



## Standards and Constitutional Oversight Committee

<b>Date:</b>	<b>Thursday, 31 January 2019</b>
<b>Time:</b>	<b>6.00 p.m.</b>
<b>Venue:</b>	<b>Committee Room 2 - Wallasey Town Hall</b>

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### Special Meeting

#### AGENDA

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

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. **ARRANGEMENTS FOR DEALING WITH COMPLAINTS AGAINST MEMBERS** (Pages 1 - 36)
4. **COUNCIL PROCEDURE RULES - STANDING ORDER CONCERNING VOTING AND ELECTRONIC VOTING** (Pages 37 - 46)

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**Standards and Constitutional Oversight Committee  
31 January 2019**

<b>REPORT TITLE:</b>	<b>Arrangements for dealing with complaints against Members</b>
<b>REPORT OF:</b>	<b>Director of Governance and Assurance</b>

## **REPORT SUMMARY**

In 2014 the Council adopted a Members' Code of Conduct and a process for dealing with complaints made under that code following the changes to the ethical standards regime introduced by the Localism Act 2011. Since 2014 there has been experience of dealing with complaints which has highlighted areas for improvement and clarification in the arrangements for dealing with complaints made under the Members' Code of Conduct. In particular, issues have been raised in relation to the timeliness with which complaints have been dealt with under the current protocol. This report seeks authority to adopt a revised procedure for investigating and making decisions in relation to allegations made under the Members' Code of Conduct.

## **RECOMMENDATION/S**

That the Committee agrees:

- (a) To adopt a revised procedure for dealing with complaints made under the Members' Code of Conduct in accordance with the revised Protocol document attached at Appendix A.
- (b) That the revised Protocol is made available on the Council website.

## **SUPPORTING INFORMATION**

### **1.0 REASON/S FOR RECOMMENDATION/S**

Robust standards arrangements are needed to safeguard local democracy, maintain high standards of conduct, and to protect ethical practice in local government. The proposed amendments will improve the clarity of the process and will provide the Standards and Constitutional Oversight Committee and the Monitoring Officer with the opportunity of dealing with complaints in a timely manner in accordance with what is currently felt to be professional best practice. They will also provide clarity and transparency for the general public.

### **2.0 OTHER OPTIONS CONSIDERED**

- 2.1 That the current protocol for dealing with complaints against Members remains unchanged.
- 2.2 That the current protocol for dealing with complaints against Members is changed in some other way.

### **3.0 BACKGROUND INFORMATION**

- 3.1 The Committee's terms of reference, contained in Article 9 of the Council's Constitution, include to:
  - (vi) 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 be 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); and
  - (vii) 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 be 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).
- 3.2 This reflects the Council's duties as imposed by s27 of the Localism Act 2011, which requires the authority to have in place arrangements under which allegations that a Member or co-opted Member of the authority has failed to comply with the authority's code of conduct can be investigated and arrangements under which decisions on those allegations can be made.

- 3.3 The Council accordingly adopted a published procedure document on the introduction of the Localism Act, entitled "*Arrangements for investigating and making decisions in relation to allegations made under the members' Code of Conduct*", which is attached as Appendix A with amendments shown in italics and underlined.
- 3.4 There has now been experience of dealing with complaints under these arrangements for investigating and making decisions in relation to allegations made under the Members' Code of Conduct over several years. A review of the complaints logged under this procedure since 2012, to assess whether the existing structures, processes and practices are conducive to investigating alleged breaches fairly and with due process, highlighted areas for improvement and clarification.
- 3.5 At the meeting of the Standards and Constitutional Oversight Committee on 7 November 2018 the Committee resolved that:
- (1) the Committee is delighted that there is now a dedicated officer team in place to deal with complaints against Members;
  - (2) officers be requested to draw up a new bespoke Protocol which details arrangements for investigating and making decisions in relation to allegations made under the Members' Code of Conduct, by reviewing and revising its current one and taking account of the views expressed and proposals and suggestions put forward by Members at this meeting; and
  - (3) a Special meeting of the Committee be convened in January 2019 to consider and adopt the new bespoke Protocol.
- 3.6 The Protocol which details arrangements for investigating and making decisions in relation to allegations made under the Members' Code of Conduct, has now been reviewed and revised taking account of the views expressed and proposals and suggestions put forward by Members. A draft revised Protocol is attached to this report. The revised Protocol differs from the Council's current Protocol in three important ways.
- Firstly, it provides for the Monitoring Officer in their discretion to refer complaints to an Assessment Panel of the Standards and Constitutional Oversight Committee in order to assess more serious or complex allegations and for that Assessment Panel to take the decision as to whether a formal investigation is merited where he/she feels it reasonable and appropriate to do so.
  - Secondly, it provides for the Monitoring Officer to submit a report to the Standards and Constitutional Oversight Committee or Assessment Panel where he/she believes that the complaint will not be dealt with within an overall timescale of 6 months.

- Thirdly, there is included a clear set of criteria against which to assess an allegation of breach, including public interest reasons, and this will be published for potential complainants to see.

3.7 It is the Monitoring Officer's view that the draft revised Protocol in particular, provides helpful guidance in relation to the procedure to be followed during the process and hearings of complaints by the Standards Panel and Standards Appeal Panel.

3.8 If adopted, it is felt that the proposed amendments would enable a greater level of Member involvement and will streamline the process for dealing with minor complaints, allowing for a faster resolution for suitable matters. The revised Protocol will also provide greater consistency in resolving complaints.

3.9 It is also proposed that the revised Protocol be placed on the Council's website so that it is readily accessible to the public.

#### **4.0 FINANCIAL IMPLICATIONS**

There are no financial implications associated with the adoption of the revised protocol for investigating and making decisions in relation to allegations made under the members' Code of Conduct.

#### **5.0 LEGAL IMPLICATIONS**

The Council must act in accordance with the legislative requirements of Chapter 7 (Standards) of the Localism Act 2011 when dealing with ethical standards.

#### **6.0 RESOURCE IMPLICATIONS: ICT, STAFFING AND ASSETS**

There are no resource implications associated with the revised Protocol document "Arrangements for investigating and making decisions in relation to allegations made under the members' Code of Conduct".

#### **7.0 RELEVANT RISKS**

Adopting the revised Protocol document "Arrangements for investigating and making decisions in relation to allegations made under the members' Code of Conduct" will streamline and clarify the process for dealing with allegations allowing for a faster resolution for suitable matters and reduce the risk of delay in the process.

## **8.0 EQUALITY IMPLICATIONS**

The Code of Conduct and the Protocol document “Arrangements for investigating and making decisions in relation to allegations made under the members’ Code of Conduct” and its implementation must adhere to equality and human rights legislation under the relevant Acts. The revised Protocol document will ensure that these matters are addressed when investigating and making decisions in relation to allegations made under the members’ Code of Conduct.

### **REPORT AUTHOR:**

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### **APPENDICES**

- A:** Amended Wirral Protocol “Arrangements for investigating and making decisions in relation to allegations made under the members’ Code of Conduct”

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# **MEMBERS' CODE OF CONDUCT**

## **PROTOCOL**

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

**January 2019**

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## **1. Introduction and Summary**

- 1.1 Under Sections 28(6) and (7) of the Localism Act 2011, the Council must have in place “arrangements” under which allegations that a Member or co-opted Member of the Council has failed to comply with the Code of Conduct can be investigated and decisions made on such allegations.

Such arrangements must provide for the Council to appoint at least one Independent Person whose views must be sought by the Council before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the Council at any other stage, or by a Member or co-opted Member against whom an allegation has been made.

- 1.2 This Protocol has been developed and established pursuant to paragraphs 9.3(vi),(vii) and (x) of the Terms of Reference of The Standards Committee set out at Article 9 of the Constitution.

- 1.3 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.

## **2. Making a Standards Complaint**

- 2.1 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 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 or using the website.

- 2.2 As a matter of fairness and natural justice, a Member should usually be told who has complained about them and the nature of the complaint. The Monitoring Officer will acknowledge receipt of the complaint within 5 working days of receiving it. A full copy of the complaint will, subject to any ruling on disclosure, ordinarily be sent to the Member complained about inviting their written comments within 10 working days, 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.
- 2.3 The Subject Member(s) shall not disclose (except to his/her advisor(s) confidentially) any information provided to him/her under paragraph 2.2 above to any other person/body without the express written consent of the Monitoring Officer.
- 2.4 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.
- 2.5 Where no further information is provided by the Complainant, no further action shall be taken in relation to the complaint and the Monitoring Officer shall inform the Complainant accordingly.
- 2.6 It should be noted that complaints which allege that Members may have committed a criminal offence in breaching the "disclosable pecuniary interest" provisions under Section 34 of the Localism Act 2011, will be referred by the Monitoring Officer to Merseyside Police for consideration
- 2.7 Ordinarily complaints will be dealt with in no more than 6 months from the date the complaint is received to the final conclusion. This will very much depend on the facts of each complaint and some investigations maybe concluded earlier and others may take longer. The overall process for dealing with complaints is set out in the flowchart in Appendix 2. If the Monitoring Officer believes a complaint will not be concluded within 6 months he/she will consult with the Independent Person and submit a report to the Standards and Constitutional Oversight Committee or Assessment Panel for consideration.

### **3. Anonymous Complaints**

- 3.1 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.
- 3.2 Details of such allegations will be retained on file by the Monitoring Officer for future reference and monitoring purposes.

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

- 4.1 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.
- 4.2 Before the assessment of a complaint begins, the Monitoring Officer must be satisfied that the complaint meets the following requirements:

- (i) It is a complaint against one or more named Members of the Council;
- (ii) The named Member or Members were in Office at the time of the alleged conduct and acting in their official capacity; and
- (iii) The complaint, if proven, would be a breach of the Council's Code of Conduct in force at the relevant time.

If the complaint fails any one of these tests, it cannot be investigated as a breach of the Council's Code of Conduct and the complainant must be informed that no further action can be taken in relation to the complaint.

## **5. Preliminary Assessment & Evaluation**

5.1 The Monitoring Officer shall, as soon as practicably possible after receipt of a Standards Complaint (and after receiving any clarification/information requested), 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").

5.2 The Preliminary Assessment and Evaluation carried out by the Monitoring Officer under 5.1 above, must take into account:

- (i) the views of the Independent Person;
- (ii) the public interest,
- (iii) any guidance provided by Standards Committee; and
- (iv) paragraph 1.3 above.

5.3 The Monitoring Officer is unlikely to refer a complaint for investigation where it falls into any of the following categories:-

(a) The same, or substantially similar, complaint has already been the subject of assessment or investigation and there is nothing more to be gained by further action being taken.

(b) It appears that the complaint concerns or is really about dissatisfaction with a Council decision or policy rather than a breach of the Code of Conduct.

(c) There is not enough information currently available to justify a decision to refer the matter for investigation.

(d) The complaint is about someone who has died, resigned, is seriously ill or is no longer a Member of the Council concerned and therefore it is not in the public interest to pursue.

(e) Where the allegation is anonymous, unless it includes documentary or photographic evidence indicating an exceptionally serious or significant matter and it is considered in the public interest that it be investigated.

(f) Where the event/s or incident/s took place more than 6 months prior to the date of complaint being received or where those involved are unlikely to remember the event/s or incident/s clearly enough to provide credible evidence.

(g) The complaint is such that it is unlikely that an investigation will be able to come to a firm conclusion on the matter and where independent evidence is likely to be difficult or impossible to obtain.

(h) He/she is satisfied that having regard to the nature of the complaint and the level of its potential seriousness, the public interest in conducting an investigation does not justify the cost of such an investigation.

(i) Where the allegation discloses a potential breach of the Code of Conduct but it is considered that the complaint is not serious enough to warrant any further action and:

- the Member and Officer resource needed to investigate and determine the complaint is wholly disproportionate to the matter complained about; or

- in all the circumstances there is no overriding public benefit or interest in carrying out an investigation

5.4 The Monitoring Officer shall notify and provide a copy to the relevant Political Group Leader\* of a complaint received in respect of a Member of their political group.

[\*In the event that the Subject Member is the Political Group Leader, the Monitoring Officer shall notify 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 notify the next most relevant senior Political Group Official/Spokesperson.]

5.5 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.

5.6 The Monitoring Officer, in carrying out the assessment and evaluation 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:

- (e) a pattern of allegations of disrespect, bullying or harassment;
- (f) factionalised groupings within the Council;
- (g) a series of 'tit-for-tat' allegations; or
- (h) ongoing employment issues, which may include resolved or ongoing employment tribunals, or grievance procedures.

5.7 The Monitoring Officer in his/her discretion may refer complaints to an Assessment Panel of the Standards and Constitutional Oversight Committee in order to assess more serious or complex allegations and for the Committee to take the decision as to whether a formal investigation is merited where he/she feels it reasonable and appropriate to do so.

5.8 Unless otherwise stated within this Protocol, Standards Complaints that are referred for investigation under paragraph 5.1(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

5.9 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 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.

5.10 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 the Council other than as part of a periodic anonymous summary to the Standards Committee for monitoring and review purposes.

5.11 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 5.1.

He/she 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

- 5.12 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

- 5.13 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 5.9 and 5.10 above, he/she shall adopt that approach accordingly and endeavour to achieve a resolution of the Standards Complaint.

- 5.14 If the Monitoring Officer, whilst seeking resolution of the Standards Complaint by adopting an alternative approach, under paragraph 5.13, 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 5.1;

He/she shall refer the Standards Complaint and any other relevant information for investigation; and the investigation report produced shall be considered by the Standards Panel.

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

- 6.1 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.

- 6.2 Within ten 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) seek to appoint an Investigator and set out the terms of reference for the investigation.
- (iii) Request the Investigator to submit an Investigation Plan for approval by the Monitoring Officer and then to conduct an investigation of the Standards Complaint and to report his/her findings to the Monitoring Officer and subsequently to the Standards Panel.

6.3 The Monitoring Officer may appoint another person (or other persons) to assist him/her or the Investigator in the conduct of his/her functions.

6.4 The investigation will be carried out having regard to the terms of reference and any guidance provided by the Standards and Constitutional Oversight Committee and/or the Monitoring Officer. 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 and Constitutional Oversight Committee are kept informed of progress.

6.5 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. The investigation process is set out in the flowchart at Appendix 3.

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

7.1 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.

## **8. Interviews**

### **8.1 Timescale**

The Investigator will decide how to conduct the investigation and submit an investigation plan to the Monitoring Officer for approval. The Investigator will then contact the Complainant and subject Member to arrange interviews with them as soon as reasonably practicable. 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.

### **8.2 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 15 working days of the Investigator requesting a convenient time and date for interview.

- (iii) In the event that the Complainant or Subject Member(s) fails to respond to a request for interview or fail to make him/herself available for interview within 15 working days of the Investigator request for interview or fails 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).

### 8.3 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.

### 8.4 Notes of interviews

Where reasonably practicable, following the interview the Investigator will produce a written note of the material points of the interview and provide two copies of that note to the person interviewed within 5 working days of the interview. The person interviewed will be asked 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 within 10 working days of receipt of the interview notes, otherwise the notes will be taken as agreed.

### 8.5 The Investigating Officer may, following consultation with the Independent Person, refer an investigation to the Monitoring Officer for re-consideration as to whether the investigation should proceed where:

- As a result of new evidence or information, the Investigating Officer is of the opinion that the matter is materially less serious than may have seemed apparent to the Monitoring Officer or Standards and Constitutional Oversight Committee when the decision was made to refer the complaint for investigation, and a different decision may have been made had either the Monitoring Officer or Standards and Constitutional Oversight Committee been aware of the new evidence or information;
- The Member who is the subject of the allegation has died, is seriously ill or has resigned from the Council concerned and in the circumstances the Investigating Officer is of the opinion that it is no longer appropriate to proceed with the investigation; or
- Other circumstances arise, which in the reasonable opinion of the Investigating Officer, render it appropriate for the investigation to be referred to the Monitoring Officer or Standards and Constitutional Oversight Committee for re-consideration.

## 9. Investigator's Report

### 9.1 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.

### 9.2 The draft report will be marked "Confidential" and "Draft". It will also be made 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.

- 9.3 The Investigator will then send a copy of his/her draft report to the Monitoring Officer and 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 10 working days of receipt of the draft report.
- 9.4 The Investigator, upon receipt of any comments received under paragraph 9.3 above, will consider such comments when preparing his/her final report for submission to the Monitoring Officer.

## **10. Rights and Responsibilities of Members and the Investigator**

- 10.1 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.
- 10.2 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.
- 10.3 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.
- 10.4 It is a breach of the Members' Code of Conduct to attempt to intimidate the Investigator or Members of the Standards and Constitutional Oversight 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 and Constitutional Oversight Committee. Should the Complainant or Subject Member(s) have any queries or concerns in respect of the Standards Complaint or investigation, then he/she should raise them directly with the Monitoring Officer in writing.
- 10.5 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.
- 10.6 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.

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

- 11.1 Within seven working days from receipt of the Investigator's final report the Monitoring Officer shall send a copy of the Investigator's final report to both the Complainant and the Subject Member(s).
- 11.2 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.
- 11.3 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 5 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 5 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.

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

- 12.1 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 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.
- 12.2 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).

## **13. Role of Investigator and the Panels**

- 13.1 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 Appeal 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.
- 13.2 It is essential that the Investigator acts, at all times, in a manner that is impartial and fair to all parties.

13.3 The Standards Panel (and the Standards Appeal 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.

#### **14. Standards Panel**

14.1 Where a Standards Complaint has been referred for investigation and a finding of a breach has been found by the Investigator, the Monitoring Officer shall seek to convene a Standards Panel within 20 working days of the Monitoring Officer receiving the response of the Complainant and the subject Member in accordance with paragraph 11.3.

14.2 The Standards Panel 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
- (vi) 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.

14.3 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. The Member may be represented legally or otherwise at the Standards Panel. The procedure adopted at the Standards Panel hearing will be as set out in Appendix 4.

14.4 The Standards Panel, with the benefit of any advice from the Independent Person, may conclude that the Member did not fail to comply with the Code of Conduct and so dismiss the complaint. If the Standards Panel concludes that the Member did fail to comply with the Code of Conduct, the Chair will inform the Member of this finding and the Standards Panel will then consider what action, if any, the Hearings Panel should recommend as a result of the Member's failure to comply with the Code of Conduct.

14.5 Action the Standards Panel can take where a Member has failed to comply with the Code of Conduct

The Council has delegated to the Standards Panel such of its powers to take action in respect of individual Members as may be necessary to promote and maintain high standards of conduct. Accordingly, the Standards Panel may –

- (a) 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
- (b) 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
- (c) report the Panel's decision to a public meeting of the Standards and Constitutional Oversight Committee for reference / consideration; and/or
- (d) 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
- (e) 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.

The Standards Panel has no power to suspend or disqualify the Member or to withdraw a Member's basic allowance or any special responsibility allowance.

#### 14.6 Action the Standards Panel can take where a Member has NOT failed to comply with the Code of Conduct

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

- (a) 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; or
- (b) 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.

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

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

- 15.1 At the end of the Hearing, the Chair will state the decision of the Hearings Panel as to whether the Member has failed to comply with the Code of Conduct and as to any action which the Hearings Panel resolves to take.
- 15.2 The Standards Panel decision and its reasons shall be confirmed in writing to the Complainant and the Subject Member(s) normally within seven 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 16 below.

## **16. Request for Permission to Appeal**

- 16.1 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.
- 16.2 Any request seeking permission to appeal must be made in writing to the Monitoring Officer within 20 working days of receipt of the Standards Panel's decision.
- 16.3 The Monitoring Officer shall acknowledge any request seeking permission to appeal made under paragraph 16.2 within 5 working days of receipt.
- 16.4 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.

## **17. Review Panel**

- 17.1 The Monitoring Officer shall seek to 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 16.4 above.
- 17.2 The Monitoring Officer shall, within 5 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.

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

- (i) The Investigator's 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
- (vi) 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.

17.4 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. The procedure adopted at the Standards Appeal Panel hearing will be as set out in Appendix 5.

17.5 Action the Standards Panel can take where a Member has failed to comply with the Code of Conduct

The Council has delegated to the Standards Appeal Panel such of its powers to take action in respect of individual Members as may be necessary to promote and maintain high standards of conduct. Accordingly, the Standards Appeal Panel may take any of the actions as detailed in paragraph 14.5.

17.6 Action the Standards Appeal Panel can take where a Member has NOT failed to comply with the Code of Conduct

Where the Standards Appeal Panel determines that the Members' Code of Conduct has NOT been breached, it may take any of the actions as detailed in paragraph 14.6.

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

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

- 18.1 At the end of the Hearing, the Chair will state the decision of the Hearings Panel as to whether the Member has failed to comply with the Code of Conduct and as to any action which the Hearings Panel resolves to take.
- 18.2 The Standards Appeal Panel decision and its reasons shall be confirmed in writing to the Complainant and the Subject Member, within normally seven working days of the Standards Appeal Panel considering the Standards Complaint. The Complainant and Subject Member do not have a right of appeal against the decision of the Standards Appeal Panel.

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

- 19.1 Where the Standards Panel or Standards Appeal 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 and information will likely be exempt from disclosure under paragraph 1 of the Council Access to Information Procedure Rules unless the Standards Panel or the Standards Appeal Panel at its meeting considers that the public interest in lifting the exemption outweighs the public interest in maintaining the exemption.
- 19.2 Agendas and papers for meetings of the Standards Panel and Standards Appeal Panel shall be distributed in accordance with the Council's Access to Information Procedure Rules.
- 19.3 The publication of Standards Panel and Standards Appeal Panel decisions and associated information shall be kept for six years from the date of the decision.

## **20. Confidentiality**

- 20.1 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 and Constitutional Oversight 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.
- 20.2 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.
- 20.3 In exceptional circumstances, despite the Monitoring Officer agreeing to the Complainant's identity being kept confidential under paragraphs, 20.2, 20.2, 2.2 and/or 2.3 above, the confidential details in question may still become known in the public domain or have to be provided for other reasons and purposes when disclosing them in the public domain.
- 20.4 The Subject Member will not be informed/notified of the Standards Complaint and/or the identity of the Complainant, in accordance with paragraph 2 until after the

Monitoring Officer has considered the Standards Complaint and made a determination in relation to any request for confidentiality made under paragraph 20.2 above.

## **21. Conflicts of Interest**

21.1 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.

## **22. Monitoring and Review**

22.1 For monitoring and review purposes, the Monitoring Officer shall provide the Standards and Constitutional Oversight Committee, at each of its meetings (unless otherwise directed by the Standards and Constitutional Oversight 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.

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

23.1 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.

## **24. Modification of Procedure**

24.1 The Monitoring Officer, in consultation with the Chair of the Standards and Constitutional Oversight 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.

## **25. Interpretation**

25.1 'Chair' refers to the relevant person presiding at the Standards and Constitutional Oversight Committee or the Standards Panel or Standards Appeal Panel.

- 25.2 'Complainant' means the person who is making the Standards Complaint.
- 25.3 'Investigator' means the Monitoring Officer or other person nominated by the Monitoring Officer (or his/her representative) to investigate a complaint.
- 25.4 'Legal Advisor' means the officer responsible for providing legal advice to the Standards Panel and/or Standards Appeal Panel. This may be the Monitoring Officer, another legally qualified officer of the Council, or someone appointed for this purpose from outside the Council.
- 25.5 'Member(s)' includes all Elected Members of Wirral Council and all non-elected Co-Opted Members of any committee (including the Standards and Constitutional Oversight 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.
- 25.6 '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.
- 25.7 '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).
- 25.8 '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.
- 25.9 The Independent Person is a person who has applied for the position following advertisement of a vacancy for the position and is then appointed by a positive vote from a majority of all the Members of the Council.
- 25.10 A person cannot be "independent" if he/she -
- i) Is, or has been within the past 5 years, a Member, co-opted Member or Officer of the Council;
  - ii) Is a relative or close friend of a person defined at paragraph i) above. For this purpose, "relative" means –
    - (a) Spouse or civil partner;
    - (b) Living with the other person as husband and wife or as if they were civil partners;
    - (c) Grandparent of the other person;
    - (d) A lineal descendent of a grandparent of the other person;
    - (e) A parent, sibling or child of a person defined at paragraphs (a) or (b)
    - (f) A spouse or civil partner of a person defined at paragraphs (c), (d) or (e) or
    - (g) Living with a person defined at paragraphs (c), (d) or (e) as husband and wife or as if they were civil partners.

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COMPLAINT FORM

Complaints about Councillors: Ref

Customer details

=====

Title:

First name:

Surname:

Address:

Telephone number:

Mobile number:

Work number:

Email:

Confirm your email:

Please tell us which statement best describes you: *Dropdown box*

Details:

Member details

=====

Title:

First name:

Surname:

Council or authority name:

\*\*\*\*\*

Title:

First name:

Surname:

Council or authority name:

\*\*\*\*\*

Title:

First name:

Surname:

Council or authority name:

\*\*\*\*\*

Additional Councillors

\*\*\*\*\*

**Complaint details**

=====

Please provide details of your complaint.

Do you wish to request that your identity is kept confidential?

**Confidentiality details**

=====

Please provide details as to why you believe details of your name and/or details of your complaint should be withheld. The box will expand to accommodate an unlimited number of words.

**Desired outcome**

=====

Please indicate the desired outcome you are looking for or hoping to achieve by submitting this complaint. The box will expand to accommodate an unlimited number of words.

**Equality monitoring**

=====

This section is optional.

Are you prepared to provide some personal information for monitoring purposes?

Are you:

How old are you?

Do you consider yourself disabled?

Please confirm the nature of your disability:

Other:

Ethnicity:

Religion:

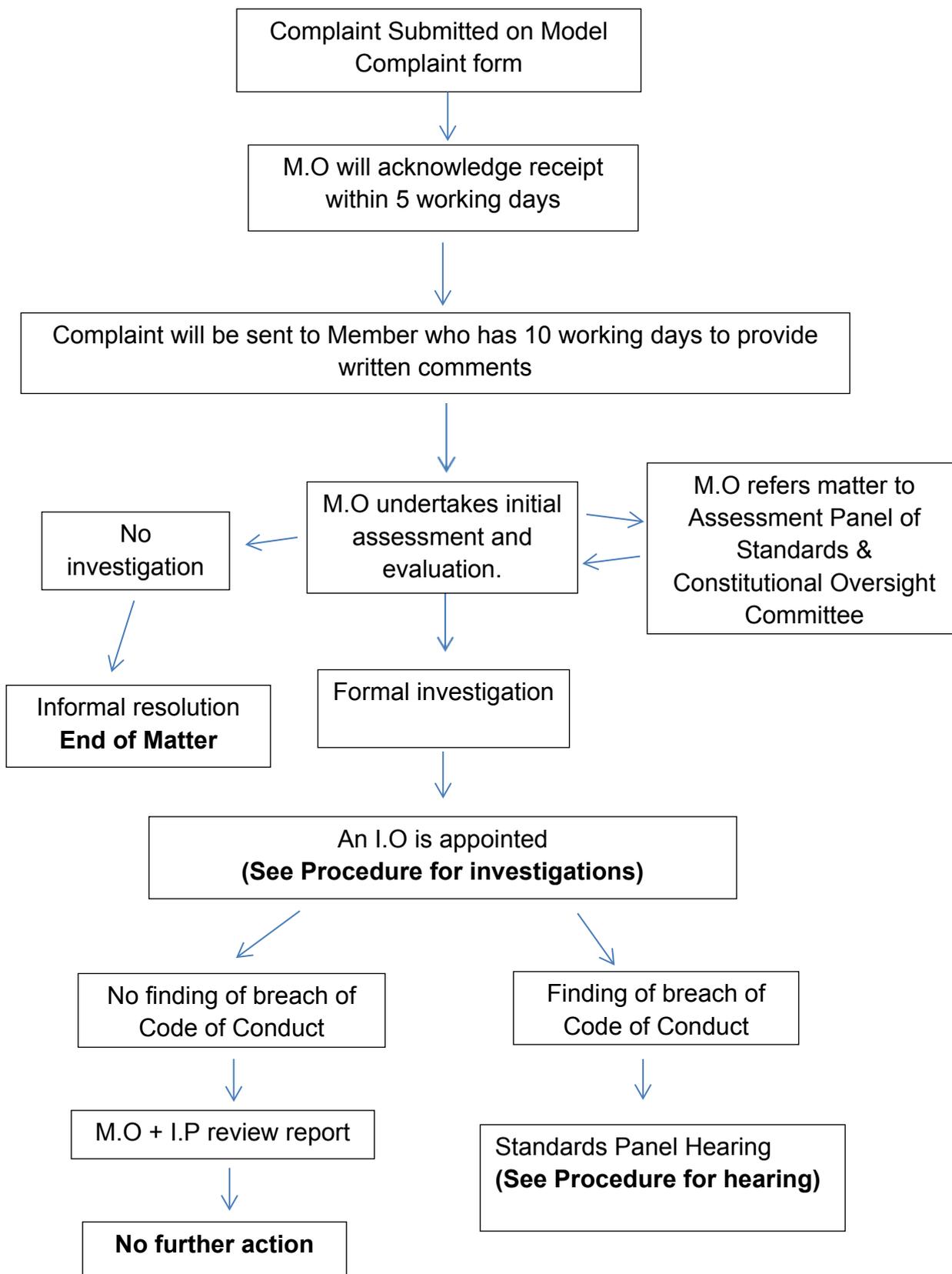
Sexuality:

Is your gender identity the same gender you were assigned at birth?

Are you married?

Are you in a civil partnership?

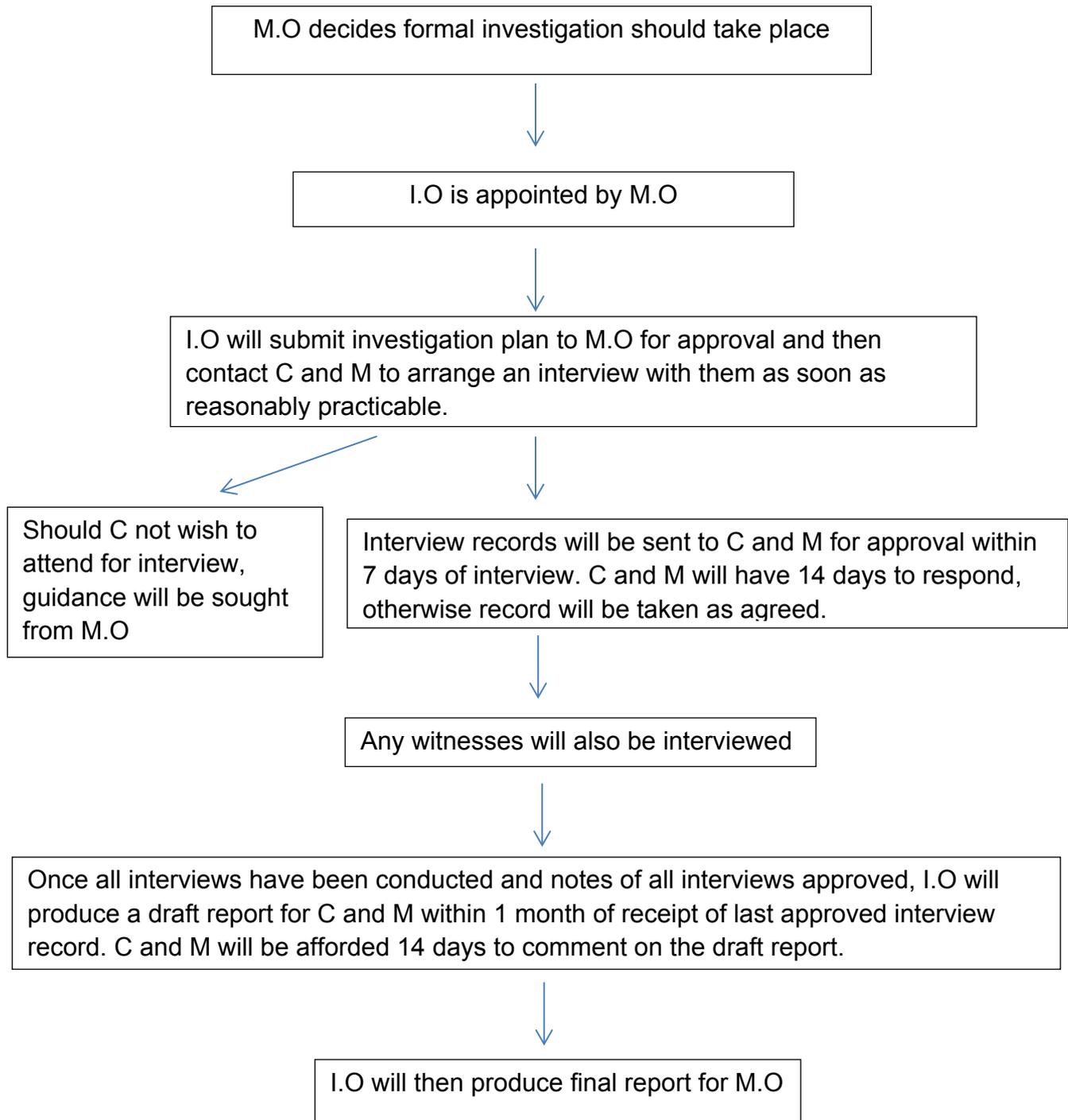
STANDARDS COMPLAINT PROCESS FLOWCHART



KEY  
M.O – Monitoring Officer  
I.O – Investigating Officer  
I.P – Independent person

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## PROCEDURE FOR INVESTIGATIONS



KEY  
 I.O – Investigating Officer  
 M.O - Monitoring Officer  
 C – Complainant  
 M - Member  
 Days = working days

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**Standards Panel Procedure**

1. Appointment of Chairperson of the Panel
2. Declarations of Interest
3. Opening remarks of the Chairperson
4. Panel to determine whether the exemption to exclude the press and public is to be maintained. (Parties invited to make representations)
5. Complainant (or representative) invited to make opening remarks
6. Subject Councillor (or representative) invited to make opening remarks
7. Investigator to present his/her report
8. Parties invited to question the investigator and/or seek points of clarification on the report
9. Panel to question the investigator on his/her report
10. Complainant (or representative) invited to make final submissions
11. Panel to seek clarification on any points relevant to the Complainant
12. Subject Councillor (or representative) invited to make final submissions
13. Panel to seek clarification on any points relevant to the Subject Councillor
14. Panel to invite the views of the Independent Person for consideration
15. Panel hearing adjourned to allow for deliberation (as deemed appropriate the Panel)
16. Panel hearing resumed for decision
17. If the Panel decision upholds/finds a breach of the Code, the Subject Councillor (or representative) shall be invited to make submissions in respect of any mitigation (including in respect of actions the Standards Panel can take) for consideration by the Panel
18. Panel hearing adjourned to allow for deliberation (if deemed necessary by the Panel)
19. Panel hearing resumed for decision on actions (if any) the Standards Panel have decided to take.

The Chairperson and Panel shall have discretion to vary the above procedure if it is considered appropriate and necessary to ensure fairness to all parties.

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**Standards Appeal Panel Procedure**

1. Appointment of Chairperson of the Panel
2. Declarations of Interest
3. Opening remarks of the Chairperson
4. Panel to determine whether the exemption to exclude the press and public is to be maintained. (Parties invited to make representations)
5. Appellant (or representative) invited to make opening remarks
6. Complainant (or representative) invited to make opening remarks
7. Relevant witnesses shall in turn be called to answer questions and/or provide points of clarification as are relevant to the grounds of appeal
8. Complainant (or representative) invited to make final submissions
9. Panel to seek clarification on any points relevant to complainant
10. Appellant (or representative) to make final submissions
11. Panel to seek clarification on any points relevant to Appellant
12. Panel to invite the views of the Independent Person for consideration
13. Panel hearing adjourned to allow for deliberation (as deemed appropriate the Panel)
14. Panel hearing resumed for decision
15. If the Panel decision upholds/finds a breach of the Code, the Appellant (or representative) shall be invited to make submissions in respect of any mitigation (including in respect of actions the Standards Appeal Panel can take) for consideration by the Panel
16. Panel hearing adjourned to allow for deliberation (if deemed necessary by the Panel)
17. Panel hearing resumed for decision on actions (if any) the Standards appeal Panel decide to take

The Chairperson and Panel shall have discretion to vary the above procedure if it is considered appropriate and necessary to ensure fairness to all parties.

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**Standards and Constitutional Oversight Committee**  
**31<sup>st</sup> January 2019**

<b>REPORT TITLE:</b>	<b>Council Procedure Rules – Standing Order concerning voting and electronic voting</b>
<b>REPORT OF:</b>	<b>Director of Governance and Assurance (Monitoring Officer)</b>

**REPORT SUMMARY**

This report seeks to address deficiencies in Standing Order 18 of the Council Procedure Rules (Part 4(A) of the Constitution) concerning voting methods. It has regard to the model standing order contained in statutory Guidance and recommends a revised standing order to make improvements and to cater for use of the electronic voting system in the Council Chamber.

**RECOMMENDATION/S**

That the Committee

- (a) Recommends that Council adopt a revised Standing Order 18 of the Council Procedure Rules (Part 4(A) of the Constitution) as attached at Appendix C

## **SUPPORTING INFORMATION**

### **1.0 REASON/S FOR RECOMMENDATION/S**

- 1.1 The Council is legally required to have regard to the statutory Guidance in drafting Council standing orders. The draft revision at Appendix C is based on the model standing order contained within the Guidance, together with:
- (a) those elements of the existing WBC standing order that appear to have been drafted with good reason and are not otherwise found in the Model; and
  - (b) amended to cater for the addition of an electronic voting system and the Council's preferred custom and practice as set out in the report below.

### **2.0 OTHER OPTIONS CONSIDERED**

- 2.1 That the current standing order remains unchanged. This will not address the issue of the current standing order requiring a vote at each meeting to allow for use of electronic voting.
- 2.2 That the standing order is amended in some other way, perhaps as part of an overall review. This will involve a delay.

### **3.0 BACKGROUND INFORMATION**

- 3.1 It was reported to the Committee's meeting of 20th November 2018 that the Council Chamber Electronic Voting System had been activated as of mid-August 2018. Demonstrations for Elected Members had taken place on 26th September and on 3rd, 8th and 10th October 2018 and the first Council meeting utilising the new electronic voting system took place on 15th October 2018.
- 3.2 Following the installation of the new electronic voting system in the Council Chamber, and consultation with Members on its usage, it was identified that the Council's Constitution would require revision of Standing Order 18 of the Council Procedure Rules. This was primarily that the default method of voting should be altered to electronic voting as opposed to a 'show of hands'. This alteration would negate the need to vote and suspend standing orders at the beginning of every Council meeting, to enable use of the electronic voting system at future meetings.
- 3.3 Member's views were sought on an alteration to the existing standing order. Following debate, the Committee formed the view that the additional sections suggested that covered the issue of electronic voting, taken largely from a detailed standing order used in another council, would alter the balance and flow of the meeting. Rather, the Committee requested that the Council Procedure Rule 18 be re-considered in its entirety, with a further Council meeting taking place between that meeting and the Committee considering this matter again.

- 3.4 The current standing orders include reference to and means of utilising electronic voting, including the Mayor's powers where the system has failed or is potentially misused. These were drafted for a previous electronic voting system, however, and miss several elements. In particular, the current standing order:
- presumes or requires a vote on whether to use the electronic voting system at the beginning of each meeting (at 18(1)); and
  - is confusing in relation to a recorded vote (referred to as a 'card vote') in that it does not necessarily differentiate between a recorded vote and the current means of electronic voting and does not specify the stating of the vote for the gallery and web-cast.
- 3.5 The current standing orders therefore require a vote at the beginning of each meeting to permit the use of electronic voting system and to waive the standing order to provide clarity.
- 3.6 As well as containing the mandatory standing orders, in drawing up standing orders, the Authority is required by to have regard to the Statutory Guidance in drafting standing orders. The Guidance contained notes as well as a set of Model Standing Orders containing what the Guidance calls 'Council Procedure Rules' as 'Part 4(1) of the Model Constitution'. To this Model has since been added further mandatory standing orders to insert.
- 3.7 The current Model Standing Orders build on, and remain largely similar to, the model standing orders issued in 1963 (and reprinted 1973) and earlier. They provide a 'factory re-set', which is worth regularly coming back to, to re-examine where the Council has strayed from them and whether the reason for so doing remains, is worthwhile and is thus worth retaining or not.
- 3.8 Attached as Appendices are
- As Appendix A, the Council's current standing order 18 on 'Voting'.
  - As Appendix B, the Model Standing Order upon which the above is based and to which the Council is to have regard.
- 3.9 As can be seen, the two are quite different in places and certain paragraphs appear to be missing or worded in an entirely different way in the WBC standing order compared to the Model. It is worth noting that this situation is repeated elsewhere in the Council's Constitution.
- 3.10 Attached as Appendix C, therefore, is a recommended to the Committee as a replacement standing order 18 of the Council Procedure Rules for adoption by the Council.
- 3.11 Having regard to the statutory Guidance, the draft at Appendix C is based on the model standing order, together with those elements of the WBC standing order that appear to have been drafted with good reason and are not otherwise found in the Model and amended to cater for the addition of an

electronic voting system and the Council's preferred custom and practice. This includes:

- (a) Primacy of the electronic voting system, except where that is unavailable or the process is in malfunction, but allowing time to be saved where it is considered that agreement is clearly by assent;
- (b) A recorded vote process, triggered by six members, whereby voting is announced for the benefit of the Chamber and web-cam record by roll-call; and
- (c) Not permitting voting by ballot.

#### **4. FINANCIAL IMPLICATIONS**

There are no financial implications associated with the adoption of an amended standing order.

#### **5. LEGAL IMPLICATIONS**

5.1 Section 9P of the Local Government Act 2000 (as amended by the Localism Act 2011), 'Local authority constitution' requires that:

- '(1) A local authority must prepare and keep up to date a document (referred to in this section as its constitution) which contains—*
- (a) a copy of the authority's standing orders for the time being*
  - (b) a copy of the authority's code of conduct (if any) for the time being under section 28 of the Localism Act 2011,*
  - (c) such information as the Secretary of State may direct, and*
  - (d) such other information (if any) as the authority considers appropriate.'*

5.2 The Local Government Act 2000 (Constitutions) (England) Direction 2000 set out 26 matters (a-z) which should be included, a number with their own subparagraphs. This amounts to 82 matters in all that are to be considered and contained in the Constitution.

5.3 Section 9Q, 'Guidance', goes on to further require that:

- '(1) A local authority must have regard to any guidance for the time being issued by the Secretary of State for the purposes of this Part.*
- (2) Guidance under this section may make different provision for different cases or descriptions of local authority.'*

5.4 Statutory Guidance, including the new Model Standing Orders referred to here, was issued in July 2001.

**6. RESOURCE IMPLICATIONS: ICT, STAFFING AND ASSETS**

There are no resource implications associated.

**7. RELEVANT RISKS**

Adopting standing orders without obvious or evidenced regards having been had to the legal requirement to do so runs the risk of challenge.

Continuing to waive existing standing orders in order for a Council meeting to operate is not conducive to good administration.

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**APPENDICES**

**A:** Current Standing Order on Voting

**B:** Model Standing Order on Voting

**C:** Recommended revised Standing Order on Voting

**WBC CURRENT STANDING ORDERS**

**Part 4(A) Council Procedure Rules**

**18. Voting**

- (1) The normal method of voting at meetings of the Council shall be by show of hands unless the Council determines otherwise.
- (2) The Mayor may decide at any time to discontinue use of the electronic voting system if satisfied that it is not working correctly.
- (3) When the electronic voting system is being used, the Mayor may require or allow the vote to be retaken either electronically or by show of hands if he/she considers that there has been any malfunction of the equipment or any incorrect use of it.
- (4) No individual votes will be recorded in the minutes of Council unless either a “card vote” is requested pursuant to paragraph (5) hereof or a “recorded vote” is requested pursuant to paragraph (6).
- (5) If a member of the Council makes a request before a vote is taken for a “card vote” and is supported by five other members rising in their places, voting shall be by that method so as to show how all members present and voting gave their votes provided that when the electronic voting system is to be used a “card vote” shall mean only the electronic recording of such votes.
- (6) Where immediately after a vote is taken at a meeting of the Council, any member of that body so requires, there shall be recorded in the minutes of the proceedings of that meeting whether that person cast his/her vote for the motion/amendment, or against the motion/amendment (a dissent) or whether he/she abstained from voting.
- (7) When the electronic voting system is not being used, a card vote may still be requested during the procedure referred to in Standing Order 9(1).
- (8) In taking a vote upon any question, only those members of the Council who are present in the Council Chamber and seated in their places when the question is put from the Chair shall be entitled to vote.

MODEL STANDING ORDERS  
Part 4(1) Council Procedure Rules  
Statutory Guidance

17. VOTING

17.1 Majority

Unless this Constitution provides otherwise, any matter will be decided by a simple majority of those Members voting and present in the room at the time the question was put.

17.2 Chairman's Casting Vote

If there are equal numbers of votes for and against, the Chairman will have the right to exercise a second or casting vote. There will be no restriction on how the Chairman chooses to exercise a casting vote, including the choice not to use such vote.

17.3 Show of Hands

Unless a ballot or recorded vote is demanded under Rules 17.4 and 17.5, the Chairman will take the vote by show of hands.

17.4 Ballots

The vote will take place by ballot if [n] number of Members present at the meeting demand it. The Chairman will announce the numerical result of the ballot immediately the result is known.

17.5 Recorded Vote

If [n] Members present at the meeting demand it, the names for and against the motion or amendment or abstaining from voting will be taken down in writing and entered into the minutes. A demand for a recorded vote will override a demand for a ballot.

*Immediately after any vote is taken at a Budget Decision meeting of the Council there must be recorded in the minutes of the proceedings of that meeting the names of the persons who cast a vote for the decision or against the decision or who abstained from voting.\*\**

## 17.6 Right to Require Individual Vote to be Recorded\*\*

Where any Member requests it immediately after the vote is taken, their vote will be so recorded in the minutes to show whether he/she voted for or against the motion or abstained from voting.

## 17.7 Voting on Appointments

If there are more than two people nominated for any position to be filled and there is not a clear majority of votes in favour of one person, then the name of the person with the least number of votes will be taken off the list and a new vote taken. The process will continue until there is a majority of votes for one person.

**RECOMMENDED ALTERATION TO STANDING ORDERS**

*Re-phrasing of current WBC wording or use of Model Standing Orders in blue  
Current WBC wording, different to the Model Standing Orders, re-used in black  
New wording in red*

**18. Voting**

(1) Majority

Unless this Constitution provides otherwise, any matter will be decided by a simple majority of those Members voting and present in the room at the time the question was put.

(2) Casting Vote

If there are equal numbers of votes for and against, the Mayor will have the right to exercise a second or casting vote. There will be no restriction on how the Mayor chooses to exercise a casting vote, including the choice not to use such vote.

(3) Method of Voting

Unless a recorded vote is demanded under 18.4 below, the Mayor will take the vote by use of the electronic voting system or, if there is no dissent, by the affirmation of the meeting.

The Mayor may decide at any time to discontinue use of the electronic voting system if satisfied that it is not working correctly. If the Mayor considers that there has been any malfunction of the equipment or any incorrect use of it, the Mayor may require or allow the vote to be retaken, either electronically or by show of hands.

Where the electronic voting system is not working correctly or unavailable, the Mayor will take the vote by show of hands.

(4) Recorded Vote

If a Member of the Council makes a request before a vote is taken (including during the closure procedure referred to in Standing Order 9(1)) and is supported by five other members rising in their places, the voting on any question shall be by roll-call and the names for and against the motion or

amendment or abstaining from voting will be taken down in writing and entered into the minutes.

This standing order will apply automatically in respect of a vote taken at a Budget Decision meeting of the Council in accordance with the Budget and Procedure Rules at Part 4C of this Constitution. \*

(5) Right to Require Individual Vote to be Recorded

Where any Member requests it immediately after the vote is taken, their vote will be so recorded in the minutes to show whether he/she voted for or against the motion or abstained from voting. \*

(6) Voting on Appointments

If there are more than two people nominated for any position to be filled and there is not a clear majority of votes in favour of one person, then the name of the person with the least number of votes will be taken off the list and a new vote taken. The process will continue until there is a majority of votes for one person. (This does not apply to the office of the Mayor or Leader which is by election by Council).

*\*Statutory standing order*