



Standards and Constitutional Oversight Committee

Date:	Wednesday, 6 July 2016
Time:	6.00 pm
Venue:	Committee Room 3 - Wallasey Town Hall

Contact Officer: Patrick Sebastian
Tel: 0151 691 8559
e-mail: patricksebastian@wirral.gov.uk
Website: <http://www.wirral.gov.uk>

AGENDA

- 1. APOLOGIES FOR ABSENCE**
- 2. MEMBERS CODE OF CONDUCT**

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

- 3. MINUTES (Pages 1 - 4)**

To confirm the Minutes of the meeting of the Standards and Constitutional Oversight Committee held on 2 June 2016 as a correct record.

- 4. APPOINTMENT OF INDEPENDENT MEMBERS (Pages 5 - 6)**

The Standards and Oversight Committee is requested to review the attached list of Independent Members and their period of appointment, with a view to advertising of vacant posts or interim re-appointment as appropriate. The current Independent Members' period of office is due to expire on 16 July 2016.

Council Minute 43, 12 July 2012 refers (**attached**)

Appointments will form a **RECOMMENDATION TO COUNCIL** at the meeting to be held on 11 July 2016.

5. SUMMARY OF STANDARDS COMPLAINTS (Pages 7 - 14)

Report of the Monitoring Officer (**attached**).

6. ESTABLISHMENT OF A STANDARDS AND CONSTITUTIONAL OVERSIGHT WORKING GROUP (Pages 15 - 20)

Report of the Monitoring Officer (**attached**).

7. DRAFT GUIDANCE TO MEMBERS: APPOINTMENTS TO OUTSIDE BODIES (Pages 21 - 28)

Further to Minute 34 (Standards and Constitutional Oversight Committee Working Group, 24 February). To consider the revised draft Guidance to Members for Appointments to Outside Bodies (**attached**).

8. ANY OTHER URGENT BUSINESS APPROVED BY THE CHAIR (PART 1)

9. EXCLUSION OF THE PRESS AND PUBLIC

The public may be excluded from the meeting during consideration of the following items of business on the grounds that they involve the likely disclosure of exempt information.

RECOMMENDATION – That in accordance with section 100A (4) of the Local Government Act 1972, the public be excluded from the meeting during consideration of the following items of business, on the grounds that they involve the likely disclosure of exempt information as defined by the relevant paragraphs of Part 1 of Schedule 12A (as amended) to that Act. The public interest test has been applied and favours exclusion.

10. ANY OTHER URGENT BUSINESS APPROVED BY THE CHAIR (PART 2)

STANDARDS AND CONSTITUTIONAL OVERSIGHT COMMITTEE

Thursday, 2 June 2016

Present: Councillor D Roberts (Chair)

Councillors M McLaughlin P Gilchrist
RL Abbey J Stapleton (In
P Stuart place of B Kenny)
C Blakeley E Boulton (In place of
D Elderton G Ellis)
Jones
Cummings

In attendance: Prof RS Jones
Mr B Cummings

1 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors G Ellis and B Kenny and from Mr C Jones.

2 MEMBERS CODE OF CONDUCT

No declarations of interest were received.

3 MINUTES

Resolved: That

- (1) the Minutes of the meeting of the Standards and Constitutional Oversight Committee held on 23 November 2016 be confirmed as a correct record; and**
- (2) the Minutes of the meeting of the Standards and Constitutional Oversight Working Group held on 24 February 2016 be confirmed as a correct record**

4 APPOINTMENT OF PANELS

A report by the Head of Legal and Member Services proposed that the Committee establish the Standards Panel and Standards Appeal Panel in accordance with the paragraph 9.5 of Article 9 of the Council's Constitution and the Protocol for Dealing with Complaints against Members.

Appended to the report were the following appendices:

1. Article 9 of the Council's Constitution;
2. Members' Code of Conduct;
3. Protocol for Dealing with Complaints against Members; and
4. Procedure for dealing with matters before the Standards Panel and Standards Appeal Panel.

The Head of Legal and Member Services referred to an email Members had received from a member of the public raising three procedural points in relation to this item of business. He informed that he intended to respond to the points raised at this meeting.

Firstly, the member of the public had referred to the report that had been outstanding and, therefore, not included with the agenda for the meeting when it had been published. The Head of Legal and Member Services reported that Officers had been canvassing Members for an appropriate date on which to hold a meeting of Standards Panel. A date had not been identified and this had held up the publication of the report. The date had still not been identified when the report had been published in a supplementary agenda. He informed that since the publication of the agenda the evening of 28 June 2016 had in fact been confirmed with the Members nominated to sit on the Panel as the date for the meeting and they were also holding 29 June 2016 in case it was needed in case of any adjournment on 28 June 2016.

Secondly, the member of the public had queried the status of the Standards Panel and the Head of Legal and Member Services reported that the Panel was in fact a Panel and not a Sub-Committee of this Committee. Therefore, its documentation and proceedings were not open to the press and public. The matter/parties could be prejudiced if confidential information was allowed to get into the public domain before due process had been completed – that in itself could bring the Council into disrepute and undermine the ethical framework.

The member of the public also asserted that paragraph 12.5 of the Protocol conflicted with s.6 of the Human Rights Act 1998 in that a public authority cannot make a decision which causes it to act in a way incompatible with a Convention right. This would seem to also conflict with both Article 10 (freedom of expression) Convention right and the whistleblowing provisions in the Public Interest Disclosure Act 1998. The Head of Legal and Member Services advised that paragraph 12.5 merely advised the parties to a complaint to maintain confidentiality and therefore there was no contravention of any of the provisions referenced.

Thirdly, the Head of Legal and Member Services referred to Article 9 of the Council's Constitution and thanked the member of the public for pointing out his oversight in respect of the local assessment and determination process as

set out within the Standards Committee (England) Regulations 2008 which had been repealed under Schedule 4 of the Localism Act 2011. He informed that this issue was known and he would put appropriate arrangements in place to revise Article 9 as necessary.

The Committee was then afforded the opportunity to make comments, observations and suggestions on the recommended approach to dealing with complaints about Members detailed in the report and its appendices. Members considered all of the documentation provided and raised the following issues which the Head of Legal and Member Services responded to as appropriate:

- The Chair of the Standards Panel and Standards Appeal Panel could not be a member of the same political group as the subject Member.
- At the meeting there is no reason why the Independent Member cannot remain in the meeting after he has presenting his views. The Panel is obliged and must have regard to these views.
- Consideration must be given to how to manage the arrangements for a Panel meeting where Members from all three political parties are the subject of a complaint(s). This will be reported back to either this Committee or its Working Group.
- The Lib/Dem Group is able to nominate one of its Committee deputies to sit on the Panel and the Appeals Panel when this is necessary.
- The Council's Constitution will be revised to rectify the omission that it does not state that Members of the Panel cannot sit on the Appeals Panel etc. This will be considered by either this Committee or its Working Group. It was noted that the Constitution did state in Article 9, B4:

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

Consequently, a Member would be conflicted if he/she had already sat on the Panel whose decision was now being appealed.

RESOLVED: That

- (1) the Committee agrees to a Standards Panel and Standards Appeal Panel being formally established for the 2016/17 Municipal Year pursuant to paragraph 9.5 of Article 9 of the Council's Constitution;**
- (2) it be noted that arrangements are now in hand to hold a meeting, names have been received from the political groups and the proposed Panel Members have put the first meeting of the Standards Panel to be held at 6pm on 28 June 2016 at Wallasey**

Town Hall in their diaries and are also holding 29 June 2016 in their diaries as a fall-back position in case of any adjournment;

- (3) where a representative Member is unavailable to attend a proposed meeting of the Standards Panel or Standards Appeal Panel when that meeting can be attended by all other persons required, the relevant political group, through their Group Leader/Deputy Group Leader or Party Spokesperson, shall promptly confirm the name of another representative Member who is able to attend that meeting; and**
- (4) the proposed procedure for dealing with a matter before either the Standards Panel or Standards Appeal Panel set out at Appendix 4 be agreed subject to any amendments to be made as a result of the issues raised and highlighted above.**

5 WELCOME TO COUNCILLOR PAUL STUART

Councillor Chris Blakeley welcomed Councillor Paul Stuart to his first meeting of the Committee.

EXTRACT 16 JULY 2012

COUNCIL MINUTE 43

VACANCIES

The Council was requested to deal with the following appointments:

A. COUNCIL COMMITTEES

(i). Standards Committee

Appointment of Independent Persons

Professor R S Jones
Mr C Jones
Mr D Burgess-Joyce
Mr B Cummings

In respect of the above appointments, Council is recommended to approve an amendment to Article 9 of the Constitution, in section 9.2 (a) as follows:

- Four persons who are not Members or officers of the Council (independent persons)

The appointment is for a four year term, subject to the receipt of satisfactory references (but may be terminated by a resolution of the Council's Standards Committee).

(ii). Health and Well Being Overview and Scrutiny Committee

Councillor Denise Roberts to replace Councillor Pat Glasman and Councillor Moira McLaughlin to become spokesperson

Brian Donaldson to replace Simon Wagener as co-opted member representing Carers

B. OUTSIDE BODIES

(iii). Children's Services and Lifelong Learning

- Wirral Metropolitan College Governing Body (Nomination)
Vacancy to replace Mr J Wilkie (former Chief Executive)
(appointed for 4 year term to 19.12.2014)

It was moved by Councillor P. Davies and seconded by Councillor J. Green that the Council recommends that Mr David Armstrong be appointed.

(iv). Environment

- Liverpool Airport Consultative Committee
Councillor Rob Gregson to replace Councillor John Salter

(v). Finance and Best Value

- Strategic Partnership Assembly
Vacancy to replace Mr J Wilkie (former Chief Executive)
- Local Strategic Partnership Executive Board
Vacancy to replace Mr J Wilkie (former Chief Executive)

It was moved by Councillor P. Davies and seconded by Councillor J. Green that the Council recommends that Mr David Armstrong be appointed.

(vi). Housing and Community Safety

Merseyside Police and Crime Panel – Nominations

The City Region Cabinet at its meeting on 22 June, 2012 considered a report to outline requirements around the establishment of a Police and Crime Panel at which it was agreed that –

- (a)** the lead host for the (Merseyside) Police and Crime Panel be Knowsley Metropolitan Borough Council;
- (b)** the membership of the Police and Crime Panel be set at 10 members (with Independent and Co-opted members to be appointed in due course) on the basis of the Mayor of Liverpool, 7 Labour Members, 1 Conservative Member and 1 Liberal Democrat Member, with the additional seat allocated to St. Helens Metropolitan Borough Council, and being drawn from the Merseyside Local Authorities as follows –
 - Knowsley MBC: 1 Labour Member
 - Liverpool City Council: The Mayor and 2 Labour Members
 - St. Helens MBC: 2 Labour Members
 - Sefton MBC: 1 Labour Member and 1 Liberal Democrat Member
 - Wirral MBC: 1 Conservative Member and 1 Labour Member

This Council's nominees are Councillors C Blakeley and M McLaughlin.

(vii). Regeneration and Planning Strategy

- Mersey / Dee Alliance
Councillor Pat Hackett to replace Councillor Phil Davies

Resolved –

- (1) That the appointment of Independent Persons to the Standards Committee and the amendment to Article 9 of the Constitution be approved.**
- (2) That the appointment of David Armstrong to replace Mr J Wilkie as the Council's representative on the following outside bodies be approved –**
 - **Wirral Metropolitan College Governing Body**
 - **Strategic Partnership Assembly**
 - **Local Strategic Partnership Executive Board**
- (3) That the appointments of (ii), (iv), (vi) and (vii) above be approved.**

WIRRAL COUNCIL

STANDARDS AND CONSTITUTIONAL OVERSIGHT COMMITTEE

6 July 2016

SUBJECT:	SUMMARY OF STANDARDS COMPLAINTS
REPORT OF:	MONITORING OFFICER

REPORT SUMMARY

This report provides a summary of standards complaints received under the Members' Code of Conduct and Protocol for dealing with complaints against Members between 1 April 2015 and 31 May 2016.

RECOMMENDATION

That the Committee notes the summary of standards complaints set out at Appendix 1 to this report.

SUPPORTING INFORMATION

1.0 REASONS FOR RECOMMENDATION

1.1 To provide the Committee with an opportunity to consider the handling and progress of standards complaints.

2.0 OTHER OPTIONS CONSIDERED

2.1 The process for the administration of standards complaints is undertaken in accordance with the Protocol for dealing with complaints against Members which was approved by the Committee.

3.0 BACKGROUND

3.1 The Council is required to deal with complaints made against Members under its approved Ethical Framework.

3.2 In order to assist with the effective administration of standards complaints, the Committee, as part of its monitoring role, is invited to consider the nature and handling of complaints received pursuant to the Members' Code of Conduct.

3.3 Appendix 1 sets out a summary of the complaints received and their status.

3.4 The Ethical Framework requires complaints to be dealt with confidentiality (unless permitted by the Protocol) and therefore it is not possible to provide extensive details in respect of each complaint.

3.5 Between 1 April 2015 and 31 May 2016 a total of 8 complaints have been received.

Period	Complainant		Ongoing	Referred for Investigation	Outcome		
	Member	Public			Upheld	Partially Upheld/ other outcome	Not Upheld
01/04/2015 to 31/05/2016	3	5	3	0	0	0	0

4.0 FINANCIAL IMPLICATIONS

4.1 There are no financial implications arising from this report save that where an external investigator is appointed, additional costs will be incurred. Such costs will vary depending upon the nature of the complaint and the time taken to undertake and complete the investigation.

5.0 LEGAL IMPLICATIONS

- 5.1 Under the Localism Act 2011 the Council is required to have a Code of Conduct relating to the conduct of Members and arrangements in place to deal with any complaints received in respect of Members conduct.
- 5.2 This report provides an opportunity for the Committee to monitor the progress of complaints.

6.0 RESOURCE IMPLICATIONS

- 6.1 There are no such issues arising from this report.

7.0 RELEVANT RISKS

- 7.1 The administration of standards complaints should be dealt with as efficiently as possible to ensure matters are concluded quickly and closure of issues secured for both complaint and the subject member(s) involved.

8.0 ENGAGEMENT/CONSULTATION

- 8.1 There are no such issues arising.

9.0 EQUALITIES IMPLICATIONS

- 9.1 There are no specific discrimination issues arising from this report.

REPORT AUTHOR: **Surjit Tour**
Head of Legal & Member Services
and Monitoring Officer
Telephone: (0151 691 8469)
Email: surjittour@wirral.gov.uk

APPENDICES

Appendix 1 – Summary of Standards Complaints

REFERENCE MATERIAL

None

This page is intentionally left blank

SUMMARY OF STANDARDS COMPLAINTS – 1 April 2015 to 31 May 2016

1 April 2015 - onwards

Case Ref	Nature of Complaint	Current Status	Next Stage	Anticipated Date for Conclusion
1 Standards 2015/01 (Received 10 June 2015)	Conduct inconsistent with the duty to promote and maintain high standards	Concluded - 11 August 2015 Initial assessment and evaluation of complaint completed. Subject Member not acting as a councillor at the material time. Therefore Code on applicable. No further action.	Matter concluded. No further Action	n/a
2 Standards 2015/02 (Received 6 August 2015)	Failed to treat others with respect Conduct inconsistent with the duty to promote and maintain high standards	Initial assessment and evaluation of complaint completed. Not possible to proceed with complaint.	Matter concluded. No further Action.	n/a
3 Standards 2015/03 (Received 24 Sept 2015)	Failed to treat others with respect Conduct inconsistent with the duty to promote and maintain high standards	Concluded – 26 Oct 2015 Initial enquires made of complainant. No response received. Unable to progress complaint.	Matter concluded. No further Action.	n/a

4 Standards 2015/04 (Received 7 Oct 2015)	Failed to treat others with respect Conduct inconsistent with the duty to promote and maintain high standards	Linked to Complaint Reference 2015/2 above. Complainant not able to proceed with complaint.	Matter concluded. No further action required.	n/a
5 Standards 2016/01 (Received 23 Jan 2016)	Failed to treat others with respect Conduct inconsistent with the duty to promote and maintain high standards	Concluded – 5 Feb 2016 Initial assessment and evaluation of complaint completed. A misunderstanding clarified to satisfaction of both parties.	Matter concluded. No further action required.	n/a
6 Standards 2016/02 (Received 4 April 2016)	Conduct inconsistent with the duty to promote and maintain high standards	Initial assessment and evaluation of complaint completed.	Decision letter to be sent to parties w/c 27 June 2016	n/a
7 Standards 2016/3 (Received 15 April 2016)	Failed to treat others with respect Conduct inconsistent with the duty to promote and maintain high standards	Initial assessment and evaluation of complaint being undertaken.	Conclude Initial assessment and evaluation.	July 2016 (subject to whether investigation required).
8 Standards 2016/4	Conduct inconsistent with the duty to promote and maintain high standards	Gathering information from complainant to progress complaint.	Undertake and complete Initial assessment and evaluation as soon	Unclear at this stage.

(Received 10 May 2016		Matter is complicated and number of issues arising before assessment and evaluation can be carried out.	as possible.	
--------------------------	--	--	--------------	--

This page is intentionally left blank

WIRRAL COUNCIL

STANDARDS AND CONSTITUTIONAL OVERSIGHT COMMITTEE

6 JULY 2016

REPORT TITLE:	<i>ESTABLISHING THE STANDARDS AND CONSTITUTIONAL OVERSIGHT WORKING GROUP</i>
REPORT OF:	<i>MONITORING OFFICER</i>

REPORTSUMMARY

This report (i) seeks approval to establish the Standards and Constitutional Oversight Working Group for this municipal year, (ii) provides details of the work undertaken by the Working Group during the last municipal year; and (iii) subject to (i) proposes a work programme for the Working Group for the 2016/17 municipal year.

RECOMMENDATION/S

That the Committee:

- (a) Agrees to establish a cross party Standards and Constitutional Oversight Working Group for the current Municipal Year;
- (b) Agrees the Terms of the Standards and Constitutional Oversight Working Group as set out at Appendix 1;
- (c) Appoints members to the Working Group or agrees that nominations be confirmed to the Monitoring Officer by all the party spokespersons.
- (d) Agrees to the work programme of the Working Group for the 2015/16 Municipal Year as set out in the report.

SUPPORTING INFORMATION

2.0 REASON/S FOR RECOMMENDATION/S

2.1 The recommendations are necessary to ensure compliance with legal obligations and improve governance arrangements.

3.0 OTHER OPTIONS CONSIDERED

3.1 The Committee is invited to include/change the proposed work programme of the Working Group. The streams identified are considered relevant and timely.

4.0 BACKGROUND INFORMATION

4.1 The Committee has for the last few years established a Working Group to assist it in its work. The terms of reference for the Working Group agreed in 2012 are set out at Appendix 1.

4.2 The work of the Working Group for each municipal year is set by the Committee.

4.3 The Working Group during the last municipal year considered the following matters and/or made recommendations for consideration by the Committee:

- Review of the Council's Constitution – Council Procedure Rules.
- Review of the Members' Code of Conduct and Protocol for dealing with complaints.
- Review of the Members' ICT Policy;
- Guidance to Members on Appointments to Outside Bodies; and
- Consideration of a Civic Handbook and Flag Flying Protocol.

4.4 Final consideration and review is however required in relation to proposals relating to the:

- Members' Code of Conduct and Protocol for dealing with complaints.
- Members' ICT Policy; and
- Civic Handbook and Flag Flying Protocol.

4.5 The Working Group last year made recommendations to the Committee in relation to the:

- Council's Constitution – Council Procedure Rules; and
- Guidance to Members on Appointments to Outside Bodies.

4.6 Accordingly, the following specific work streams for the Working Group are proposed for consideration and approval by the Committee.

(A) Review of the Council's Constitution

- 4.7 It is considered helpful to keep the Constitution under review to ensure it remains up to date and effective.
- 4.8 The Working Group focused its attention specifically on the Council's Procedure Rules during the last municipal year and made a number of significant changes to the Council Procedure Rules.
- 4.9 Given the nature and extent of those changes it would be prudent for the Working Group to review the success/effectiveness of those changes during this municipal year and consider any changes/amendments necessary.
- 4.10 Moreover, there are some updates required to certain aspect of the Constitution to ensure that it remains up to date and those changes can be presented and considered by the Working Group before being referred to the Committee for consideration.

(B) Review of the Members Code of Conduct and Protocol

- 4.11 The Working Group has annually reviewed the Members' Code of Conduct and Protocol for dealing with complaints.
- 4.12 It is good practice for members to keep the Code and the protocol under review to ensure that it remains fit for purpose and assists the Council maintain high standards of conduct as required under the Localism Act 2011.
- 4.13 Accordingly, it is proposed that the work programme of the Working Group includes the review of the Code and Protocol.

(C) Member's ICT Policy

- 4.14 The Working Group in the last municipal year considered the revised Member ICT Policy to ensure that it too is fit for purpose and sets out clearly all the obligations and duties members are required to follow, as well what is permitted.
- 4.15 Further revisions have been made following the Working Group's consideration of the draft Policy. However, those revisions have not been formally considered by the Working Group.
- 4.16 It is proposed that the Working Group considered the draft Member ICT Policy and if agreeable refers the same to the Committee for consideration and approval at its next meeting.

(D) Civic Handbook and Flag Flying Protocol

- 4.17 The Working Group in the last municipal year considered the Civic Handbook and Flag Flying Protocol. The changes requested have been made and the Working Group is required to approve those changes ahead of recommending the same to the Committee for approval.

5.0 FINANCIAL INFORMATION

5.1 There are no such implications arising.

6.0 LEGAL IMPLICATIONS

6.1 The legal implications have been set out in this report.

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

7.1 There are no such implications arising.

8.0 RELEVANT RISKS

8.1 The Council must ensure that the Constitution and other working arrangements/practices are effective and compliant with relevant legislation.

8.2 By undertaking a regular review of the Constitution and other key aspect of the Council's practices, the risks to the Council are mitigated.

9.0 ENGAGEMENT/CONSULTATION

9.1 The Standards Working Group has a consultative role by virtue of its cross-party membership. No formal consultation is necessary in respect of the matters falling within this report.

10.0 EQUALITIES IMPLICATIONS

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

(a) No EIA is required.

REPORT AUTHOR: **Surjit Tour**
Head of Legal & Member Services
and Monitoring Officer
Telephone: 0151 691 8569
Email: surjittour@wirral.gov.uk

APPENDICES

Appendix 1 - Terms of Reference for the Working Group

Standards and Constitutional Oversight Committee Working Group

Terms of Reference

Scope and Remit

- (a) Establishing a Protocol of Etiquette (primarily focused on conduct and behaviour expected at meeting of Full Council) to be developed in conjunction with the Council's Occupational Development team/initiatives;
- (b) Review and revision of the Members' ICT Policy;
- (c) Review and revise the information governance arrangements relating to Members in conjunction with the Council's Information Governance Board;
- (d) Consider how high standards of conduct can be further embedded; and
- (e) Monitoring (and review) of the Constitution to ensure any improvements/amendments required can be addressed promptly; and
- (f) Any other work required to be undertaken by the Standards and Constitutional Oversight Committee.

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

Membership

The Working Group shall consist of the Chairperson of the Standards and Constitutional Oversight Committee and two Members from the Labour Group and Conservative Group and one Member of the Liberal Democrat Group (total 6 members); all of whom must also be members of the Council's Standards and Constitutional Oversight Committee.

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 Constitutional Oversight Committee.

The Chair shall have a casting vote.

Meetings

The Working Group shall meet as frequently as considered necessary.

Meetings shall be quorate providing the Chair (or his/her deputy) and at least two other Members of the Working Group 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 Constitutional Oversight Committee in relation to matters falling within its scope and remit.

Administration

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

OUTSIDE BODIES – GUIDANCE NOTE FOR MEMBERS

1.0 Introduction

1.1 Service on outside bodies has always been an established part of a Member's role. An appointed Member on an outside body will be able to use their knowledge and skills as a Councillor to assist the organisation to which they are appointed.

1.2 Member appointments to outside bodies are normally agreed by the Cabinet or the Council and this guidance draws attention to the main issues which Members should consider when appointed to outside bodies.

1.3 The Council is now increasingly working in partnership with outside bodies and greater clarity is needed as to the role of Members appointed to these bodies. In situations where funding streams may benefit outside bodies and be channelled through the Council as the accountable body, or where the Council funds the outside body directly (e.g. CAB), questions of accountability and governance will arise.

2.0 Matters to consider before appointment

2.1 Membership on outside bodies can take various forms and it would be prudent to establish the capacity in which you are appointed. This may be either:

- as a member of the management committee, board of directors, or committee of trustees of the outside body. Here, you will not only be representing the interests of the Council, but you will also have duties to the outside body and a role in its governance. If you serve in a decision-making capacity or have a position of general control or management on the outside body, whether company, trust or other association, you owe duties and responsibilities to that body which are separate and distinct from your duties owed to the Council. On occasion, it is likely that duties owed to the outside body and to the Council, will conflict e.g. if you are the treasurer or other person involved in the decision of an outside body who has applied to the Council for grant funding; or
- as an 'observer', or undertaking a monitoring role, facilitating exchanges of views or information as an extension of your Council duties, but take no part in the outside body's management or governance, other than to attend and vote at annual or general meetings. Here, you will be mainly concerned with representing the Council and will not have responsibilities for governance of the body.

3.0 The main issues for you to consider

- the application of the Council's Member Code of Conduct and the principle of bias;

- the primary duty in certain cases, to act in the interests of the outside body;
- conflict with your role as a Councillor;
- indemnities.

4.0 Code of Conduct – Register of Interests

4.1 The law requires you to tell the Monitoring Officer in writing, within 28 days of taking office, or within 28 days of any change to your Register of Interests, of any interests which fall within the categories set out in the Code of Conduct. These categories include your membership or position of control or management in any other bodies to which you are appointed or nominated by the Council.

4.2 The Member Code of Conduct requires you to comply with the Code, unless you are subject to another body's code of conduct.

Note: New provisions in the Localism Act 2011 on registering and declaring pecuniary and non-pecuniary interests have replaced the old rules on personal and prejudicial interests.

5.0 Council decision making (conflicts of interest)

5.1 Where you serve as an appointed or nominated representative of the Council on an outside body, it is inevitable that conflicts (actual or potential) will arise, from time to time, between the duties you owe to the outside body, and the duties you owe to the Council. Conflicting interests should be declared on every occasion. It will be a matter for your individual judgement as to whether you participate in discussion of, and vote on, the particular item of business, whether at a meeting of the outside body, or a Council committee. Decisions will be required to be made against the background of the Member Code of Conduct and any advice sought and obtained from the Monitoring Officer.

Personal Interest

5.2 There may be occasions when it would be right for you to take part in the discussion. For example, where there is a general discussion on the role of the outside body, it is clearly in the public interest, that as the Council's representative, you should be able to speak and the Member Code of Conduct allows you to do this.

5.3 If you are appointed to an outside body, you will have a personal interest in that body.

5.4 Provided that you do not have a pecuniary (see below), you only need to declare your interest if and when you speak on the matter at a Council meeting.

5.6 Example: if you are attending a Council debate on education policy and are also a local education authority appointed governor, you would only need to declare an interest if and when you decided to speak during the debate.

6.0 Pecuniary / Other Disclosable Interest

6.1 You will have a pecuniary / other interest in a matter relating to the outside body, if you are in a position of control or management on the outside body and the interest falls into one of the following two categories:

(a) the matter affects the financial position of the outside body e.g. an application for grant funding to the outside body; or

(b) the matter relates to an approval, consent, licence, permission or registration that affects the outside body e.g. application by the outside body for planning permission.

6.2 If you have a pecuniary / other disclosable interest in a matter under discussion at a Council meeting, you must declare that you have such an interest (and the nature of that interest) as soon as that interest becomes apparent to you.

6.3 The duties to register, disclose and not to participate in respect of any matter in which a member has a “Disclosable Pecuniary Interest” are set out in Chapter 7 of the Localism Act 2011. Disclosable Pecuniary Interests are defined in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.

7.0 Bias

7.1 Where you might be inclined to the view that you have no prejudicial interest, your duties as a director, or as a trustee or a member of a management committee may well be regarded, on an objective appraisal, as giving rise to a legitimate fear of lack of impartiality, especially having regard to the desirability of maintaining public confidence. Participation in the decision making at a Council meeting by a Councillor disqualified by bias, potentially invalidates the decision.

7.2 Where your membership on the outside body is in an advisory or consultative basis, bias will not be assumed from mere membership and therefore it would possibly be legitimate for you to decide that you had no prejudicial interest. However, once the outside body has a line which is being advocated by you, it is likely that the Court would find bias which could result in the Council’s decision being struck down. In each case, the Monitoring Officer or Head of Legal and Democratic Services will need to ascertain the facts and review those facts against the legal framework.

8.0. Matters for you to check – questions for you to ask

8.1 In the event of your being appointed to an outside body, you should be clear about the answers to the following questions. The outside body to which you are nominated should be in a position to respond to your questions. Whilst it is your responsibility to obtain the answers to these questions,

Democratic Services will always be happy to assist you and may already have information available:

- What is the nature of the organisation and its main activities? Is it a company, if so what type of company is it (limited by shares or guarantee)? Is it unincorporated? Does it have charitable status?
- In what capacity do I serve on the outside body? Is the effect of my appointment to make me a member of the company, a director or a charitable trustee?
- Do I have a copy of the body's governing instrument (this may be a trust deed, a constitution or memorandum and articles or association)?
- Have I been supplied with a copy of any code of conduct to which I am subject as a member of the body.
- Am I aware of the identity of other directors, trustees or committee members?
- Is there an officer of the body such as a secretary or clerk to whom I can refer?
- Are written minutes kept of meetings and have I seen these minutes?
- Are meetings being conducted in accordance with the governing instrument?
- Am I aware of the financial position of the organisation to which I have been appointed?
- Am I aware of any contracts between the body and the Council?
- Does the governing body of the organisation receive regular reports on the financial position?
- Have I seen the last annual report and accounts?
- Am I aware and have I been advised of the main risks the body faces and what steps are taken to deal with such risks?
- Have I been informed of the main insurances/indemnities held by the body?

9.0 Duties and responsibilities

9.1 The following is a brief summary of the duties and responsibilities of Councillors who are nominated by the Council to outside bodies. Most of the obligations applying to company directors, also apply to trustees and to members of management committees etc.

(a) Company

If the body is a limited company, it is likely that you will be appointed as a company director.

You will need to complete a form giving your details for filing in the Register of Companies at Companies House <http://www.companieshouse.gov.uk/> the company secretary will assist you with this and advise you on your duties to the company.

Duties of a company director are not the same as your responsibilities as a Councillor. Briefly your responsibilities as a director are:

- To promote the success of the company
- To exercise care, diligence and skill
- Not to exceed powers
- To comply with the Companies Acts
- To avoid conflicts of interest
- To exercise independent judgement
- Not to accept benefits from third parties
- To declare an interest in a proposed transaction or arrangement with the company

(b) Local trusts

Occasionally Members will find themselves invited to serve on local trusts which provide that the local councillor is a trustee ex officio. Many such trusts are of some antiquity and often relate to village halls or other community facilities.

‘Ex officio’ is a Latin term meaning ‘by virtue of office or position.’ Ex-officio members of boards and committees, therefore, are persons who are members by virtue of some other office or position that they hold. Without exception, ex-officio members of boards and committees have exactly the same rights and privileges as do all other members, including, of course, the right to vote.

(c) Charity trustees

A number of useful publications are available on the Charity Commission’s website at www.charitycommission.gov.uk Publication CC3 – ‘The Essential Trustee’ what you need to know is a useful reference document. Those who are responsible for the control and administration of a charity are referred to as trustees, even where the

organisation is a company limited by guarantee, and even though they are not strictly trustees.

A charity may also be unincorporated (see below). The main duties of charity trustees can be summarised as follows although the outside body should be in a position to advise you more specifically on your duties:

- Act in accordance with the charity's trust deed or governing document;
- Protect the charity's assets and manage the charity's affairs prudently;
- Comply with the Charities Acts and the Trustee Act 2000;
- Not make a private profit or personal gain from their position;
- Take proper professional advice on matters on which they are not competent.

(d) Unincorporated organisations

Groups which are not limited companies may be 'unincorporated associations' which have no separate identity from their members. The rules governing the organisation's members' duties and liabilities will (or should) be set out in a constitution, which is simply an agreement between members as to how the organisation will operate. Usually, the constitution will provide for a management committee to be responsible for the everyday running of the organisation. Management committee members must act within the constitution and must take reasonable care when exercising their powers.

If you are involved in a decision-making capacity or have a position of general control or management on an unincorporated body, you will need to be aware that as the body has no separate corporate status, any liabilities will fall upon you personally and you will need to assess the risk of personal liability and the extent to which this has been covered by insurance, which should be taken out in the name of the organisation's committee members.

(e) Local authority companies

Legislation seeks to restrict and control companies which have a connection with local authorities, either because of the level of interest owned by the local authority, or because of the degree of business and involvement between the local authority and the company.

There are three types of local authority companies which are affected by the legislation. These are controlled, influenced and minority companies.

- **Controlled company:** where there is more than 50% local authority interest;
- **Influenced company:** where there is at least 20% local authority interest plus a business relationship with the company accounting for

over 50% of the company's turnover and/or the company is located on local authority land leased or sold for less than best consideration;

- **Minority company:** where the local authority's interest is less than 20%. This type of company is not treated as part of the local authority, and is able to act with more freedom (subject to the other provisions affecting companies in general).

Controlled and influenced companies are also known as 'regulated companies', under the effective control of the local authority, and under the legislation, subject to the capital finance regime which applies to local authorities, as well as other special propriety controls.

For this reason, the Council usually ensures that any involvement it has in companies, is kept below 20%, i.e. that less than 20% of voting rights/directors are associated with the Council.

If you are nominated a director of a company which has a Council interest, you owe specific duties, obligations, responsibilities etc to the company as detailed in paragraph 9(a) above, as the company is a separate legal entity from the Council.

10.0 Joint committee

10.1 A joint committee comprising the Council and other local authorities is established under specific legislative provisions. Your appointment to a joint committee is treated in exactly the same way as your appointment to any other Council committee. You are collectively responsible with other members of the joint committee, for the committee's decision making process. You must comply with the Wirral Council's Member Code of Conduct.

11.0 Partnership arrangements

11.1 The Council may from time to time enter into co-ordinated, joined-up and partnership approaches with other local authorities and organisations. This may be on a voluntary basis, or as required by law.

11.2 The partnership will usually be an informal arrangement or an unincorporated association and therefore not a formal partnership in law. Your appointment to such a partnership is treated in exactly the same way as your appointment to an outside body and you will need to consider the issues outlined in paragraph 9(d) above.

12.0 Indemnities

12.1 If you serve as a director of a company, trustee of a charity or in other decision-making capacities on outside bodies, you serve the particular body rather than the Council and it follows that the Council cannot indemnify you against claims brought against you personally.

12.2 Where there is any possibility of legal liability, the outside body should effect appropriate insurance cover for its directors, company officers, trustees, committee members etc.

12.3 The Council's indemnity/insurance cover will only extend to you, where you are assisting the outside body as an adviser or observer, through facilitating exchanges of views or information as a councillor or otherwise representing the Council.

13.0 Substitution

13.1 Where you take no part in the outside body's management or governance, other than to attend and vote at annual or general meetings e.g. as an 'observer', or undertaking a monitoring role, facilitating exchanges of views or information as an extension of your Council duties, another Councillor may substitute for you on the outside body. However, if you have a role in the governance of the outside body i.e. you serve in a decision-making capacity or have a position of general control or management as director, trustee etc, no other Councillor can substitute for you.

14.0 Involvement and reporting

14.1 Members appointed to an outside body should ensure that they take a proper role in the management and governance of the body. This will include attending meetings regularly and being familiar with issues relating to that body.

14.2 Through procedures established by the Council, Members will report back to the Council on their involvement in outside bodies. This can include a report in the form of the minutes of the outside body, to be noted by the Council Committee, the Cabinet or Council. Member's reports may be edited to protect confidentiality or withheld entirely from the public domain, on grounds of confidentiality.

15.0 Further advice

15.1 Relationships between the Council and outside bodies and you as the Council's representative can involve complex issues. In any case of uncertainty, dispute or difficulty, advice should be sought from the Head of Legal and Member Services.