - The Standards Appeal Panel will only meet when required to undertake its role and discharge its functions as set out in these Terms of Reference.

10. **Access to Information** – Where the Standards Appeal Panel is considering allegations that an elected or co-opted Member of the Council has failed, or may have failed, to comply with the Council’s Code of Conduct for Members under 1 (a) above, the matter shall be exempt from disclosure under paragraph 7C of the Council Access to Information Procedure Rules unless the Standards Panel at its meeting considers that the public interest in lifting the exemption outweighs maintaining the continued application of the exemption..

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## EXPLANATORY NOTE

### Localism Act 2011 and the Standards Regime

#### INTRODUCTION

##### 1. Localism Act 2011

- 1.1 The main elements of the new Council standards regime are contained within Chapter 7 and Schedule 4 of the Localism Act.
- 1.1 The intention is that the new standards regime will be more cost effective, efficient, less formal, less time consuming and more proportionate.
- 1.2 One significant change made by the Localism Act will be the abolition of Standards for England, which ceased to exist after 31 March 2012.
- 1.3 The changes to the standards regime came into force on 1 July 2012.

#### LOCALISM ACT: THE STANDARDS REGIME

##### 2. New Duty and Arrangements

- 2.1 The Council, under Section 27(1) of the Localism Act, “must promote and maintain high standards conduct by Member and Co-opted Members” of the Council.
- 2.2 In discharging the duty mentioned in paragraph 2.1 above, 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.<sup>1</sup>
- 2.3 The Council must also have in place arrangements under which:
  - a. allegations can be investigated, and
  - b. decisions on allegations can be made.<sup>2</sup>
- 2.4 Independent Person: The arrangements referred to above, must include provision for the appointment by the Council of at least one independent person –
  - a. whose views are to be sought, and taken into account, by the Council before it makes its decision on an allegation that it has decided to investigate; and

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<sup>1</sup> Section 27(2) Localism Act 2011

<sup>2</sup> Section 28(6) Localism Act 2011

b. whose view may be sought –

- i) by the Council in relation to allegations that are not subject to investigation; and
- ii) by a Member/Co-opted Member of the Council if the person's behaviour is subject to an allegation.

2.5 A person cannot be an Independent Person for the purposes of the Localism Act if at any time during the 5 years ending with the appointment, the person was:

- i) a Member/Co-opted Member or officer of the Council; or
- ii) a relative or close friend of anyone mentioned in i) above.<sup>3</sup>

2.6 The appointment of a Independent Person(s) must be by public advert, an application process being adopted and the appointment by a majority of the Members of the Council.

### **3. The Code of Conduct**

3.1 The Council must ensure that the Member Code of Conduct, when viewed as a whole, deals with the conduct that is expected of Members and Co-opted Members of the Council when they are acting in that capacity" ("the Member Code of Conduct").

3.2 The Council is permitted to either revise its existing Members' Code of Conduct or adopt a new code of conduct as a replacement.

3.3 The Localism Act requires the Member Code of Conduct to be consistent with the following principles<sup>4</sup>:

- Selflessness;
- Integrity;
- Objectivity;
- Accountability;
- Openness;
- Honesty; and
- Leadership.

3.4 The Localism Act further requires the new Member Code of Conduct to include the arrangements the Council considers appropriate with regards the registration and disclosure of –

- pecuniary interests; and
- interests other than pecuniary interests.<sup>5</sup>

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<sup>3</sup> Section 28(8) Localism Act 2011

<sup>4</sup> Section 28(1) Localism Act 2011

<sup>5</sup> Section 28(2) Localism Act 2011



#### **4. Disclosure and Registration of Members Interests**

4.1 Members and Co-opted Members of the Council have a legal obligation<sup>6</sup> to notify the Council's Monitoring Officer of any "disclosable pecuniary interest" for the purposes of inclusion within the register of Interests.

4.2 "Disclosable pecuniary interest": This is defined under Section 30(3) Localism Act and includes:

- a. an interest of the Member/Co-opted Member; or
- b. an interest of:
  - i. the Member's/Co-opted Member's spouse or civil partner;
  - ii. a person with whom the Member/Co-opted Member is living as husband and wife; or
  - iii. a person with whom the Member/Co-opted Member is living as if they were civil partners.

and the Member/Co-opted Member is aware that other person has the interest.

4.3 Notification Period: A new (or re-elected) Member of the Council must notify the Monitoring Officer of any "disclosable pecuniary interest" (or any unregistered "disclosable pecuniary interest" if the case of a re-elected Member) before the end of 28 days beginning with the day on which the persons becomes a Member/Co-opted Member of the Council.

#### **5. Register of Interests**

5.1 The Council's Monitoring Officer is required to establish and maintain a register of interests of the Members and Co-opted Members of Council.

5.2 Where an interest is disclosed by a Member/Co-opted Member, the Monitoring Officer must record that interest (irrespective of whether it is a "disclosable pecuniary interest") in the register of interests.

5.3 The Register of Interests must be available for inspection and must be published on the Council's website.

#### **6. Disclosing interests at Council meetings**

6.1 Unless otherwise registered in the register of interests (as referred to above), a Member/Co-opted Member attending a Council meeting (i.e. meeting of the Council, or any committee, sub-committee, joint committee or sub-joint committee of the Council), must disclose that "disclosable pecuniary interest(s)" to the meeting.

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<sup>6</sup> Section 30(1) Localism Act 2011

- 6.2 A Member/Co-opted Member does not have to disclose the nature of the disclosable pecuniary interest if it is sensitive. A sensitive disclosable pecuniary interest is one which if disclosed could lead to the Member/Co-opted Member or a person connected with him/her, being subjected to violence or intimidation.<sup>7</sup>
- 6.3 Where an unregistered disclosable pecuniary interest is disclosed at a meeting, the relevant Member/Co-opted Member must notify the Monitoring Officer of the disclosable pecuniary interest within 28 days of the date of the meeting in question.
- 6.4 Participation at Meetings: Where a Member/Co-opted Member discloses an unregistered disclosable pecuniary interest (whether it be sensitive or not) at a Council meeting (as described at paragraph 6.1 above), then the Member/Co-opted Member must not:
- i. participate or further participate in any discussion of the matter at the Council meeting;
  - ii. participate in any vote, or further vote, taken on the matter at the Council meeting.

(Unless otherwise granted a dispensation by the Council).

## **7. Failure to disclose Interests/Sanctions**

- 7.1 A person commits an offence if, without reasonable excuse, he/she fails to register or disclose a “disclosable pecuniary interest” as required or knowingly or recklessly provides information in relation to a “disclosable pecuniary interest” that is false or misleading.<sup>8</sup>
- 7.2 A person who commits an offence, as outlined in paragraph 7.1, shall upon summary conviction be liable to a fine not exceeding £5,000.00 and may be disqualified for a period not exceeding 5 years from being or becoming a Member or Co-opted Member of a Council.
- 7.3 The Localism Act removes the power of the Council to suspend a person being Member/Co-opted Member.
- 7.4 Any criminal proceedings shall be brought by or on behalf of the Director of Public Prosecutions and may be brought within 12 months of the date evidence existed that was both in the knowledge and to the opinion of the prosecutor, sufficient to warranted proceedings. There is however a three year limitation period that applies to all conduct.

## **8. ‘Standards Committee’**

- 8.1 There is no specific requirement under the Localism Act to retain the Council’s Standards Committee. However, the Council has established the Standards and Constitutional Oversight Committee which is required to:

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<sup>7</sup> Section 32 Localism Act

<sup>8</sup> Section 34 Localism Act 2011

- a. Assist the Council discharge its duty to promote and maintain high standards conduct by Member and Co-opted Members of the Council; and
- b. Ensure appropriate and effective arrangements are in place to:
  - i. Investigate allegations into conduct;
  - ii. Make decisions in relation to allegations against conduct;
  - iii. Monitor standards issues and matters;
  - iv. Deal with requests for dispensations;
  - v. Consider and approve training; and
  - vi. Evaluate and assess applications received for the position of Independent Person.

**Surjit Tour**  
Head of Legal & Member Services

9 July 2013

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**Standards and Constitution Oversight Committee  
Working Group**

**Terms of Reference**

**Scope and Remit**

To review, examine and explore the ethical framework, including such options, procedures, arrangements considered necessary to enable the Council discharge its duties and obligations arising under the Localism Act 2011 in relation to promoting and maintaining high standards of Member conduct.

In particular, to:

1. Review the Council's existing ethical framework relating to Members' conduct;
2. Evaluate and examine the terms of reference of the Council's Standards Committee and its Panels;
3. Review and revise the Members' Code of Conduct (as appropriate);
5. Review the current Register of Interests to consider its effectiveness;
6. Review the arrangements and procedures set out in the Protocol for dealing with complaints;
7. Consider and review arrangements for dispensations;
8. Consider Member/Co-opted Member training needs;
10. Consider and undertake any other actions, steps or measures considered necessary/important to assist the Council promote and maintain high standards of conduct by Members.

The Working Group shall make recommendations to the Council's Standards and Constitution Oversight Committee in relation to the matters and issues mentioned above.

**Membership**

The Working Group shall consist of:

- The Chairperson of the Committee;
- Two Members from the Labour Group;
- Two Members from the Conservative Group;
- One Member from the Liberal Democrat Group; and
- At least one of the Independent Persons (none voting).

Any Member of the Working Group is entitled to nominate a deputy to attend meetings of the Working Group on his/her behalf providing the nominee is a Member of the Council's Standards and Constitution Oversight Committee.

### **Meetings**

The Working Group shall meet as frequently as considered necessary.

The meeting shall be chaired by the Standards and Constitution Oversight Committee chairperson.

Meetings shall be quorate providing the Chair (or his/her deputy) and at least one eligible Member from at least two of the political parties are in attendance.

Meetings of the Working Group shall be held in private and the provisions relating to Access to Information shall not apply.

### **Decision Making**

The Working Group shall only be permitted to make recommendations to the Council's Standards and Constitution Oversight Committee in relation to matters falling within its scope and remit.

### **Administration**

The Working Group shall be administered and supported by officers from the Council's Legal & Member Services Section.

## SUMMARY OF CURRENT STANDARDS COMMITTEE COMPLAINTS – 1 July 2013 to 9 July 2013

Case Ref	Nature of Complaint	Current Status	Next Stage	Anticipated Date for Conclusion
Standards2012/01  (Received 16 Oct 2012)	Conflict of Interest  Failed to treat others with respect  Conduct inconsistent with the duty to promote and maintain high standards	Closed – 1 Feb 2013  Delay due to complainant not providing information as requested.  No Further Action following preliminary evaluation and assessment by Monitoring Officer	n/a	n/a
Standards2013/01  (Received 18 Jan 2013)	Failed to treat others with respect  Conduct inconsistent with the duty to promote and maintain high standards  Disclosed information given in confidence	Closed – 19 April 2013  No breach of the Code.  However, Monitoring Officer considered it appropriate to issue an informal warning issued and require a remedial step (alternative action) to be undertaken to address a particular issue. The step was undertaken by the Member in question.	n/a	n/a

Standards2013/02  (Received 17 May 2013)	Failed to treat others with respect	Monitoring Officer undertaking preliminary assessment and evaluation.  Meetings with Independent Persons and Group Leaders now complete.	Further enquiries required to be undertaken by Monitoring Officer.  Monitoring Officer to determine most appropriate option to deal with/progress the complaint.	Decision on how to progress complaint to be made by 26 July 2013.
Standards2013/03  (Received 28 April 2013)	Conflict of Interest  Conduct inconsistent with the duty to promote and maintain high standards	Closed  No Further Action following preliminary evaluation and assessment by Monitoring Officer	n/a	n/a
Standards2013/04  (Received 3 April 2013)	Failed to treat others with respect  Conduct inconsistent with the duty to promote and maintain high standards	Monitoring Officer undertaking preliminary assessment and evaluation.  Meetings with Independent Persons and Group Leaders now complete.	Monitoring Officer to determine most appropriate option to deal with/progress the complaint.	Decision on how to progress complaint to be made by 26 July 2013.



**CODE OF CONDUCT FOR MEMBERS**  
**WDA/22/13**

**Recommendation**

That:

1. a Code of Conduct for Members be adopted;
2. delegated powers of the Authority be granted to the Monitoring Officer to consult with the constituent councils and agree an appropriate mechanism for dealing with complaints at a local level; and
3. the Authority lobby the Government to have joint waste disposal authorities included as a relevant authority for the purposes of the Localism Act 2011.

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**CODE OF CONDUCT FOR MEMBERS****WDA/22/13****Report of the Chief Executive****1. Purpose of the Report**

- 1.1 This report advises Members of the changes brought about by the Localism Act 2011 and specifically its impact on this Authority in relation to promoting and maintaining high standards of conduct for its Members. The report seeks Members' approval to a number of recommendations that would strengthen the Authority's arrangements.

**2. Background**

- 2.1 The Localism Act 2011 (the Act) imposed new duties on local authorities and as a result, the Standards for England was abolished in April 2012. The remaining elements of the previous Standards regime were revoked on 1 July 2012.
- 2.2 In place of those requirements, relevant authorities have the following duties:
- (i) Duty to promote and maintain high standards of conduct by elected and co-opted members.
  - (ii) Duty to adopt a Code of Conduct based on Lord Nolan's Seven Principles of Public Life.
  - (iii) Duty for the local authority to require registration and for members to register disclosable pecuniary interests and such other interests as the local authority may determine.
  - (iv) Duty to have arrangements in place to investigate allegations and to reach decisions in relation to allegations.
  - (v) Duty to appoint at least one independent person whose views must be sought before a decision is reached regarding an allegation of breach of the code.

- 2.3 For the purposes of the Act, the constituent councils in Merseyside are relevant authorities however the Merseyside Waste Disposal Authority is not.
- 2.4 In view of this, the arrangements in place at this Authority have been reviewed.

### **3. Review of Arrangements**

- 3.1 Prior to the enactment of the Localism Act 2011, this Authority relied upon the Codes of Conduct for Members in place at each of its constituent councils for promoting and maintaining standards of conduct.
- 3.2 This arrangement worked well as all constituent councils had adopted the model Code of Conduct which expressly referred to Members conduct when appointed to outside bodies such as this Authority
- 3.3 In response to the Act, constituent councils have reviewed and revised their own arrangements and this review has considered the impact of those changes on the Authority. Having sought legal advice and following consultation with the councils, the following issues have been identified:
  - 3.1.1 The degree to which the current Codes of Conduct apply to councillors when acting in their capacity as a Member of this Authority is open to interpretation. For example, with the exception of Liverpool City Council, the Codes refer only to Members' conduct at their own council meetings and would not necessarily or obviously apply to MWDA meetings.
  - 3.1.2 For the purposes of the Act, this Authority is not a 'relevant authority,' and therefore there is no obligation to adopt a Code of Conduct and the criminal offences defined by the Act do not apply.
  - 3.1.3 It is also worth noting that in the list of Disclosable Pecuniary Interests set out in the regulations, specific reference is made to interests being in 'the area of the relevant Authority.' In effect, this means there is no existing requirement in constituent council Codes to disclose interests where a Member is on a board with wider boundaries, i.e. Merseyside.
- 3.4 Given the above issues it is apparent that a weakness now exists in the Authority's arrangements and having met with each of the Monitoring

Officers for the five constituent councils, the following proposals for strengthening arrangements are being proposed:

- MWDA to establish its own Code of Conduct for Members, a draft of which is attached at Appendix 1. The Authority is not obliged to adopt such a Code however, if agreed, Members will be required to comply with the Code and sanctions for non-compliance will be determined by their own District procedures..
- Where appropriate, that constituent councils be asked to review their Codes of Conduct with a view to incorporating some reference to Members' conduct when acting in a role on an outside body. The wording in Liverpool's Code of Conduct could be suffice as it includes within its scope: "When you act as a representative of your authority (a) on another relevant authority, you must, when acting for that other authority, comply with that authority's code of conduct; or (b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject."
- Subject to this Authority's approval of its own Code, that constituent councils be asked to attach it as an Annex to their own Codes of Conduct and that the Authority adopts a procedure (attached at Appendix 2) which allows for close collaboration should a complaint arise. The procedure acknowledges that MWDA does not have its own political party structures and therefore the Monitoring Officer's role would be to assess the complaint and gather appropriate evidence before liaising with the relevant Monitoring Officer for the constituent council to use their own local procedures and political structures to consider and implement any sanctions or disciplinary action.
- MWDA to lobby central government to include joint waste disposal authorities as a relevant authority for the purposes of the Localism Act.

3.5 Clearly a number of the proposals outlined above will require action and co-operation from each of the councils and preliminary consultation with constituent council monitoring officers has received a positive response , however, it remains within the Authority's remit to put in place its own

Code of Conduct for Members and this report seeks approval to adopt such a Code.

#### **4. Draft Code of Conduct for Members**

- 4.1 The Code of Conduct for Members attached at Appendix 1 has been drafted as if the MWDA was a 'relevant authority,' and is consistent with the Nolan principles of selflessness; integrity; objectivity; accountability; openness; honesty and leadership.
- 4.2 The Code includes the list of Disclosable Pecuniary Interests defined in the regulations and the following wording has been added to clarify the position with regard to the reference to a relevant authority:
- “Whilst Merseyside Waste Disposal Authority is not listed as a “Relevant Authority” in the above act, the following list of Disclosable Pecuniary Interests should be treated as if it were for the purposes of this Code.”
- 4.3 In reviewing the arrangements, Members will be aware that a representative of Halton Borough Council has been appointed to the MWDA board. It should be noted however that this Member does not have voting rights and therefore the arrangements currently in place, i.e. the Members' own Code of Conduct and the Authority's Procedural Rules should be sufficient in this instance.
- 4.4 In establishing a Code of Conduct for Members, it is recognised that this Authority does not have its own political party structures; and therefore the sanctions; that might be available to Members at their constituent council. For this reason, the Monitoring Officer is in the process of consulting with the constituent councils to establish a procedure to allow collaboration should a complaint arise.
- 4.5 The draft procedure is attached at Appendix 2 and Members are asked to delegate powers of the Authority to the Monitoring Officer to finalise the procedure following the outcome of that consultation.

#### **5. Register of Interests**

- 5.1 Should Members be minded to approve the Code of Conduct attached at Appendix 1, the Monitoring Officer will be required to establish and maintain a register to record each Member's disclosable pecuniary interests and any other interests as defined in the Code.
- 5.2 The definition of disclosable pecuniary interests includes not only the pecuniary interests of the individual Member but also the pecuniary

interests of the Member's spouse or civil partner or someone with whom the Member is living with as if they were husband and wife or civil partners.

- 5.3 In relation to the "other interests", only the interests of the Member need to be registered.
- 5.4 The draft Code does not propose the establishment of a register of gifts and hospitality, although it does provide that gifts worth in excess of £50 should not be accepted.
- 5.5 Members are required by the Code of Conduct to register their interests within 28 days of becoming a Member. Where a Member is re-appointed to the Authority, the Member is required to register any interests not already registered. Where a matter arises at a meeting which relates to a pecuniary interest which has not been registered, the Member must declare and then register that interest within 28 days of the matter arising.
- 5.6 Subject to the Authority's approval of the draft Code of Conduct, Members will be provided with forms to complete so that the new register can be compiled. Each year around the time of Authority's AGM, further forms will be sent to Members to ask if they wish to update the Register. It is a matter for Members to determine if they wish to do so.

## **6. Lobbying**

- 6.1 Whilst the Authority can implement its own voluntary arrangements with the support of the constituent councils, there remains an omission in the Localism Act 2011 which prevents the Authority from having any legal recourse in the event of a breach.
- 6.2 In order to rectify this issue and strengthen the Authority's arrangements, it is proposed that the government be lobbied to amend the Act so that waste disposal authorities are included as a relevant authority.

## **7. Risk Implications**

- 7.1 The following risks have been identified:

<b>Identified Risk</b>	<b>Likelihood Rating</b>	<b>Consequence Rating</b>	<b>Risk Value</b>	<b>Mitigation</b>
Failure to promote and maintain the conduct of Members	1	5	5	Adopt a voluntary Code of Conduct for Members and lobby government for inclusion in Localism Act

Failure to maintain open and transparent decision-making processes.	1	5	5	Implement and maintain a register of interests for Members
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## **8. HR Implications**

8.1 There are no HR implications associated with this report.

## **9. Environmental Implications**

9.1 There are no environmental implications associated with this report.

## **10. Financial Implications**

10.1 There are no financial implications associated with this report.

## **11. Conclusion**

11.1 Members are asked to note the Authority's position with regards to the implications of the Localism Act 2011; to approve a voluntary Code of Conduct for Members; and to authorise the Monitoring Officer to lobby the government to include this Authority as a relevant authority for the purposes of the Act.

The contact officer for this report is: Mandy Valentine  
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Liverpool L3 1BP

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Tel: 0151 255 2523  
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The background documents to this report are open to inspection in accordance with Section 100D of The Local Government Act 1972 - Nil.



## CODE OF CONDUCT FOR MEMBERS

The Merseyside Waste Disposal Authority (“the authority”) has adopted this Code of Conduct to promote and maintain high standards of conduct and underpin public confidence in the authority and its members.

The Code has been adopted voluntarily and is based on the following core principles of public life - selflessness, integrity, objectivity, accountability, openness, honesty and leadership. It sets out general obligations about the standards of conduct expected of members of the authority, together with provisions about registering and declaring interests.

### Interpretation

In this Code:-

“member” includes a co-opted member.

“meeting” means any meeting of:

- (a) the Authority or any of its committees;
- (b) any briefing by officers; or
- (c) any site visit to do with business of the Authority

whether or not the press and public are excluded from the meeting in question by virtue of a resolution of members.

### General obligations

When acting in your role as a member of this authority you must act in accordance with the following obligations:

#### *Selflessness*

You must act solely in the public interest and must never use or attempt to use your position improperly to confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, friends or close associates.

#### *Integrity*

You must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.

You should exercise independent judgement. Although you may take account of the views of others (including a political group), you should reach your own conclusions on the issues before you and act in accordance with those conclusions.

#### *Objectivity*

When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or

benefits, on merit.

You should remain objective, listen to the interests of all parties appropriately and impartially and take all relevant information, including advice from the authority's officers, into consideration.

#### *Accountability*

You are accountable to the public for your decisions and you must co-operate fully with whatever scrutiny is appropriate to your office, including by local residents.

#### *Openness*

(a) You must be as open and transparent as possible about your decisions and actions and the decisions and actions of your authority. You should be prepared to give reasons for those decisions and actions. You must not prevent anyone getting information that they are entitled to by law.

(b) Where the law or the wider public interest requires it, you must not disclose confidential information or information to which public access is restricted.

#### *Honesty*

(a) You must declare any private interests, both pecuniary and non-pecuniary, that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interests as set out below.

(b) You must only use or authorise the use of the authority's resources in accordance with the authority's requirements. You must, when using or authorising the use by others of such resources, ensure that they are used for proper purposes only. Resources must not be used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

#### *Respect for others*

(a) You must treat others with respect. You should engage with colleagues and staff in a manner that underpins mutual respect, essential to good local government.

(b) You must not do anything which may cause your authority to breach any equality laws.

(c) You must not compromise or attempt to compromise the impartiality of anyone who works for, or on behalf of, the authority.

(d) You must not bully any person, including other councillors, officers of the authority or members of the public.

#### *Leadership*

You must promote and support high standards of conduct when serving as member or co-opted member of the authority, by leadership and example, championing the interests of the community.

You should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in you.

## Registration of Interests

You must within 28 days of:

- (a) this Code being adopted by this authority; or
- (b) your election or appointment to office (where that is later)

register with the Monitoring Officer the interests which fall within the categories set out in Appendix A (Disclosable Pecuniary Interests) and Appendix B (Other Disclosable Interests).

You must ensure that your register of interests is kept up-to-date and within 28 days of becoming aware of any new interest in Appendix A or B, or of any change to a registered interest, notify the Monitoring Officer of that new interest or change.

## Declaring of Interests and Participation in Meetings

If you are present at a meeting and you have a Disclosable Pecuniary Interest as set out in Appendix A

- (a) you must not participate in any discussion of the matter at the meeting and you must not vote on the matter;
- (b) you must make a verbal declaration of that interest if an item of business affects or relates to that interest, at or before the item is considered or as soon as the interest becomes apparent;
- (c) you must leave the room where the meeting is held during any discussion or vote;
- (d) if the interest is not registered and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest within 28 days.

Where a matter arises at a meeting which relates to an interest in Appendix B

- (a) you must not vote on the matter;
- (b) you may speak on the matter only if members of the public are allowed to speak at the meeting;
- (c) you must declare your interest if you speak on the matter at the meeting or if the interest is not already on your register of interests or if you have not notified the Monitoring Officer of it. Otherwise, you do not need to declare the interest at the meeting.

Where a matter arises at a meeting which relates to or is likely to affect any of the interests listed in Appendix A, but in respect of a member of your family (other than your spouse/partner) or a friend or close associate of yours

- (a) you must declare the interest;
- (b) you must not vote on the matter;
- (c) you may speak on the matter only if members of the public are allowed to speak at the meeting.

**Sensitive interests**

Where you consider that disclosure of the details of an interest could lead to you or a person connected with you being subject to violence or intimidation and the Monitoring Officer agrees that it is a “sensitive interest”, you need only declare the fact that you have an interest but not the details of that interest. Copies of the public register of interests may state you have an interest the details of which are withheld.

**Gifts and Hospitality**

There will be no requirement for you to declare or register any gifts and hospitality but DO NOT accept any gifts in excess of £50 (fifty pounds).

**APPENDIX A****DISCLOSABLE PECUNIARY INTERESTS**

This code requires members to register, disclose and not to participate in respect of any matter in which a member has a “Disclosable Pecuniary Interest” as defined in Chapter 7 of the Localism Act 2011. Disclosable Pecuniary Interests are defined in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.

Whilst Merseyside Waste Disposal Authority is not listed as a “Relevant Authority” in the above act, the following list of Disclosable Pecuniary Interests should be treated as if it were for the purposes of this Code.

A Disclosable Pecuniary Interest is an interest of you (i.e. the member) or of your partner (which means spouse or civil partner or a person with whom you are living as husband or wife, or as if you are civil partners) within the categories below\*:

<b><i>Subject</i></b>	<b><i>Prescribed description</i></b>
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by a Member of a relevant authority in carrying out duties as a Member, or towards the election expenses of a/the Member of the relevant authority. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest*) and the relevant authority— (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.  <i>*this means a firm in which the relevant person is a partner or a body coporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest</i>

Land	<p>Any beneficial interest in land which is within the area of the relevant authority*.</p> <p><i>*land excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income.</i></p>
Licences	<p>Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.</p>
Corporate tenancies	<p>Any tenancy where (to the relevant Member's knowledge)—</p> <p>(a) the landlord is the relevant authority; and</p> <p>(b) the tenant is a body in which the relevant person has a beneficial interest.</p>
Securities	<p>Any beneficial interest in securities* of a body where—</p> <p>(a) that body (to the relevant Member's knowledge) has a place of business or land in the area of the relevant authority; and</p> <p>(b) either—</p> <p>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p> <p><i>*securities means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.</i></p>

*\*The provisions in the Code in respect of the registration and declaring of Disclosable Pecuniary Interests and the requirement to withdraw from participating in respect of any matter where you have a Disclosable Pecuniary Interest apply to your interests and to those of your spouse or civil partner or a person with whom you are living as a spouse or civil partner where you are aware of their interest.*

**APPENDIX B**

**OTHER DISCLOSABLE INTERESTS**

An interest which relates to or is likely to affect:

(i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by this authority or your principal authority.

(ii) any body

- (a) exercising functions of a public nature;
- (b) directed to charitable purposes; or
- (c) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)

of which you are a member or in a position of general control or management.

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MERSEYSIDE WASTE DISPOSAL AUTHORITY

## **Procedure for considering complaints alleging a failure to comply with a Members' Code of Conduct for Merseyside Waste Disposal Authority**

### **Introduction**

1. This procedure should be used to deal with complaints submitted in relation to the Members' Code of Conduct adopted by Merseyside Waste Disposal Authority (the Authority).
2. The Members' Code of Conduct applies to elected Members appointed to the Authority when they are acting in that capacity. All complaints should be submitted to the Authority's Monitoring Officer for consideration.
3. The Monitoring Officer may nominate another officer of suitable experience and seniority to carry out any of the functions listed in this procedure.

### **Stage 1 – Initial assessment by the Monitoring Officer**

4. Complaints must be submitted in writing, provide substantiated information and should outline what form of resolution the complainant is seeking.
5. The Monitoring Officer will consider the complaint and make a decision as to whether it will be treated as a valid complaint or not based on the criteria agreed by the Authority.
6. In all cases where the complainant names a Member of the Authority, the Member will be notified of the complaint as will the relevant Monitoring Officer for the Member's principal authority. If the Monitoring Officer decides that the complaint is 'invalid,' this notification is made for information only.
7. If the complaint relates to an elected member but not in their capacity as a Member of Merseyside Waste Disposal Authority, the complaint will be redirected to the relevant Monitoring Officer of the Member's principal authority.
8. If the complaint relates to an employee or is a service related issue, the Monitoring Officer will redirect the complaint through to the Authority's Comments and Complaints Procedure.
9. In any case where the Monitoring Officer decides that the complaint is 'invalid,' the complainant will be informed in writing why their complaint cannot be dealt with under this procedure. There is no appeal process for decisions taken by the Monitoring Officer at this stage.

10. The Monitoring Officer will report on such complaints received on an annual basis to the Authority where complaints have been received in the preceding year.

## **Stage 2 – Complaint Resolution**

11. Following initial assessment and information gathering, where the complaint is deemed to be valid, the Monitoring Officer will notify the relevant Monitoring Officer for the Member's principal authority.
12. The complaint will then be dealt with under the principal authority's own complaints procedures to seek resolution or use the sanctions available to that authority where a complaint is upheld. Throughout, this Authority's Monitoring Officer will provide all necessary evidence and assistance to facilitate the process.
13. The outcome and recommendations will be reported back to the Authority's Monitoring Officer and subsequently the Authority at the conclusion of the matter.

**CRITERIA FOR THE ASSESSMENT OF COMPLAINTS**

(Guidance Note: Complainants will be required to complete the relevant complaints form and also asked to indicate what outcome they would wish to see in terms of the complaint being made).

**GENERAL CRITERIA –**

The Monitoring Officer in consultation with the relevant authority should be satisfied that the complaint meets the following tests:

**Question 1:** Has the complainant contacted the member concerned directly to try to resolve the matter?

*If the answer is no then was there a reason why not? If yes then what was the response?*

**Question 2:** Is it a complaint against a named member (or members) of Merseyside Waste Disposal Authority (MWDA)?

*If the answer is no then the complainant and subject member to be informed that no further action will be taken in respect of the complaint as the person is not a Member of the Authority.*

**Question 3:** Was the named member in office and the Code of Conduct in force at the time of the alleged misconduct but the named member is no longer a current elected member?

*In the above circumstances then the complainant and subject member to be informed that no further action will be taken in respect of the complaint as it would not be an effective use of limited resources to investigate an individual who is no longer an elected member.*

**Question 4:** Would the complaint, if proven, be a breach of the Code under which the member was operating at the time of the alleged misconduct? (note: it maybe a service provision issue or the complainant is merely dissatisfied with the outcome of a decision of the Authority)

*If the answer is no then the complainant and subject member to be informed that no further action will be taken in respect of the complaint as this is not a breach of the code of conduct.*

**Question 5:** Does the matter complained of clearly relate to an incident or issue when the member has been acting in his/her official capacity as a Member of Merseyside Waste Disposal Authority?

*If the answer is no then the complainant and subject member to be informed that no further action will be taken in respect of the complaint as this is not a breach of the Authority's Code of Conduct.*

**Question 6:** Has the complainant submitted enough information to satisfy the Monitoring Officer that the complaint should be referred for investigation or other action; is it submitted in writing; and does it outline what form of resolution the complainant is seeking?

*Unless sufficient information has been received to make a decision as to whether the complaint should be referred for investigation or other action then the response to the complainant will be to that effect. The complainant and subject member to be advised that no further action is to taken on this complaint.*

(Note: The Authority will ensure that the guidance for individuals making complaints is clear enough to ensure that they send through all relevant information that they wish to be considered in support of the complaint)

**Question 7:** Is the member a member of another authority rather than MWDA?

*If it is a member of another authority, the complaint will be referred to the Monitoring Officer of that authority to consider.*

**Question 8:** Has the complaint already been the subject of an investigation or other action relating to the Code of Conduct? Similarly, has the complaint been the subject of an investigation by other regulatory authorities/ police?

*If the answer is yes then unless significantly new information has been provided, the complainant will be informed that the matter of complaint has already been subject to a previous investigation or other action and there is nothing more to be gained by further action being taken.*

**Question 9:** Is the complaint about something that happened so long ago that there would be little benefit in taking action now?

*If the answer is yes then the complainant will be informed that the period of time that had elapsed since the alleged misconduct was taken into account when deciding whether or not it should be referred for investigation or further action. It was decided under the circumstances that further action was not warranted.*

**Question 10:** Is the complaint too trivial to warrant further action?

*If the answer is yes then the complainant will be informed that the matter was not considered to be sufficiently serious or an effective use of limited resources to warrant further action.*

**Question 11:** Does the complaint appear to be simply malicious, politically motivated or tit-for-tat?

*If the answer is yes then the complainant will be informed that the matter appeared to be simply malicious, politically motivated or tit-for-tat, and not sufficiently serious or an effective use of limited resources and therefore it was decided that further action was not warranted.*

**Question 12:** Does the complaint relate to the production of or a statement made on a political leaflet and personal blogs (private social networks) or at political meetings?

If the answer is yes then the complainant will be informed that these are subject to the laws of defamation, public order, discrimination and electoral law and not a matter for the Authority and no further action to be taken unless the allegation relates to -

- the Authority's facilities or resources having been used to produce a political leaflet;
- where there may be an impact on the reputation of the Authority or its constituent members; or
- an allegation that confidential information obtained by a councillor in their capacity as a MWDA Member had been used and published to the public in a leaflet and/ or a social network which may then breach the code of conduct in respect of confidentiality.

**Question 13:** Does the complaint appear to be a breach of criminal law?

*If the answer is yes then the complainant will be informed that it is a matter for the police and advised of whom to contact.*

**Question 14:** Is the complainant an officer of the Authority?

If the answer is yes then the officer will be advised to speak to their direct line manager in the first instance to see if the matter can be resolved between the officer and member concerned using the existing internal structures and the Protocol on Member / Officer Relations.

**Question 15:** Does the complaint relate to a failure to respond to constituent or another individual?

If the answer is yes then the complainant will be advised that failure to respond to a request does not constitute a breach of the code.

**Question 16:** Is the complaint anonymous?

As a matter of fairness and natural justice, a member should usually be told who has complained about them subject to the considerations below. If the complaint fails one or more of these tests then the complaint will not be progressed and the

complainant (where identified) and subject member must be informed that no further action will be taken in respect of the complaint. The Monitoring Officer will review these types of complaints and if appropriate give guidance to the complainant of other more appropriate courses of action. The Monitoring Officer will consult the Monitoring Officer for the Member's principal authority in each instance to link with their local procedures.

### **CONFIDENTIALITY OF COMPLAINANTS – OPTION FOR CONSIDERATION**

As a matter of fairness and natural justice, a member should usually be told who has complained about them. However, there may be instances where the complainant asks for their identity to be withheld. Such requests should only be granted in exceptional circumstances and at the discretion of the Monitoring Officer. The Monitoring Officer should consider the request for confidentiality alongside the substance of the complaint itself.

Requests for confidentiality will be considered in the following circumstances:

- The complainant has reasonable grounds for believing that they will be at risk of physical harm if their identity is disclosed.
- The complainant is an officer who works closely with the subject member and they are afraid of the consequences to their employment or of losing their job if their identity is disclosed (this should be covered by the authority's Whistleblowing Policy and/or the Protocol for Member / Officer Relations).
- The complainant suffers from a serious health condition and there are medical risks associated with their identity being disclosed. (In such circumstances, the Monitoring Officer may wish to request medical evidence of the complainant's condition.)

In certain cases, such as allegations of bullying, revealing the identity of the complainant may be necessary for investigation of the complaint.

If the Monitoring Officer decides to refuse a request by a complainant for confidentiality, it may be appropriate to offer the complainant the option to withdraw, rather than proceed and have their identity disclosed.