



Standards and Constitutional Oversight Committee

Date:	Tuesday, 11 June 2019
Time:	6.00 p.m.
Venue:	Committee Room 2 - Wallasey Town Hall

Contact Officer: Patrick Sebastian
Tel: 0151 691 8424
e-mail: patricksebastian@wirral.gov.uk
Website: <http://www.wirral.gov.uk>

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. APPOINTMENT OF VICE-CHAIR

4. MINUTES (Pages 1 - 12)

To approve the accuracy of the minutes of the Standards and Constitutional Oversight Committee meeting held on 26 February 2019.

5. GOVERNANCE REVIEW (Pages 13 - 20)

6. CODE OF PRACTICE FOR GOVERNANCE OF COUNCIL INTERESTS IN COMPANIES (Pages 21 - 56)

To review the Code of Practice for Governance of Council Interests in Companies – per Leader Decision published on 20 March 2019, whereby it was:

Resolved –

(1) That the Code of Practice be adopted.

(2) That the Code of Practice be referred to the Standards and Constitutional Oversight Committee.

7. **APPOINTMENT OF PANELS** (Pages 57 - 102)
8. **WEBCAST PROJECT UPDATE – VIEWING STATISTICS**
(Pages 103 - 110)
9. **CONFIDENTIAL: CASE ID - 17020182 CCR 8355 (LGO PUBLIC REPORT)**
(Pages 111 - 126)

STANDARDS AND CONSTITUTIONAL OVERSIGHT COMMITTEE

Tuesday, 26 February 2019

Present:

Councillors	A Davies	C Blakeley
	C Jones	G Ellis
	B Kenny	P Gilchrist
	J McManus	S Williams (In place of T Cox)

In attendance: Independent Member Mr G Kerr

23 **APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillors Tony Cox and Bernie Mooney.

24 **MEMBERS' CODE OF CONDUCT - DECLARATIONS OF INTEREST**

No declarations of absence were received.

25 **MINUTES**

RESOLVED:

That the Minutes of the meetings of the Committee held on 20 November 2018 and 31 January 2019 be confirmed as a correct record.

26 **REVISION OF MEMBERS' ICT POLICY**

The Head of ICT Strategy and Delivery introduced his report reminding Members that the Council was responsible for a wide variety of information, some of which was personal and sensitive. Elected Members were responsible for the personal information of Wirral citizens in their Ward/Constituency. Members and the Council had legal and moral responsibilities to ensure that the security of that information was maintained.

It was also reported that the Council maintained an Information Governance Framework which sought to protect the security of its information assets. This was a combination of policy, procedural and technical controls which together helped officers and Members to manage the risks to the confidentiality, integrity and availability of Council information.

Appended to the report at Appendix 1 was the Members' Information and ICT Acceptable Use Policy which confirmed responsibilities as a new or existing Elected Member of Wirral Council in terms of the acceptable use of Council information and ICT facilities. As well as outlining responsibilities under the Data Protection Act it also detailed the key policy rules that must be followed to ensure the safe handling, storage and use of Council and constituents' information. It supplemented the Members' Code of Conduct, and replaced the existing 'Members' ICT Policy' previously agreed by the Council on 19 December 2016.

The Head of ICT Strategy and Delivery informed that the Members' ICT Policy had been updated to take account of the 1998 Data Protection Act and the 2018 Data Protection Act. A few small changes had been made in respect of the security of emails and improvements in technology.

The Committee noted that no other options had been considered because failure to adequately protect the Council or Constituents' information would result in a compromise of its security which could have a number of negative consequences for the Council, including:

- Financial penalties - The ICO could issue monetary penalties up to €20 million to organisations which have failed to comply with the DPA.
- Legal ramifications – Serious breaches of the DPA could result in legal action, including prosecution.
- Reputational damage – Data breaches were often reported in the media and consequently result in the public perception of an organisation and/or the individuals who represent them, being damaged.
- Emotional / physical harm – The compromise of personal and sensitive data could result in harm to the individuals to whom the information related.
- Compliance – Failure to maintain information and ICT security could result in the Council not complying with the Public Services Network (PSN) and NHS Data Security and Protection Toolkit standards. This could result in the authority being unable to deliver key services.

Members then asked a number of questions which were answered by the Head of ICT Strategy and Delivery and the Director of Governance and Assurance. Issues raised included the following:

- The role of the Members' Equipment Steering Group. It was considered that it should have had the opportunity to make recommendations on it and sign off the revised Policy.

- The webcasting service interruption during the Extraordinary Council meeting held on 25 February 2019. Members had requested that the meeting be held in the Civic Hall but there had not been sufficient time to do this in order that the meeting could be webcast. This was disappointing as a lot of members of the public had been expected and did attend but as there was not enough room in the public gallery, had to be accommodated in Committee Rooms 1 and 2. Regrettably, there had been a wifi problem and the signal had dropped out. Consequently, members of the public had missed a lot of the meeting because of the interruption. It was noted that the webcasting was provided by a private company and did not use the Council's network.
- The Civic Hall was not designed for Council meetings and there was no webcasting equipment in there. On special occasions with plenty of notice suitable accommodation for a Council meeting may be found e.g. Civic Hall, Floral Pavilion, other hired space but this would incur an additional cost as it would also mean hiring a private company to provide webcasting because the Council's mobile kit did not accommodate all 66 Members.
- The Council now owned a cinema but it could not be used for Council meetings because it only owned the freehold, not the operation or the leasehold. It was leased to a cinema provider (Vue). If Vue Cinemas wished to let the Council use the cinema they would hire it out to the Council.

It was reported that the Head of ICT Strategy and Delivery (Jeff Ashworth) was leaving the Council and that his last day at work would be 22 March 2019. Members put on record the Committee's thanks for the work he had done and wished him well for the future.

RESOLVED:

That the Members' Information and ICT Acceptable Use Policy be recommended to the Council for approval.

27 **COUNCIL PROCEDURE RULES - STANDING ORDER CONCERNING VOTING AND ELECTRONIC VOTING**

The Director of Governance and Assurance introduced a report which sought to address deficiencies in Standing Order 18 of the Council Procedure Rules (Part 4(A) of the Constitution) concerning voting methods. It had regard to the model standing order contained in statutory Guidance and recommended a revised standing order to make improvements and to cater for use of the electronic voting system in the Council Chamber.

Attached to the report was:

- Appendix A - the Council's current standing order 18 on 'Voting'.

- Appendix B - the Model Standing Order upon which the above was based and to which the Council must have regard.
- Appendix C – the recommended revised Standing Order on Voting.

The Committee was informed that the Council was legally required to have regard to the statutory Guidance in drafting Council standing orders. The draft revision at Appendix C was 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.

The Committee noted that another option available to it was that the current standing order remained unchanged. However, this would not address the issue of the current standing order requiring a vote at each meeting to allow for use of electronic voting. Alternatively, the standing order could be amended in some other way, perhaps as part of an overall review. This would mean a delay.

The Committee was aware that the Council Chamber's Electronic Voting System had been activated in mid-August 2018. Demonstrations for Elected Members had taken place on 26 September and on 3, 8 and 10 October 2018 and the first Council meeting utilising the new electronic voting system had taken place on 15 October 2018.

Following the installation of the new electronic voting system in the Council Chamber, and consultation with Members on its usage, it had been 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.

Member's views had been sought on an alteration to the existing standing order. Following debate, the Committee had 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.

The Committee noted that the current standing orders included reference to and means of utilising electronic voting, including the Mayor's powers where the system had failed or was potentially misused. These were drafted for a previous electronic voting system, however, and missed several elements. In particular, the current standing order:

- presumed or required a vote on whether to use the electronic voting system at the beginning of each meeting (at 18(1)); and
- was confusing in relation to a recorded vote (referred to as a 'card vote') in that it did not necessarily differentiate between a recorded vote and the current means of electronic voting and did not specify the stating of the vote for the gallery and web-cast.

It was noted that the current standing orders, therefore, required 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.

Members noted that the two were quite different in places and certain paragraphs appeared to be missing or worded in an entirely different way in the Council's standing order compared to the Model. Members also noted that this situation was repeated elsewhere in the Council's Constitution, hence Appendix C which was recommended to the Committee as a replacement standing order 18 of the Council Procedure Rules for adoption by the Council.

It was reported that having regard to the statutory Guidance, the draft at Appendix C was based on the model standing order, together with those elements of the Council's standing order that appear to have been drafted with good reason and were 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.

The Committee was also made aware that adopting standing orders without obvious or evidenced regards having been had to the legal requirement to do so runs the risk of challenge and continuing to waive the existing standing orders in order for a Council meeting to operate was not conducive to good administration and not good practice.

Members then asked the Director of Governance and Assurance a number of questions and made a number of comments. They were all in favour of recorded votes (card votes) involving a roll call, taking precedence which meant that Members would not be required to press the button to record their

vote using the electronic voting system at the same time as voting orally. This would avoid the confusion that had been experienced at the Extraordinary Council meeting on 25 February 2019. It was noted that this was how the report and Appendix C had been written. When a recorded vote was not requested voting in the Council Chamber would involve the use of the electronic voting system.

RESOLVED:

That the Council be recommended to adopt a revised Standing Order 18 of the Council Procedure Rules (Part 4(A) of the Constitution) as attached at Appendix C to the report.

28 **ARRANGEMENTS FOR DEALING WITH COMPLAINTS AGAINST MEMBERS**

The Acting Senior Manager Legal and Committee Services introduced a report that informed the Committee that in 2014 the Council had 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 had been experience of dealing with complaints which had highlighted areas for improvement and clarification in the arrangements for dealing with complaints made under the Members' Code of Conduct. In particular, issues had been raised in relation to the timeliness with which complaints had been dealt with under the current protocol.

On 7 November 2018 the Committee had resolved that Officers should be requested to draw up a new bespoke Protocol which detailed arrangements for investigating and making decisions in relation to allegations made under the Members' Code of Conduct. Consequently, a draft revised Protocol was presented to the Committee on 31 January 2019 which resolved to convene a Working Group to consider the proposed draft in more detail.

This report sought authority to adopt the revised Protocol for investigating and making decisions in relation to allegations made under the Members' Code of Conduct which had now been reviewed and revised taking account of the views expressed and proposals and suggestions put forward by Members at the Working Group meeting held on 12 February 2019.

Members noted that robust standards arrangements were required to safeguard local democracy, maintain high standards of conduct, and to protect ethical practice in local government. The proposed amendments would improve the clarity of the process and would provide the Committee and the Monitoring Officer with the opportunity of dealing with complaints in a

timely manner in accordance with what was currently felt to be professional best practice. They would also provide clarity and transparency for the general public.

Appended to the report for Members' information was an amended Protocol in respect of 'Arrangements for Investigating and Making Decisions in relation to allegations made under the Members' Code of Conduct' and six appendices as follows:

- Appendix 1 – Complaint Form
- Appendix 2 – Standards Complaint Process Flowchart
- Appendix 3 – Procedure for Investigation
- Appendix 4 – Standards Panel Procedure
- Appendix 5 – Standards Appeal Panel Procedure
- Appendix 6 – The Assessment Panel's Terms of Reference

Other options being considered were that the current protocol for dealing with complaints against Members remained unchanged or that the current protocol for dealing with complaints against Members was changed in some other way. The Committee noted that adopting the revised Protocol document "Arrangements for investigating and making decisions in relation to allegations made under the members' Code of Conduct" would streamline and clarify the process for dealing with allegations allowing for a faster resolution for suitable matters and reducing the risk of delay in the process.

The Acting Senior Manager Legal and Committee Services reported that the Working group had amended paragraph 2.2 of the revised Protocol to say that within five working days of receipt of a valid complaint a copy of it would be sent to the Member complained about, inviting their written comments within ten working days. Also, paragraph 5.1 of the revised Protocol had been amended to say that the Monitoring Officer would complete his evaluation and assessment within ten working days after receipt of the valid complaint and it did say after receiving any clarification/information requested. However, she now of the view that this was a little confusing and sought Members' agreement for that to be amended so that it was clear that the ten days was following the process in paragraph 2.2 because clearly until the Member had commented it was difficult to finalise the assessment and evaluation and it was important that Members had the opportunity to respond to complaints against them.

Members were then given the opportunity to ask questions and the Director of Governance and Assurance and the Acting Senior Manager Legal and Committee Services responded to them as appropriate.

The Committee concluded that the revised Protocol was much clearer now and there was a proper timetable to be followed when complaints against

Members were received. The Workshop had gone well and the Acting Senior Manager Legal and Committee Services was thanked for her hard work on revising the Protocol.

RESOLVED: That

That the Committee agrees:

- (1) subject to the amendments proposed by the Acting Senior Manager Legal and Committee Services above being included within the revised procedure for dealing with complaints made under the Members' Code of Conduct in accordance with the revised Protocol document attached at Appendix A to the report be adopted; and**

- (2) the revised Protocol be posted on the Council's website.**

29 LOCAL GOVERNMENT ETHICAL STANDARDS - REVIEW BY THE COMMITTEE ON STANDARDS IN PUBLIC LIFE - JAN 2019

The Director of Governance and Assurance introduced a report that informed Members of the outcome of the Committee on Standards in Public Life's review of Local Government Ethical Standards. The report kept Members abreast of developments with the ethical standards regime and sought approval for immediate actions to be taken in light of the review.

It was reported that on 25 May 2010, the coalition government had announced its intention to abolish the Standards Board regime set out in Part 3 of the Local Government Act 2000. The government had accepted that it was important to have safeguards in place to prevent the abuse of power and misuse of public money, given that those who elected Members to office had the right to expect the highest standards of behaviour. However, it had considered that the standards regime under the LGA 2000, under which all local authorities, by law, had to adopt a national code of conduct and a standards committee to oversee the behaviour of Members and receive complaints, regulated by Standards for England, was ineffective, bureaucratic and encouraged petty complaints or harmful accusations. It, therefore, proposed that, through the Localism Act 2011, local authorities would draw up their own local codes of conduct and it would become a criminal offence for Members to deliberately withhold or misrepresent a financial interest.

However, concerns had been raised by the Committee on Standards in Public Life (CSPL) in various reports, following the implementation of the Localism Act 2011, on whether the sanctions for breach of standards were adequate and it would, therefore, be monitoring the implementation of the new local government standards regime.

The CSPL had taken a review with the following terms of reference:

1. Examine the structures, processes and practices in local government in England for:
 - a. Maintaining codes of conduct for local councillors
 - b. Investigating alleged breaches fairly and with due process
 - c. Enforcing codes and imposing sanctions for misconduct
 - d. Declaring interests and managing conflicts of interest
 - e. Whistleblowing
2. Assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government.
3. Make any recommendations for how they can be improved.
4. Note any evidence of intimidation of councillors, and make recommendations for any measures that could be put in place to prevent and address such intimidation.

The review had covered all local authorities in England, of which there were 353 principal authorities, with 18,111 councillors in 2013, and an estimated 10,000 parish councils in England, with around 80,000 parish councillors. The CSPL had not taken evidence relating to Combined Authorities, metro mayors, or the Mayor of London.

The review report had run to 100 pages and a list of recommendations was set out in a table in the report to assist the Committee in its deliberations. The CSPL's review report and conclusions was appended to the report

The Committee noted that adopting the best practice recommended in the CSPL report would ensure robust standards arrangements were in place to safeguard local democracy, maintain high standards of conduct, protect ethical practice in local government and would reduce the risk of legal challenge. It would also provide clarity and transparency for the general public.

The CSPL had concluded that its recommendations represented a package of reforms to strengthen and clarify the existing framework for local government standards. Whilst many of the recommendations would require primary legislation – whose implementation would be subject to Parliamentary timetabling – they would expect that those recommendations only requiring secondary legislation or amendments to the Local Government Transparency Code could be implemented by government relatively quickly.

The best practice that the CSPL believed their recommendations represented a package of reforms to strengthen and clarify the existing framework for local

government standards. Whilst many of the recommendations would require primary legislation – whose implementation would be subject to Parliamentary timetabling – they would expect that those recommendations only requiring secondary legislation or amendments to the Local Government Transparency Code could be implemented by government relatively quickly.

The Committee noted that the best practice the CSPL had identified was, in most cases, already operating in a number of local authorities. Taken as a whole, this best practice represented a benchmark that any local authority in England could and should implement in its own organisation. Ultimately, the CSPL believed that, responsibility for ethical standards rested, and should remain, with local authorities. Senior Councillors and officers must show leadership in order to build and maintain an ethical culture in their own authority identified as, in most cases, already operating in a number of local authorities.

The Director of Governance and Assurance reported that the CSPL's recommendations had mostly accorded with the response that this Committee had put forward when it had submitted its evidence. The CSPL had made recommendations to central government and had also captured what it considered to be best practice. The CSPL had asked the Local Government Association (LGA) to put together a revised Members' Code of Conduct. The LGA had not been keen to take this forward but it was hoped that it would co-ordinate something, again, so that there was a common standard. Local Authorities were expected to review their Codes of Conduct in the meantime. Wirral Council's Code did contain errors as it had been very much 'a lift and shift' from the previous model but when it was moved across there had been little bits left out e.g. some definitions were not carried over into the Code.

The Director reported that he had discussed, with colleagues in the Liverpool City Region, how helpful it would be if there was a common Code of Conduct across the region and in a way there was because two years ago when the City Region had been established a Constitution had been put together involving a piece of work that had produced a Code of Conduct for the new Combined Authority. He had been involved with this himself, whilst in private practice. He had taken the best bits of all of the six local authorities and put it together into one common Code so those Members, from each local Authority that went along to the Combined Authority meetings thus wearing two hats would see their own Code reflected to some extent in it. This common Code of Conduct was available for Members to look at, evaluate and consider whether they wanted to change to it.

The Director recommended the Committee to request a report that informed it of what the other Councils in the Liverpool City Region's Standards Committees were doing as the plan was that they would each be considering the outcome of the Committee on Standards in Public Life's review of Local Government Ethical Standards and deciding whether or not to review their

Codes of Conduct. The Committee would then be able to compare the Council's Code with the common Code, decide on any other changes it wished to make and then hopefully by then it may know what the LGA's responses were as well.

The Director informed that the Council accorded pretty much with all the best practice set out with one exception the commercial confidentiality of local authority companies.

A Member drew attention to Best practice 14. and the subsequent comments as detailed in the report as follows:

'Councils should report on separate bodies they have set up or which they own as part of their annual governance statement, and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness, and publish their board agendas and minutes and annual reports in an accessible place.

- Comment: Our annual governance statement does include reference to separate bodies wholly owned by the Council. The Council has wholly and jointly owned companies. It is considered that the minutes of the company board meetings contain commercially sensitive information which should not be subject to routine publication. The companies are however, subject to the provision of the Freedom of Information Act 2000.
- Recommendation: No further action at this juncture.'

The Member informed that he could not accept that there should be no further action. He proposed that in principle, given the increase in owned and jointly owned bodies, the Minutes should be published as soon as practicable after each decision-making meeting and that Officers be requested prepare a list of bodies that could potentially have their Minutes published and it be recommended to the Cabinet that it seeks their views on this and they be reported back to this Committee for further consideration.

The Director informed that it would not do any harm to ask these bodies to publish what they could and there may be different responses depending on whether or not they were wholly owned bodies. They were not always the same like companies for example.

A Member asked how many bodies this involved and the Director informed her that there were a dozen or so companies in which the Council had share holdings, there may be others that were dormant but in terms of active companies there were three or four limited by guarantee e.g. the Mersey Maritime Group and there were bodies in respect of the Council's activities with the Chamber of Commerce. There were two active trading companies,

trading in the market place (Edsential and Wirral Evolutions) and there was also the Wirral Growth Company Partnership, a body that would be active in the market place. The Council also had interests in two charities.

Another Member asked the Director to provide and circulate to each member of the Committee a complete list of these wholly owned, jointly owned bodies and charities etc. The Director informed that he would provide the information as part of a formal Committee report.

The Member also queried whether there could be one Standards Committee established consisting of Members drawn from each of the local authorities within the Liverpool City Region instead of each authority have their own Standards Committee. The Director reported that it was not uncommon to have joint Standards Committees or rather a separation of the Constitutional and Overseeing provision. However, being judged by a Councillor from another authority did not always sit well with some Members. The Director informed that he was happy to include this on the agenda for consideration at the next meeting of the Liverpool City Region's Monitoring Officers.

RESOLVED: That

- (1) the report and the contents of the review be noted;**
- (2) the actions contained within paragraph 3.6 of the report in relation to the Best Practice recommendations with the exception of Best Practice 14, be endorsed;**
- (3) the Committee receive, at a future meeting, a report that informs it of what the other Councils in the Liverpool City Region's Standards Committees have decided to do in respect of their Codes of Conduct, having considering the outcome of the Committee on the Standards in Public Life's review of Local Government Ethical Standards and on progress with the piece of work being carried out at Liverpool City Region level following the review;**
- (4) Officers be requested to prepare a list of those separate bodies that could potentially have their Minutes published and it be the subject of a report to the next meeting of the Committee; and**
- (5) the Cabinet be recommended to seek the views of those separate bodies on the list (at (4) above) on publishing their Minutes and report back to a future meeting of the Committee for further consideration.**

STANDARDS AND CONSTITUTIONAL OVERSIGHT COMMITTEE

11th June 2019

REPORT TITLE:	GOVERNANCE REVIEW
REPORT OF:	Director of Governance and Assurance

REPORT SUMMARY

The Annual Meeting of Council required this Committee to look at the Council's governance arrangements. The purpose was to include options to change the Council's form of governance, with an express intention to consider adopting a committee system as well as different executive arrangements. This is to report in September to allow for detailed work to follow for adoption of any new form of governance from the next Annual Meeting.

This report sets out the various options and arguments for the Committee, in brief, and recommends establishing a workshop and working group of the Committee to examine the issues further.

RECOMMENDATION/S

It is recommended that the Committee establish:

- (a) A cross-party workshop to explore available forms of governance and governance arrangements in greater detail; and
- (b) An all-party working group to consider the outcome of the workshop and make a recommendation to the Committee's meeting of 11th September to refer to full Council.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 The Annual meeting of Council on 14th May 2019 resolved to:
- “charge the Standards and Constitutional Oversight Committee to conduct a review of the governance arrangements of the Council, with the objective to produce, in September 2019, an interim report on options and preferred outline for further consideration.”*
- 1.2 Set out in the report are the headline considerations and advice concerning a change to the form of governance of the Council and the suggestion of a working group and an all member workshop be held to consider a recommendation to Committee and Council within the desired timeframe.

2.0 BACKGROUND INFORMATION

2.1 Statutory Position

- 2.1.1 Prior to the Local Government Act 2000, local authority governance operated entirely under the provisions of the Local Government 1972 (and likewise the Local Government Act 1933), which provided for decisions to be made at full meetings of Council or for authority to be delegated for the exercise of Council functions to be undertaken by committees, sub-committees or an officer of the Council. Over time this was amended, principally by the Local Government (Access to Information) Act 1985 and the Local Government and Housing Act 1989, providing stricter requirements on Member decisions being made in public, the publication of papers to be considered and that committees be made up of councillors from all political groups.
- 2.1.2 The Local Government Act 2000 introduced a new system of governance for all local authorities, with the exception of councils with a small population. Whilst the 1972 Act remained in place for a defined list of functions, most functions of the local authority were required to be governed by a new executive system. The executive system initially had several variations, but was amended to become either a Leader and Cabinet system or a directly elected Mayor and Cabinet system, each with very similar powers (and similarly referred to in statute as ‘the senior executive member’).
- 2.1.3 The 2000 Act has since been significantly amended for local authorities in England by the Localism Act 2011, from which time councils may adopt one of the following forms of governance. These are:
- (a) executive arrangements (either a leader or directly elected mayor and cabinet);
 - (b) a committee system; or
 - (c) prescribed arrangements;
- which are briefly described further below.

2.2. Executive arrangements (Leader and Cabinet)

2.2.1 The current Cabinet system has the following key principles:

- (i) The senior executive member, the Leader at Wirral Council, is the holder of all 'executive functions' and so is responsible for specified functions of a local authority and is responsible for most day to day management and service decisions of an authority.
- (ii) The Leader must appoint at least two and a maximum of nine other Members to the executive (known as the Cabinet) to support the Leader in carrying out their role.
- (iii) The Leader determines whether executive decisions are taken by members of the Cabinet collectively, as a committee of Cabinet or individually by the Leader or another single Cabinet member, or by an officer.
- (iv) Political balance rules (requirement to have the same proportion of members of each group on a body as on the Full Council) do not apply to the Cabinet or Cabinet Committees.
- (v) Whilst the Leader determines who makes an executive decision, the Council determines how it is to be made through the executive procedure rules in Council's Constitution. (This is not the same in a directly elected mayoral model, where the mayor's written consent is required before the Council can alter executive arrangements.)
- (vi) The Budget/Council tax and certain policy framework documents, the Corporate Plan and Local Plan (local development framework) for example, are the responsibility of the Cabinet to formulate but are the responsibility of full Council to approve or object to.
- (vii) Decisions reserved for the Council (deemed non-executive) continue to operate under the 1972 Act regime via committees. These tend to be of a quasi-judicial or regulatory nature, for example development control.
- (viii) At least one Overview and Scrutiny Committee must be established with certain powers and functions of scrutiny set out in legislation. These include duties in relation to health, flood risk management and crime and disorder, and 'call-in' of key executive decisions.

2.3 Committee System

2.3.1 A Committee system would have the following key principles:

- (i) Decisions are taken through committees, appointed by full council. Political balance rules apply to these Committees and any Sub-Committees.
- (ii) Council or each Committee determines whether decisions are taken by Council, a committee or sub-committee of Council or individually by an officer. There are no single Member decisions.

- (iii) There are no restrictions on the number of committees, meeting frequency, or the size of the membership.
- (iv) There may be at least one Overview and Scrutiny Committee established with powers and functions of scrutiny but it is not a requirement. Council may choose not to have a separate overview and scrutiny function, in which case the statutory scrutiny functions in relation to health, flood risk management and crime and disorder would need to be exercised by the authority.
- (v) Full Council sets the budget/Council tax and approves certain policy framework documents, for example the Corporate Plan.
- (vi) Full Council motions, as now, are to be differentiated from decisions made in the exercise of the Authority's functions. Formal decisions will require officer reports and background papers before the matter is considered and a decision is made.
- (vii) There is not a 'Leader' in decision making terms. Nonetheless it is common that a Leader position is created, seen as the principal political spokesperson for the Council with ostensible responsibility for representing its views to the public and external organisations. This person is traditionally also the Chair of the principal committee responsible for development of policy and budgetary matters.
- (viii) To allow for business between committee meetings, extensive delegation is provided to officers. Where urgent and key, such decisions are often exercised by the officer in consultation with the Chair of the relevant Committee or a councillor appointed as Leader.

2.4 Prescribed arrangements

- 2.4.1 'Prescribed arrangements' means an alternative form of governance that is neither a cabinet system or a committee system proposed by the Authority but this must be approved by the Secretary of State and only if those alternative arrangements would be appropriate for other authorities.
- 2.4.2 No Authority has so far adopted or proposed an alternative model, and it is difficult to say what such a system might look like.

2.5 Advantages and Disadvantages of the Governance Forms

- 2.5.1 In considering a change specifically from a Cabinet form of Governance to a Committee system there are a number of advantages of each system which would have to be considered and looked at in close detail. The following is a very brief snapshot of what are often put forward as the pros and cons of each system
- 2.5.2 Key arguments often put in favour of an executive arrangements form of governance include:
 - (i) efficient decision making and delivery and thus speed of reaction to changing circumstances or requirements in a business like way;

- (ii) clear lines of responsibility and transparency;
- (iii) clear leadership of the Council;
- (iv) clear separation between decision makers and those holding to account;
and
- (v) easier partnership working.

2.5.3 Key criticisms often made of an executive arrangements form of governance include:

- (i) power concentrated in too few hands;
- (ii) under-utilised backbenchers;
- (iii) decisions taken 'behind closed doors'.

2.5.4 Key arguments often put in favour of a committee system form of governance include:

- (i) all Members have the opportunity to be directly involved in decision making;
- (ii) decisions are made through politically balanced Committees;
- (iii) the resulting greater cross-party debate leads to better decision making and consideration of all alternatives;
- (iv) all decisions in are made in a public meeting.

2.5.5 Key criticisms often made of a committee system form of governance include:

- (i) bureaucratic and much slower decisions;
- (ii) voting on party political lines and application of the 'whip' interferes with properly considering all options and genuine debate;
- (iii) no individual responsibility and accountability and the role of a Leader is opaque;
- (iv) increased officer briefings and support required;
- (v) much higher cost of administration; and
- (vi) slow decision making and the resulting requirement for officer decision making at a higher level.

2.6 Permitted Variations – Hybrid systems

2.6.1 The constraints within each form of governance leave individual local authorities with significant ability to address perceived advantages and disadvantages and develop a governance system appropriate to their local circumstances. Within each form of governance, these variations of governance arrangements may be such that the two systems might look almost identical by comparison or vary from each other considerably.

2.6.2 In considering a change of governance arrangements, the Council could consider a number of alternatives to a formal Executive or Committee system. In each case, the arrangements are agreed by full Council (the 'how' in

executive arrangements and not the 'who' determined by the Leader) and are captured in the council's constitution. Examples would include:

- (a) A 'hybrid system', whereby some councils have created versions of the leader/cabinet system (which means that they do not require a formal change under the Act) that include aspects of the committee system. The most common arrangement is to set up non-decision making group of councillors, usually corresponding to cabinet portfolios, which examine papers and make recommendations about how decisions should be made. The decisions are subsequently made at meetings of the cabinet or by individual cabinet members, and may well follow the recommendations of the 'committees' although they are not legally required to do so.
- (b) An amended Cabinet system – which could involve more or all decisions being taken by Cabinet collectively rather than by individual Cabinet members, together with increased scrutiny from non-cabinet members.
- (c) Enhancing the role of Full Council , which could include a greater role in strategic decisions through an increased Policy Framework and pre-Cabinet decision scrutiny and debate
- (d) An as yet undefined system that would meet the criteria for "prescribed arrangements".

2.7 Process of change

2.7.1 Any change from the current Cabinet system to another form of governance including a committee system would involve:

- (i) Passing a resolution approving the change at Full Council.
- (ii) As soon as practicable after passing the resolution, make the provisions of the new arrangements available for inspection
- (iii) Publish in one or more newspapers circulating in the area a notice which describes the features of the new system and timescales by which the change would take effect. There is no requirement to formally consult on any proposals.
- (iv) The change must be implemented either at the next Annual Meeting following the approval or at a later Annual Meeting specified in the resolution where the approval was given.
- (v) The full Council can therefore decide at which Annual Meeting in future it may wish any new governance arrangements to be introduced.
- (vi) Once the change is made, a change from the new form of governance cannot be made again for 5 years from the date of the approval.
- (vii) It is possible that interim arrangements would be required during a changeover to a new system.

2.7.2 A change of executive arrangements, without changing the form of governance, requires a simple majority of Council.

3.0 RESOURCE IMPLICATIONS

3.1 There are significant implications for the Council in changing its decision making structure to a new form of governance and correspondingly less for amended executive governance arrangements.

3.2 Examples of increased resources as a result includes:

- A comprehensive rewrite of the Council's constitution, governance and decision making processes would be required, for which external legal support will be required (albeit that this is now a necessary project in any event). This will include a comprehensive review of the Scheme of Delegation to officers.
- Those authorities that have changed form of governance successfully have expressed that it is best developed over eighteen months. A shorter time frame may mean increased resource and/or a period of change whilst the new governance arrangements bed down and are amended.
- Impact on the decision flow and relationship with current officer structure, including the design and delivery of the budget and major policies.
- Significant day to day resource implications will be had for those officers involved in formal and informal engagement with Councillors. This will be increased dependent on the decision making structures designed and the number and timings (day or evening) of decision-making meetings.
- Specific significant implications for Democratic Services (and Scrutiny) officers.
- A new approach may be required to engagement with partners and partnerships.
- Review members' remuneration arrangements.
- Additional extensive training for members and officers.

3.3 The majority of these issues will be addressed during this period in greater detail, dependent on the outcome of the initial view of the Committee in its report to Council following its September meeting.

3.4 Beyond this, detailed consideration will be required to be given to the wide ranging implications of any change to the current political system of governance. It will represent a key and integral element of the overall organisational vision of the Council and how it interacts with other stakeholders, including those forming the Wirral Partnership with the Council.

4.0 LEGAL IMPLICATIONS AND RELEVANT RISKS

4.1 The legal provisions, risks and implications are inherent in this report and the investigatory work ahead.

- 4.2 There are clearly major implications for any change in governance arrangements, in terms of resources, transparency of decisions, effective engagement with the public and effective use of Council and officer time.
- 4.3 A clear fundamental principal of any governance review must be that any system of governance must reflect and be designed to meet the requirements of the Council so that it can function effectively and efficiently and that it supports its functional and service delivery framework to the community.

5. BACKGROUND PAPERS / REFERENCE MATERIAL

- 5.1 A paper produced jointly by the Local Government Association and by the Centre for Public Scrutiny, "*Rethinking governance - Practical steps for councils considering changes to their governance arrangements*" can be found at: www.cfps.org.uk/wp-content/uploads/Rethinking-Governance.pdf.

REPORT AUTHOR: Philip McCourt
Director of Governance and Assurance
Tel: 0151 691 8569

LEADER DECISION FORM

DECISION TO BE TAKEN BY: Councillor Phil Davies
Leader of the Council

PORTFOLIOS AFFECTED: LEADER OF THE COUNCIL

WARDS AFFECTED: ALL

**SUBJECT: CODE OF PRACTICE FOR GOVERNANCE OF COUNCIL
 INTERESTS IN COMPANIES**

1. RECOMMENDATION:

- 1.1. That the Leader adopt the Draft Code.
- 1.2. That the Code of Practice be then referred to the Standards and Constitutional Oversight Committee.



2. REASONS FOR THE DECISION

- 2.1. The Draft Code of Practice will promote and ensure good governance in relation to those companies in which the Council is a shareholder and creates a 'blueprint' for an approach to company interests in concert with the Council's adopted Commercial Strategy (minute to item 40 refers, Cabinet 26th November 2018). The Draft Code is in accordance with the local government model.

3. STATEMENT OF COMPLIANCE

The recommendations are made further to legal advice from the Monitoring Officer and the Section 151 Officer has confirmed that they do not incur unlawful expenditure. They are also compliant with equality legislation and an equality analysis and impact assessment has been completed. The recommendations reflect the core principles of good governance set out in the Council's Code of Corporate Governance.

4. DECLARATION OF INTEREST

<p>Signed: </p> <p>Executive Member: CLUR. PHIL DAVIES</p> <p>Date: 19/3/19.</p> <p>Also present:</p>	<p>Signed: </p> <p>Chief Officer: P. McCarry</p> <p>Date: 19/3/19.</p>
--	--

Date of Senior Policy Team Meeting(s):

A list of background papers on this issue is held with:

Contact Officer: Colin Hughes

Date: 19 March 2019

Date of Publication:

Date of Expiry of Call-In Period:

EXECUTIVE MEMBER DECISION
SHAREHOLDER BOARD 19 MARCH 2019

REPORT TITLE	<i>CODE OF PRACTICE FOR THE GOVERNANCE OF COUNCIL INTERESTS IN COMPANIES</i>
REPORT OF	<i>DIRECTOR: GOVERNANCE AND ASSURANCE</i>

REPORT SUMMARY

This report invites the Leader to adopt the Draft Code of Practice for the Governance of Council Interests in Companies (Draft Code) which has been considered by the Business Overview and Scrutiny Committee and the Audit and Risk Management Committee.

RECOMMENDATIONS

That the Leader adopt the Draft Code.

SUPPORTING INFORMATION

1.0 REASONS FOR THE RECOMMENDATIONS.

- 1.1 The Draft Code of Practice will promote and ensure good governance in relation to those companies in which the Council is a shareholder and creates a 'blueprint' for an approach to company interests in concert with the Council's adopted Commercial Strategy (minute to item 40 refers, Cabinet 26th November 2018). The Draft Code is in accordance with the local government model.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 No guidance is to be provided for the Council members and officers. This was rejected because it would lead to confusion and bad practice.

3.0 BACKGROUND INFORMATION

- 3.1 On 29th August 2018 the Leader considered the Draft Code and referred it to the Audit and Risk Management Committee and the Business Overview and Scrutiny Committee for noting prior to its adoption.
- 3.2 The original report and Draft Code are attached at [Appendix 1](#).
- 3.3 The Draft Code was considered by the Business Overview and Scrutiny Committee on 18th September 2018 and by the Audit and Risk Management Committee on 24th September 2018. The minutes of those Committees are attached in [Appendix 2](#).
- 3.4 A briefing session for Members was conducted on 19th December 2018.
- 3.5 It is proposed that the Draft Code be adopted for the reasons set out in the original report that was presented to the Shareholder Board on 29th August 2018.

4.0 FINANCIAL IMPLICATIONS

- 4.1 None directly arising from this report.

5.0 LEGAL IMPLICATIONS

- 5.1 The Council must establish a company if it is to exercise its powers for a commercial purpose. The Code also makes reference to limited liability partnerships.
- 5.2 Once adopted, the Code will establish a methodology for dealing with all Council shareholder interests in companies, be that where the Council decides to establish a wholly owned company, enters a joint commercial venture with another body or becomes a member of a not for profit company or company limited by guarantee.

6.0 RESOURCE IMPLICATIONS: ICT, STAFFING AND ASSETS

- 6.1. None directly arising from this report.

7.0 RELEVANT RISKS

7.1 None directly arising from this report.

8. CONSULTATION

8.1 The Draft Code has been considered by the Business Overview and Scrutiny Committee and the Audit and Risk Management Committee.

9.0 EQUALITY IMPLICATIONS

9.1 None.

REPORT AUTHOR: Colin Hughes
Group Solicitor
telephone: 0151 691 8502
email: colinhughes@wirral.gov.uk

REPORT SPONSOR: Philip McCourt
Director: Governance and Assurance
telephone: 0151 691 8569
email: philipmccourt@wirral.gov.uk

This page is intentionally left blank

EXECUTIVE MEMBER DECISION

Shareholder Board 27th June 2018

SUBJECT:	CODE OF PRACTICE FOR GOVERNANCE OF COUNCIL INTERESTS IN COMPANIES
WARD AFFECTED:	All
REPORT OF:	Director of Governance and Assurance
RESPONSIBLE PORTFOLIO HOLDER:	Cllr A. Davies
KEY DECISION?	No

1. REPORT SUMMARY

- 1.1 This report invites the Cabinet Member with portfolio as shareholder representative to consider the approach to the governance of the Council's subsidiary companies and, in particular, the part that the introduction of a *Council Code of Practice for the Governance of Council Interests in Companies* has in promoting and ensuring good governance in relation to those company interests.

2. RECOMMENDATION/S

- 2.1 The Cabinet Member is requested to:
- (a) consider the Draft Council Code of Practice for the Governance of Council Interests in Companies as attached at Appendix A;
 - (b) Refer the Draft Code to
 - the Business Overview and Scrutiny Committee
 - the Audit and Risk Committeeand request that the committees note the role of the Code of Practice, and the principles within it, in relation to the Council's own Code of Corporate Governance
 - (c) Request a subsequent report in order to adopt the Draft Code by the Cabinet Member with portfolio or full Cabinet as desired

SUPPORTING INFORMATION

3. BACKGROUND AND KEY ISSUES

- 3.1 Wirral Borough Council and other local authorities have long had an interest in several kinds of corporate bodies and companies. Never before, however, has there been such an interest in establishing companies and in particular, in this age of austerity and self-reliance, interest in the local authority trading company.
- 3.2 In establishing their company interests, local authorities have had to wrestle with the means by which their company interests are to be governed and how the distinct company commercial activities are to meld with the local authority and public body activities.
- 3.3 In establishing their approach to governance for their authorities, local authority lawyers and their advisors recognised that, to be successful, local authority trading companies will need to obtain from the authority the right balance between their needs as new ventures for freedom (for example, to excel in the open market, to have specialist tools and to develop a culture that enables success), whilst also acknowledging the need for democratic accountability, a commitment to the sponsoring organisation's goals, and compliance with that organisation in systems and data terms. Above all, there was recognised by each authority that, however ambitious and worthy the ventures might be, those ventures, be they jointly or by the local authority alone, involve the expenditure of public money and the stewardship of public resources. The result was a recommendation that a code of practice for the governance of council interests in companies be produced.
- 3.4 Consideration was therefore given to how to organise the establishment and continuing governance of these company ventures, not just individually but on a more planned and co-ordinated basis. Whether pertaining to just one company or several companies distinctly or in a group structure, it was acknowledged that this debate should lead to a model for all such companies, to explain the status of such companies to stakeholders and to provide a 'blue-print' for future company ventures.
- 3.5 Once established in a few councils, it quickly became apparent that there was a commonality in approach and a need amongst local authorities and a project providing a common approach was sponsored by Lawyers in Local Government (LLG) and produced by Philip McCourt (then of Weightmans LLP).
- 3.6 The intention of such a code of practice is to provide a reference point to the Council and interested parties (Councillors, officers, company representatives, etc.) in understanding the requirements of the Council in setting up a local authority company, and a local authority trading company (LATC) in particular, and how the governance arrangements for those companies are expected to work once set up.
- 3.7 The resulting example Codes of Practice for the Governance of Council Interests in Companies has now been adopted by LLG

- 3.8 Attached is that LLG common Code as adapted for Wirral Borough Council. As explained in it, this and the examples it follows adopt the approach of the code of corporate governance of this and most local authorities, which in turn follow the CIPFA/Solace model in which LLG was a part.
- 3.9 The Code sets out
- the law and guidance which govern how local authority companies are to be established and run;
 - the way in which a local authority might wish to organise its company interests;
 - how those interests may be best governed according to a set of principles;
 - how decisions will be taken as shareholder;
 - how scrutiny is to be conducted, where there is a scrutiny function and where there is not; and
 - how regulatory matters and conflicts of interest may be best managed.
- 3.10 The key relationship between the company, the executive decisions (in whatever form) to hold the company to account and as shareholder, the scrutiny or committee function in holding that decision making to account in turn is handled through the medium of a suggested shareholder board.

4. OTHER OPTIONS CONSIDERED

- 4.1 Drafting a different Code
- 4.2 Not operating under a common governance code

5. BACKGROUND INFORMATION

- 5.1 The Council is currently a shareholder and sole member of two local authority companies, one active and one dormant, is a member of a co-owned company and is a member of several others alongside various partner bodies.
- 5.2 The Council plans, as part of its commercial approach, to establish or buy shares in several further companies.

6. FINANCIAL IMPLICATIONS

- 6.1 The adoption of a common approach has no direct financial implications.

7. LEGAL

- 7.1 The Council, in order to exercise its powers to do something for a commercial purpose, is required to do so through the medium of a company. A local authority is empowered to be a member of a company under the provisions of the Local Government and Housing Act 1989.

8. RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

8.1 None directly. Wider resource implications are dealt with in the Code.

9. RELEVANT RISKS

9.1 There are no risks arising directly from this report, although a number of opportunities and risks do arise out of the Council's approach to local authority trading companies, which are dealt with elsewhere..

10. ENGAGEMENT / CONSULTATION

10.1 The example Code on which this was based was the subject of consultation at two Lawyers in Local Government (LLG) conferences over a period of eighteen months and discussion with partner authorities, involving Bristol City Council in particular. Consultation and discussion was held with LLG,s corporate partner law firms, including Bevan Brittan, Eversheds Sutherland, Trowers and Hamilins and Weightmans.

11. Relationship to Overview and Scrutiny Committee(s)

11.1 The Code itself refers to Overview and Scrutiny in the following manner at section 7, which is reflected in the recommended terms of reference and membership of the Shareholder Board. The summary excerpt is that:

“The key role of overview and scrutiny is then to advise the executive and hold it to account on behalf of the wider public interest and its role within the Council...

“Overview and Scrutiny, to fulfil its role, requires a means of access to the sensitive information and debate that inform the Shareholder Group and the Leader's decision making, without either oppressing that process or endangering its own strictly non-executive role.

“To this end it is considered that the Chair of the appropriate Overview and Scrutiny Committee is best placed to be involved, use his/her knowledge of this committee and its remit to sift the information and be alert to those matters that need to be brought to the overview and scrutiny committees' attention and be investigated further. Accordingly, the Chair will be invited to the forum created to handle this crucial information flow, the Shareholder Board. To retain the independence required of the O&S Chair, this is not membership as direct advisor as part of the decision making, but as an informed observer.”

12. Relationship to Audit Committee

11.2 In a similar manner to the Council's wider Code of Corporate Governance, it is envisaged that the operation of the Code of Practice, and the authority's performance against the principles contained within it, will be

included in the Annual Governance Statement and be subject to periodic review by the authority's Audit Committee and recommendations to Cabinet.

11.2 The Code itself refers to audit in three places

- At para 3.5 "The Council itself has adopted a Bristol City Council Code of Corporate Governance and the approach of this Code of Practice will fall to be associated with the provisions of that Code.
- At para 10.5 "The Bristol Holding Limited Bristol Holding Limited's will have two standing committees, which will be as follows: ... The Audit Committee, which will fulfil the same role and function as the Council's Audit Committee, the outputs of which will feed into the holding company board, the company business plans and the Council's own statement of accounts and Annual Governance Statement.
- The terms of reference of the Shareholder Group, which provides that the Shareholder Group may: "make reports to and consult the Audit Committee, in relation to that Committee's particular functions"

13. EQUALITY IMPLICATIONS

13.1 None necessary for this report

**REPORT AUTHOR: Philip McCourt,
Director of Governance and Assurance**

APPENDICES

Appendix A: Draft Governance Of Council Interests In Companies - A Code Of Practice

Appendix B: Explanatory conference slides

REFERENCE MATERIAL

LLG Guidance Note for England & Wales February 2018

WIRRAL BOROUGH COUNCIL
GOVERNANCE OF COUNCIL INTERESTS IN COMPANIES
A CODE OF PRACTICE

Contents

1. Introduction	1
2. Background	1
(a) local authority trading	
(b) the local authority company	
(c) other local authority entities	
3. Guidance	4
4. Principles of Governance of Council Companies	5
I. Controls and freedoms	
II. Relationship, integrity and accountability	
III. Understanding of roles	
5. Ownership and Control of the Company	7
6. Shareholder Board	8
7. Scrutiny	9
8. Investment and Finance	11
9. Companies Structure	11
10. The Company's Board	13
11. Conflicts of Interest	14
12. Managed Services, Support Arrangements and Employees	15
Appendices	
A1. Shareholder Board Terms of Reference	18
A2. Shareholder Agreement Outline	22
A3. Director's duties Briefing Note	23

1. Introduction

- 1.1 The purpose of this Code of Practice is to provide a reference point to the Council and interested parties (councillors, officers, company representatives and contractors) in understanding the requirements of the Council in setting up a local authority company, and in particular a local authority trading company (LATC), and how the governance arrangements for that company will work once set up.
- 1.2 The OECD/G20 helps define corporate governance by saying that it:
- *“involves a set of relationships between a company’s management, its board, its shareholders and other stakeholders; and*
 - *“provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined”.*¹
- 1.3 This Code of Practice therefore sets out how the Council will normally go about managing those relationships and ensuring that a company will go on to deliver the objectives established for it by the Council. It also briefly explains and makes reference to the law and basic requirements placed upon a local authority in establishing or owning companies.
- 1.4 The Code of Practice is set out as:
- an explanatory background;
 - a set of guiding principles; and then
 - a set of working expectations.
- 1.5 Attached, as appendices, are also key documents used in this process.

2. Background

(a) Local authority trading and the local authority trading company ²

- 2.1 There are long-established powers for councils to trade. Among the most important is the Local Authorities (Goods and Services) Act 1970, which authorises councils to enter into agreements with other local authorities and other designated public bodies, for the provision of goods, materials and administrative, professional and technical services, for the use of vehicles, plant and apparatus and associated staff, and for the carrying out of maintenance. Payment terms are set out in an agreement. These are not limited to cost recovery. The 1970 Act is the bedrock of trading within the public sector and there is substantial experience of its operation. But the Act is limited in scope. For example, it does not allow trading with the private sector or the public at large. Other established trading powers are specific in nature, such as the Local

¹ “G20/OECD Principles of Corporate Governance - OECD Report to G20 Finance Ministers and Central Bank Governors” - September 2015

² Source: Local Government Association Briefing

Government (Miscellaneous Provisions) Act 1976, which enables councils to enter into agreements with anyone for the use of spare computer capacity.

- 2.2 The Local Government Act 2003 added new possibilities to charge for services, to both provide extra services at cost and to trade with the private sector. Under the 2003 Act, the Government authorizes trading by means of a trading order. The Trading Order currently in force was made in 2009³, which permits all councils in England to trade or "to do for a commercial purpose", anything which they are authorised to do for the purpose of carrying on their ordinary functions, which includes use of the granted general power of competence.
- 2.3 Under that 2003 Act and Trading Order, as augmented by the Localism Act 2011, for a local authority to exercise the power to do things for a commercial purpose (which the authority couldn't otherwise do), then it must be done through a company. Councils are thus enabled to establish a company by which they can trade with the private sector for a profit - that is to enter into commercial contracts. The profits may then go back to the council through dividends or service charges.
- 2.4 The reason given for this legislative requirement is that:

"local authorities and their trading arms have to be on a level playing field with the private and commercial sector in both a positive and negative way. They should not be at a disadvantage, but they should not have an outstanding advantage. Taxation is a particular issue. It is right to carry forward the requirement that such bodies should be companies and trading as such."
- 2.5 To exercise the power to establish a company and trade, a local authority must first approve a business case ('a comprehensive statement') covering:
 - the objectives of the business;
 - the investment and other resources required to achieve those objectives;
 - any risks the business might face and how significant these risks are; and
 - the expected financial results of the business, together with any other relevant outcomes that the business is expected to achieve.
- 2.6 That business case is then implemented and refreshed by way of a business plan, which should be updated and submitted for approval each year, to guide the company in carrying out its continuing activities.
- 2.7 The local authority must also recover the costs of any accommodation, goods, services, staff and anything else they supply to the company under any agreement or arrangement. This is an absolute requirement and distinct from the various rules on procurement or providing state aid.
- 2.8 Other important legal, commercial and financial considerations for councils or fire and rescue authorities setting up a trading company include company law issues, the cost of bidding for contracts, tax liability (corporation tax and VAT),

³ *The Local Government (Best Value Authorities) (Power to Trade) (England) Order 2009*

EU procurement law and state aid rules and employment law (TUPE and pensions).

(b) The Local Authority Company

- 2.9 The kind of company that must be utilized to enable the Council to trade in this way is defined in Part V of the Local Government and Housing Act 1989 ('LGHA 89'). That lists:
- a company limited by shares;
 - a company limited by guarantee and not having a share capital;
 - a company limited by guarantee and having a share capital;
 - an unlimited company;
 - a society registered or deemed to be registered under the Industrial and Provident Societies Act 1965.
- 2.10 The LGHA 89, and the current Order⁴ made under it, places local authority companies into one of three categories, being controlled or influenced by the local authority (a regulated company) or a company in which the local authority has a minority interest. It then goes on to set out a number of additional restrictions and requirements to which the local authority and the companies must adhere.
- 2.11 The reasons for these limitations were described by the Government of the day, when setting out the reasons for the LGHA 89, as being that:
- "when a company is effectively under the control of a local authority... the most significant controls that Parliament has laid down for the conduct of local authorities should apply to that company."*
- 2.12 A regulated local authority company and any subsidiary of it, for example, is required to state on all correspondence that it is "**a local authority controlled company**" or "**a local authority influenced company**" (as the case may be) and name the relevant authority or authorities and is subject to rules concerning access by the Council's auditors and for delivery of information to the authority and its members.

(c) Other Local Authority Entities

- 2.13 If it isn't needed as a means by which it can trade, a local authority is free to involve itself in any one of a number of different forms of sole and joint ventures to best assist it in achieving its goals and aims, which may or may not involve establishing an entity that has a separate legal personality. These may also be as above, companies as defined by the Companies Act and which can include an industrial or provident society or a community interest company. They may alternatively be established as a distinct trust, with the council or appointees as trustee. They may be embodied as limited liability partnerships. They may also exist simply as unincorporated partnerships, with other public bodies or private persons (that can often act as if they were a distinct entity), such as the Local Economic Partnership.

⁴ *The Local Authorities (Companies) Order 1995*

- 2.14 There are certain rules yet to be brought into force, and the Secretary of State holds reserve powers, that may require, prohibit or regulate the taking of specified actions by entities connected with a local authority and those appointed to or representing the local authority at them⁵. In this respect:
- “entity” means any entity, whether or not a legal person, and
 - an entity is stated to be “connected with” a local authority if financial information about that entity must be included in the local authority’s statement of accounts.
- 2.15 Whilst this Code of Practice will apply to all companies in which the Council has an interest, it may not be as appropriate for the governance of the Council’s relationship with other entities which it is connected to, is a member of or has an interest in. In these instances, regard will be had to this Code but its application will be determined on a case by case basis.

3. Guidance

- 3.1 In exercising the power to establish a local authority trading company (LATC), local authorities were obliged under the 2003 Act to have regard to Statutory Guidance. The “*General Power for Local Authorities to Trade in Function Related Activities Through a Company*”⁶ was issued and it is to this document that this and other councils in establishing the companies have had regard to.
- 3.2 That Statutory Guidance is now out of date, however, and was withdrawn as of 17th June 2014. Whilst new guidance is awaited, the withdrawn guidance nevertheless remains useful and largely very relevant. Where it is still relevant, this Code has had regard to it and, where associated with the principles of this Code, accompanying direct quotes from the Government Guidance are included throughout.
- 3.3 All listed companies are subject to the *UK Corporate Governance Code*⁷. The Council will expect all of its companies and their subsidiaries, and indeed any company with which it is associated, to adopt the “comply or explain” approach of the UK Corporate Governance Code as a demonstration of best practice in corporate governance.
- 3.4 The *Corporate Governance Guidance and Principles for Unlisted Companies in the UK*⁸ and also the *Corporate Governance Handbook*⁹ have additionally been utilised in the compiling of this Code of Practice.

⁵ S.212 *Local Government and Public Involvement in Health Act 2007*

⁶ First published: 29 July 2004: UK Govt Archive

⁷ September 2014: Financial Reporting Council

⁸ First edition: November 2010: Institute of Directors (IoD) and European Confederation of Directors’ Associations (ecoDa)

⁹ Third edition 2013: Institute of Chartered Secretaries and Administrators (ICSA)

- 3.5 The Council itself has adopted a Code of Corporate Governance and the approach of this Code of Practice will fall to be associated with the provisions of that Code.

4. Principles of Governance of Council Companies

- 4.1 In setting out the governance relationship between the Council and its companies, group of companies and organisations it has invested in, this Code has three key underpinning principles. These are as follows, preceded by a relevant quote on the subject from the Government Guidance.

I. Controls and Freedoms

The Guidance:

- 4.2 *“A successful company will be one that works alongside the authority in delivering joint objectives. The authority will have to consider how to balance the need to assist the company to achieve its trading objectives with the principles of transparency, accountability and probity.”*

The Principles

- 4.3 It is recognised that, whilst appreciating this should not be unfettered, a trading company needs to be given commercial freedoms to enable it to succeed.
- 4.4 Accordingly, governance arrangements will seek to ensure that:
- the company will be provided with sufficient freedoms to achieve its objectives; and
 - the Council will retain sufficient controls to ensure that its investment is protected, that appropriate social and financial returns on investment can be obtained and that the trading activities of the companies are conducted in accordance with the values of the Council.

II. Relationship, Integrity and Accountability

The Guidance:

- 4.5 *“It is important that trading companies can operate on an equal footing with their competitors, but it is equally important that they are not used as a device for inhibiting legitimate public access to information about local government and local government services.”*

The Principles

- 4.6 It is recognised that, whilst appreciating its procedures operate in a way that protects the company’s commercial interests, those procedures should ensure

that the Council can carry out its functions as an investor, as a trustee of public funds and a local authority committed to both due responsibility for the exercise of its functions and for providing a vision for the City.

4.7 Accordingly, governance arrangements will seek to ensure that:

- the executive can make investment decisions based upon complete and accurate consideration of business cases and business plans;
- the executive can evaluate social and financial benefits and returns on investment; and
- the Council's overview and scrutiny committees are able to exercise their powers in relation to the executive's decision making

in a manner that ensures the companies can provide full and frank financial and business reporting against their business plans and be open to an appropriate level of scrutiny without fear of commercial confidentiality being breached.

III. Understanding of role

The Guidance:

4.8 *"A trading company will be a separate legal entity from a local authority. It will derive its legal authority from its Memorandum of Association and the Companies Acts. Its directors and officers will derive their authority from the articles of association and the law relating to companies.*

...

"Those "who are appointed directors will participate directly in the activities of the company and are answerable to the company and have the powers and duties of company directors whilst they do so.

...

"Local authority members and officers should be aware of potential conflicts of interest when carrying out their roles for their authorities, or when acting as directors of trading companies."

The Principles

4.9 It is recognised that, as company ventures have a separate legal personality to the local authority, the success and good governance of the company venture depends upon those involved understanding their role and responsibilities collectively and individually.

4.10 Accordingly, governance arrangements will seek to ensure that there is sufficient induction, training and other materials in place so that:

- their legal duties;
- stewardship of assets;
- the provisions of the governing documents;

- the external environment; and
 - the total structure of the organizations and the venture
- are appropriately understood by Members of the Council in their role as part of the executive or of overview and scrutiny, by officers of the Council associated with these duties and by the directors of the companies.

5. Ownership and control of the company

- 5.1 Wirral Borough Council, the local authority as a corporate body, will be a member of the company. The membership will be as guarantor if a company limited by guarantee or, as will be the norm if a LATC, the holder of shares (perhaps the only share) in a company limited by shares.
- 5.2 The rights and duties as a member of the company will, however, almost always fall to be exercised as an executive responsibility. This means that, at the Council, decisions to be taken as a member of the company (as shareholder) fall to be decided on by the Leader. In the normal way, therefore, these functions may be delegated by the Leader to the Cabinet, a member of the Cabinet or to an officer and will be subject to key decision and access to information rules, call-in and review by overview and scrutiny committee.
- 5.3 For ease of use, where decisions are to be taken by the local authority as a member of a company, those decisions are referred to in this Code as being taken by 'the executive'.
- 5.4 The authority of the shareholder is exercised where decisions of the company are reserved for approval of the executive before they can be implemented, but also directly in the form of a shareholder's written resolution or at the company's general meetings.
- 5.5 At the company general meetings the executive will be present and voting as a member of the company, where this presence and voting will be in the form of a single person known as the 'shareholder representative'.
- 5.6 Decisions to be made by the executive, rather than left to the company itself, are known as 'reserved matters'. Reserved matters cover such things as the approval of the company's annual business plan or mid-year amendments to it, the appointment of directors, certain key financing decisions and so forth. These are established either through agreement with the company, known as a shareholders' agreement, or as set out in the company's governing articles of association.
- 5.7 The relationship between the local authority (and the companies it is a member of) is governed by these and other key documents that are required to establish a local authority company, and a trading company in particular. In establishing the local authority's company and then in governing the relationship with what is now a separate legal personality, the executive will need to put in place the following documents:

- The **business case** which assesses the risk involved in the proposed trading enterprise and decides whether or not it should be established and proceed to trade. It starts the process of business planning.
- The **articles of association**, or the memorandum and articles of association as it used to be called, which is the constitution of the company. This is the legal documents required to set up a limited company and give details of its name, aims and authorised share capital, conduct of meetings, appointment of directors and registered office.
- The **shareholders agreement**, or management agreement, which sets out the rights of the Council as the sole or co-shareholder and how it can exercise those rights. It details the powers of the board of the company and how and when the shareholder might influence those powers. It is important to note that the shareholder agreement is capable of being developed and added to as the company develops.
- The **financial agreements** which are the commercial agreements that set out what assistance is to be provided and on what terms. This may be purely financial, such as a direct loan or a facility such as a parental guarantee, and made on commercial terms. It may also be in the form of goods, services or staff to be provided and set out in a resourcing agreement or a service level agreement, which is likely to be on a service charge or cost recovery basis. The agreements may require regular and detailed access to information and financial reporting to the Council and/or holding company.
- The **business plan** which sets out the objectives of the business, how they are to be achieved and standards met adjusted in the light of experience and changing circumstances. It is a comprehensive analysis of the business situation at a particular point in time. It is often referred to as the annual business plan because it is expected to be submitted for shareholder approval annually.

5.8 A model shareholder agreement for use with the holding company, setting out the principal decisions reserved for the executive's approval, including subsidiaries of the company as a group, is outlined at Appendix 2.

6. Shareholder (Advisory) Board

6.1 The structure described above creates a governance process whereby, so far as appropriate under this Code's Principles, the company is left to get on with its business. Following the UK Corporate Governance Code, the companies will utilise a unified board, with appropriate non-executive directors providing outside expert help and with board committees (such as an audit committee) to provide oversight and ensure delivery.

6.2 The Leader and cabinet, in turn, will seek to inform the executive decisions and holding the company to account utilising a reflection of the company board structure in the form of a Shareholder Board, including external expertise and sub-groups. The role of this group is to provide the necessary oversight from a shareholder's perspective that the parameters, policies and boundaries that the

executive as the shareholder has established for the company are being adhered to. In it, the Leader or the appointed member of Cabinet with portfolio remains the decision maker but the Shareholder Board act as advisors in the making of those executive decisions.

- 6.3 Such a Shareholder Board is considered to be an effective means of governance of the companies. This is because it allows for decision making and discussion in an informed atmosphere, which also provides the executive with:
- a mechanism to communicate the shareholders' views to the company; and
 - a means to evaluate the effectiveness of the company board and the delivery of the company performance against strategic objectives.
- 6.4 It is intended that the Leader, or the appointed member of Cabinet with portfolio, will make most decisions concerning the executive's role in respect of company interests at meetings of the Shareholder Board. It is envisaged that key decisions concerning the companies will, however, still normally be made at meetings of the Cabinet.
- 6.5 The Terms of Reference for the Shareholder Board are set out at Appendix 1.

7. Scrutiny

- 7.1 The overview and scrutiny committees have a significant role to play to ensure that the company is able, and the executive has properly required the company, to make sufficient returns for the investment to be worthwhile and, indeed, ensure that the social objects set for it are not lost in the drive towards the overriding and essential requirement for the company to be economically successful.
- 7.2 It is the executive, the Leader and Cabinet, who is responsible for approving the business case to establish a company, of setting the right balance between the economic, social and environmental objects of a company when it is established and of subsequently exercising the Council's powers as shareholder.
- 7.3 Once established, the company must then get on with the business of delivering the objectives with which it has been tasked, within the parameters set for it. It must be otherwise free, however, to operate in its own best interests and to compete on an even basis with its competitors in the marketplace.
- 7.4 Again, it is the executive, either generally or when considering reserved matters, to whom the company must answer and by whom it is held to account for its success, or failure, in achieving the objectives set for it.
- 7.5 The key role of overview and scrutiny is then to advise the executive and hold it to account on behalf of the wider public interest and its role within the Council.
- 7.6 This creates a flow of information and accountability, in which

- the company needs to get on with the business of delivery;
- the executive needs to make the company decisions reserved to it and to hold the company to account for performing against them; and
- Members as part of overview and scrutiny need to advise on or scrutinise the decisions of the executive.

This needs to be done in a trading environment that requires them all to make speedy and reactive commercial decisions and to handle often highly valuable and commercially sensitive information.

- 7.7 Overview and Scrutiny, to fulfil its role, requires a means of access to the sensitive information and debate that inform the Shareholder Group and the Leader's decision making, without either oppressing that process or endangering its own strictly non-executive role.
- 7.8 To this end it is considered that the Chair of the appropriate Overview and Scrutiny Committee is best placed to be involved, use his/her knowledge of this committee and its remit to sift the information and be alert to those matters that need to be brought to the overview and scrutiny committees' attention and be investigated further. Accordingly, the Chair will be invited to the forum created to handle this crucial information flow, the Shareholder Board. To retain the independence required of the O&S Chair, this is not membership as direct advisor as part of the decision making, but as an informed observer.
- 7.9 Overview and Scrutiny committees may then review any matter concerning the Council's companies and make proper use of its full powers and function, having had these matters drawn to its attention by, and with the benefit of, a fully informed Chair.
- 7.10 In carrying out any such review, the Government Guidance states that:
- "The local authority should ensure that its overview and scrutiny committees are able to exercise their powers in relation to the discharge of local authority functions under the relevant legislation.*
- 7.11 To this end, the legal framework for local authority companies includes an express requirement concerning the provision of information to Members of the Council, which reflects the similar provision in relation to local authorities generally. This states that a local authority regulated company "*shall provide to a Member of the Council such information about the affairs of the company as the member reasonably requires for the proper discharge of his duties.*"¹⁰
- 7.12 The exception here is that the company cannot be required to provide information in breach of any enactment, or of an obligation owed to any person.
- 7.13 It is also worth noting that, where a Member or an officer has become a member or director of a local authority company, the local authority must make arrangements for them to be open to questioning about the company's activities

¹⁰ Article 7, Local Authorities (Companies) Order 1995

by Members of the Council at a meeting of the authority, or a committee or sub-committee, or by cabinet members in the course of proceedings of the cabinet or a committee of the cabinet. Importantly, the Member or officer is not required to disclose confidential information about the company.

8. Investment and Finance

- 8.1 The balance of how each company venture may be financed will be assessed and set out in the business case, required at the very beginning of the venture and the incorporation of the company as described above, and in business plans as made or amended and agreed by the executive. Each decision will take into account state aid implications and such matters as where legislative and regulatory requirements demand full cost recovery or standard commercial terms to be applied.
- 8.2 Where the purpose of a company is to better utilise assets owned by the Council, for example, the principal investment in the company is likely to be those assets. The assets may then be made use of by the company through their being transferred in their entirety from the Council to the company or by being provided to the company by the Council under a lease, loan or use agreement.
- 8.3 Investment at the initial stage of a trading company will normally be by way of purchase of share capital, often together with a loan or loan facility on commercial terms. This is to fund those costs which arise at the start of the company or company joint venture, including the holding company and its subsidiaries, to cover initial set up costs, working capital costs and collateral costs. For purchased company interests, share value should reflect the fair value of the going concern.
- 8.4 Direct investment may well also be by various other forms of agreement. This may be for the supply of monies, directly as a loan or under a parental guarantee, credit agreement, facility and so forth, which should be on standard commercial terms. It may also be for the supply of goods, property or staff, as described above and at section 12 below.

9. Companies Structure

- 9.1 Wherever advantageous and reasonably practicable to do so, the Council's companies and any subsidiary companies will be expected to adopt a common 'group' approach. Especially where a Teckal company, this will involve the companies using existing Council policies and strategies where appropriate and, in particular, the Council will require the company and its subsidiaries to adopt a common approach across the group on branding and its finance, ethics and procurement policies and practices wherever practicable. For example, the Council will require a Teckal and potentially other companies owned by the Council to approve the procurement and authorisation of spend levels set by each company for its directors and staff.

- 9.2 More detailed matters may also be set as a common approach by the Council, where it considers that that will increase effectiveness, efficiency and engender common understanding. This is likely to include such things as group financial procedure rules, fraud and whistle-blowing policies, decision making levels and procedures, capability and disciplinary procedures, health and safety practices and so forth.
- 9.3 The Council and any holding company may similarly provide a natural home and conduit for support and control roles that will be common across the group, such as company secretarial services, procurement, finance and human resources. These fall into two groups. The first is those services that would be better employed directly by the company within any group structure, such as financial and payroll systems for example. The other are those provided as managed services to the companies by the Council, under a resourcing agreement (or service level agreement), because this is more cost effective, appropriate or is a demand of the shareholder, such as HR or company secretarial and legal services. (This is described further at section 12 below).
- 9.4 The secondary purpose is financial, in that a range of company activities can share VAT registration where appropriate and more than one company, one arranged as a subsidiary to another, can be treated as holding group accounts. The latter means that reporting is as one set of accounts and that profit and loss can be distributed across the group, setting one off against another, as might be desired to meet the aims and values set for the group.
- 9.5 The executive will approve the appointment of auditors for any company and its accounts may be required to appear as part of the Council's financial statements.

10. The Company's Board

- 10.1 The Government Guidance advised that a local authority company will be run by its board of directors answerable to the shareholders, in accordance with the articles of association, and goes on to suggest that a board of between 3 and 8 directors is most likely to be practical (although this will be dependent on the circumstances of each company). The participating Local Authority should be represented on the board of its company.
- 10.2 The representatives who are appointed directors by the executive will participate directly in the activities of the company and are answerable to the company and have the powers and duties of company directors whilst they do so. Accordingly, the Government Guidance goes on to suggest that this requirement in a trading company and the accompanying conflict of interests that may arise means that officers are better placed to fulfil this role.
- 10.4 Specific arrangements may be required outside of the norm in certain circumstances. For example, the Council may require that it appoints the Chair of the board of directors and that the Chair will have a deciding say to be

exercised through means of a 'golden vote' procedure on the board. This approach may be needed in a specific kind of company, for instance, to ensure that the Council's officers will always be able to out-vote the directly appointed directors on the holding company. Such matters as the quorum requirement for board meetings of the company and the like will be expected to reflect that objective.

- 10.5 A Council owned company will normally be required to have two standing committees, which will be as follows:
- The Remuneration Committee, which will conduct appointments and remuneration decisions and recommendations to the Council (where an appointment is not wholly reserved to the Council).
 - The Audit Committee, which will fulfil the same role and function as the Council's Audit Committee, the outputs of which will feed into the holding company board, the company business plans and the Council's own statement of accounts and Annual Governance Statement.
- 10.6 In respect of the individual wholly owned trading companies, non-trading (Teckal) companies and joint ventures, the appointment of directors of the company will be as are considered best to meet the requirements of the subsidiary or venture concerned.
- 10.7 Where an officer is placed on a company board, he or she will be provided with an indemnity for their actions in that role. This is provided for under the Local Authorities (Indemnities for Members and Officers) Order 2004. It should be noted, however, that any such indemnity only covers actions taken honestly and in good faith.
- 10.8 Appointments to company director will be of the relevant post or office of the Council, not as an individual. This will be reflected within each of the companies' articles in that if any one of the Council appointed directors ceases to be an employee or office holder of the Council, then they automatically also cease to be a director of the company.
- 10.9 The remuneration of Council appointed directors to a company controlled or influenced by the Council, other than permitted expenses, will be met by the Council and not the company. This is because, whilst that director's overriding duty is to the company, that person's role as director on the company board is only because of, and in fulfilment of, their employment as an officer of the Council, for which they are remunerated by the Council under that contract of employment. The position on the company is an inherent part of their job, for which payment is not to be made twice, directly or by different persons, for the same work
- 10.10 That is not to say that the Council would fail to recognise that the position of an officer appointed as a company director or company officer will include distinct and potentially onerous additional responsibilities. Rather, it is that it is the Council that needs to recognise the value of those responsibilities, through a job evaluation process or other means by which the Council sets salaries, in

considering any review of an officer's remuneration. To do otherwise risks a future action against the officer or the Council and, if a payment were made to a Council officer by the company that was considered to be a fee or reward accepted under the colour of his or her office or employment other than his proper remuneration, that officer may also have committed a criminal offence¹¹.

- 10.11 For the purposes of completeness, where a Member of the Council is a director of a regulated company the law only permits such a Member to receive payment for that directorship up to the amount payable for that role under the authority's Special Responsibility Allowance (SRA)¹², set as a result of the recommendation of the Independent Remuneration Panel¹³. These payments may be made by the company directly or, more normally and as would be the case here, by the Council for reasons of simplicity, accounting and accountability.
- 10.12 The view behind this is that the regulated company is, in fact, simply a part of the Council. In the same way that there is a bar on Members of the Council being employees, the philosophy runs akin to that for officers in that the Council may not pay a councillor for any other activities they may carry out as a Member of the Council other than through their SRA.

11. Conflicts of interest

- 11.1 The Government Guidance states that "*Local authority members and officers should be aware of potential conflicts of interest when carrying out their roles for their authorities, or when acting as directors of trading companies.*"
- 11.2 There will always arise a point where, in matters of reporting, contractual discussion, investment requests or resourcing agreements, there is potential for the same person to be a decision maker or advisor both for the Council and the company.
- 11.3 This is a reflection of the position of each company as a separate legal entity and that the directors of each company are subject to. As the Corporate Governance Guidance and Principles puts it:

'An important principle of Company Law is that directors have a duty to promote the success of the company as a whole. They are specifically prohibited from directing the activities of the company in favour of themselves or particular shareholders and/ or stakeholders'.

- 11.4 Appendix 3 sets out a briefing for directors' duties.

¹¹ s117(2) of the Local Government Act 1972

¹² Article 5 of the Local Authorities (Companies) Order 1995

¹³ Reg 21 of the Local Authorities (Members' Allowances) (England) Regulations 2003.

- 11.5 An essential element of this in terms of this Code is that, whilst changes to the Companies Act and current articles of association allow for appropriate provisions dealing with conflicts of interest and the ability of company directors to authorise them, an officer of the Council or a Member can never waive their duty to act in the public interest in exercising their responsibility for functions of the Authority. This will, on occasion therefore, create an inescapable conflict of interest between someone's role as a Member or, more likely, as an officer of the Council and as a director of a company, of which those involved need to be aware.
- 11.6 There are also natural points where it is expected that the Council and one of its trading companies will take a different approach. In this respect, the Government Guidance states that:
- “The local authority should consider appointing a ‘contract officer’ and/or ‘contract member’ with primary responsibility for liaison between the company and the authority, and for access to information about it. It might wish to place limitations on these individuals to ensure that they are fully accountable to the authority as a whole and to ensure that the Section 151 Officer/Monitoring Officer countersigns major decisions about the company’s operations.”*
- 11.7 This is the role of the Shareholder Board. In support of that function, the Council will appoint a lead authority and client-side officer to lead on managing contractual arrangements with the companies and in holding of the companies to account.
- 11.8 A certain form of wholly owned local authority also exist to provide services directly to or for the Council (known as a ‘Teckal’ company). The relationship between the authority and the company are set out in a contract for services. In this scenario, clear separation is required between commissioner and provider and there will be a requirement for further support to be provided, beyond the position of lead authority and client officer.
- 11.9 Officers placed into any of these roles are, at some point, likely to find themselves in a position where they are, or are negatively seen to be, acting against the interest of their own authority and also challenging the Council as their employers or senior managers to whom they might normally answer to. As a result of such activities, their performance in the company or actions they feel are required of them by the company, some of those officers may even find themselves in a position where it is no longer felt tenable that they can be appointed by the authority as a director of a company. The Council as an employer, from the viewpoint of both the executive and overview and scrutiny, wholly recognises these unusual positions that such officers may find themselves. The Council therefore undertakes that no officer will suffer any ill affect to his or her employment or career with the authority for fulfilling these activities to the best of their ability or in undertaking these actions asked of them.

12. **Managed Services, Support Arrangements and Employees**

- 12.1 The authority is required under the 2009 regulations to recover the costs of any accommodation, goods, services, staff or any other thing it supplies to a company in pursuance of any agreement, or arrangement in place. It cannot subsidise the operation of the company in this way.
- 12.2 The Government Guidance in addition clarifies that
- “Because the power to trade is subject to a restriction requiring it to be exercised through a company, it follows that the authority has the requisite power to enter into arrangements with a company in order for the trading power ... to be exercised. It is not necessary therefore, for the company to be expressly designated as a public body under the Local Authorities (Goods and Services) Act 1970, in order for the authority to be able to provide it with staff, goods etc, for the purpose of exercising the power to trade.”*
- 12.3 This means that the authority may enter into an agreement with the companies to provide services at cost or as a surplus service charge and that staff time and resources utilized for company purposes should be carefully accounted for. Where this is done at cost, which shall be the norm, it is helpfully stated in the Guidance that the approach should be in accordance with the CIPFA definition of ‘whole cost’.
- 12.4 Referred to above as the ‘managed services’, those areas of the authority’s resources so utilized might include project management, initial set-up staff, human resources, audit, business continuity, communications, procurement, legal or finance and so on. It is for the company and the executive to agree what is the appropriate level of authority led resource that is appropriate, should or can be delivered to the company in each case. The parameters of those services can be agreed through a Resourcing Agreement or what is known as a Service Level Agreement (SLA).
- 12.5 The authority as shareholder, however, does need to be assured that there are effective and robust support services in place in certain areas. This is to satisfy itself that sufficient standards of operational governance, legal and company secretarial compliance and effective financial management within the company are adhered to. The authority will reserve to itself the ability under the Shareholder Agreement to insist on supplying these services to a controlled company, at cost, if it feels that these standards are not otherwise being met or are not in its opinion likely to be met.
- 12.6 In particular, the Company Secretary role should have a consistent approach across all of the Council owned companies or group of companies. This is to ensure consistent interpretation of the compliance standards across the companies and of the governance relationship between the companies and between the companies and the Council. In addition, it ensures that appropriate and proper intelligence is shared across the companies and the authority. In relation to all authority-controlled companies and their subsidiaries, therefore, the position of company secretary as an officer (not a director) of each company in the group is to be fulfilled by the Council’s Monitoring Officer, being the equivalent corporate governance, assurance and general counsel position for

the Council. All company secretarial and general counsel duties for the companies will then be carried out through that office, either directly or through the position of an assistant company secretary, with the exception of where a conflict of interest is identified and is acknowledged by that officer.

- 12.7 In relation to company staffing, it is expected that staff of the local authority trading companies will be directly recruited and employed by the companies themselves, with the exception of those support staff supplied by or seconded from the authority as described above. Where the business case includes that staff are transferred, however, this will be subject to full reporting and then consultation and requirements under TUPE legislation and guidance.

(Based on the LLG Guidance Note for England & Wales February 2018)

WIRRAL BOROUGH COUNCIL
SHAREHOLDER BOARD - TERMS OF REFERENCE

As per existing terms of ref

OUTLINE OF THE
SHAREHOLDER AND COMPANY AGREEMENT

1. DEFINITIONS AND INTERPRETATION
2. FINANCING THE COMPANY
3. DIVIDEND POLICY
4. SUBSIDIARIES
5. MANAGEMENT OF THE COMPANY
6. SHAREHOLDER GROUP
7. THE BUSINESS PLAN AND COMPLIANCE WITH THE BUSINESS PLAN
8. REPORTING AND ACCOUNTING MATTERS
9. BANKING ARRANGEMENTS
10. TERMINATION
11. UNLAWFUL FETTER ON THE COMPANY'S POWERS
12. ASSIGNMENT AND SUB-CONTRACTING
13. FURTHER ASSURANCE
14. REMEDIES AND WAIVERS
15. ENTIRE AGREEMENT
16. VARIATION
17. CONFLICT WITH THE ARTICLES
18. SEVERANCE
19. CONFIDENTIALITY
20. NOTICES
21. NO PARTNERSHIP OR AGENCY
21. COUNTERPARTS
22. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999
23. GOVERNING LAW AND JURISDICTION

Guidance Note to Council Members and Officers when acting as
Directors of Council Companies

MINUTE EXTRACTS**BUSINESS OVERVIEW AND SCRUTINY COMMITTEE – 18 SEPTEMBER 2018****20 LEADER DECISION REFERRAL - CODE OF PRACTICE FOR GOVERNANCE OF COUNCIL INTERESTS IN COMPANIES**

Following the publication of a Leader decision, Philip McCourt, Director of Governance and Assurance, introduced a report which set out the approach to the governance of the Council's subsidiary companies and, in particular, the part that the introduction of a Council Code of Practice for the Governance of Council Interests in Companies had in promoting and ensuring good governance in relation to those company interests.

The Code set out:

- the law and guidance which governed how local authority companies were to be established and run;
- the way in which a local authority might wish to organise its company interests;
- how those interests might be best governed according to a set of principles;
- how decisions would be taken as shareholder;
- how scrutiny was to be conducted, where there was a scrutiny function and where there was not; and
- how regulatory matters and conflicts of interest might be best managed.

In response to Members' comments, Philip McCourt suggested that the Code would normally be adopted by the Cabinet rather than Council, though it maybe something that the Council could comment on. The draft Code was also being considered by the Audit and Risk Management Committee. It was a very complex issue and he would be happy to give a training session to Members on this. The Council had corporate responsibility in so far as any shareholder would but the company had responsibility as a legal entity in its own right.

Resolved – That this Committee notes the role of the Code of Practice and the principles within it, in relation to the Council's own Code of Corporate Governance and agrees that a training session provided by the Director of Governance and Assurance be held, open to all Members.

AUDIT AND RISK MANAGEMENT COMMITTEE – 24 SEPTEMBER 2019**25 LEADER DECISION REFERRAL - CODE OF PRACTICE FOR GOVERNANCE OF COUNCIL INTERESTS IN COMPANIES**

Philip McCourt, Director: Governance and Assurance introduced notice of a Cabinet Member Decision in respect of the Draft Council Code of Practice for the Governance of Council Interests in Companies. The decision had also included a recommendation that the Draft Code be referred to the Business Overview and Scrutiny Committee and the Audit and Risk Management Committee to note the role of the Code of Practice, and the principles within it, in relation to the Council's own Code of Corporate Governance.

The Director: Governance and Assurance informed that the matter had recently been considered by the Overview and Scrutiny Committee and it had been recommended that an 'All Member' briefing on Local Authority Companies be provided. He further informed that the documentation attached to the Member Decision set out the blueprint for the Principles of Governance i.e. Controls and Freedoms, Relationship, Integrity and Accountability and Understanding of the Role. Members were apprised that the Draft Code had been modelled on the LLG Guidance Note for England and Wales, February 2018.

Mr McCourt highlighted that the governance arrangements would seek to ensure that:

- the executive can make investment decisions based upon complete and accurate consideration of business cases and business plans;
- the executive can evaluate social and financial benefits and returns on investment; and
- the Council's overview and scrutiny committees were able to exercise their powers in relation to the executive's decision making

in a manner that ensured the companies would provide full and frank financial and business reporting against their business plans and be open to an appropriate level of scrutiny without fear of commercial confidentiality being breached.

Mr McCourt directed Members' attention to two diagrams which explained the varying conflicts Members may have in being appointed to differing roles, including the relationship between the Council's and the Council Company's audit committees, and the pivotal role of the Shareholder Board as chaired by the relevant Cabinet Member as decision maker and Overview and Scrutiny observer.

Members questioned the Director: Governance and Assurance on a number of areas that included the need for legal involvement and assurances, what stage the process had reached and the role of Elected Members in terms of scrutiny, and how (if any) conflicts of interest would be addressed.

Mr McCourt responded, informing the Committee that the Code addressed the matter of conflict of interests, stating that once appointed, and acting on behalf of the

company, Member's duty was to that company. He added that the guidance and subsequent briefings would ensure that the legal duties and associated arrangements in terms of stewardship of assets, etc. were appropriately understood by Members of the Council in their role, by officers of the Council associated with those duties, and by directors of the company, or companies.

Following further questioning on the role of scrutiny and a request from a Member regarding the practicalities of access to the shareholder board and company minutes, Mr McCourt informed that the shareholder board non-decision making and company minutes would remain private, but Members could always request information; however, the requests would need to be assessed and cater for a balance of 'need to know' and 'relevance'. He added that any key decisions, for example relating to Capital Investment of Council monies, or the disposal of Council Assets e.g. Land, would still be the subject of the public decision making process (i.e. Member Decision) and would still be subject to call-in.

Prior to the vote on the report recommendation, an amendment was moved by Councillor Phil Gilchrist and seconded by Councillor Jeff Green that:

'Officers are asked to draw up, and report back on, the establishment of a mechanism, under which the minutes of the shareholder board may be made available for inspection'.

A vote was taken, and the amendment was lost (3:4).

A vote was then taken on the report recommendation, and it was:

Resolved (4:3) - That the Code of Practice, and principles within it, in relation to the Council's own Code of Corporate Governance be noted.

This page is intentionally left blank



STANDARDS AND CONSTITUTIONAL OVERSIGHT COMMITTEE

11 June 2019

SUBJECT:	Establishing the Standards Panel and Standards Appeal Panel
REPORT OF:	Director: Assurance and Governance and Monitoring Officer

REPORT SUMMARY

The purpose of this report is for the Committee to formally 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.

RECOMMENDATION/S: That

- (1) a Standards Panel and Standards Appeal Panel be formally established pursuant to paragraph 9.5 of Article 9 of the Council’s Constitution;
- (2) each political group through their Group Leader/Deputy Group Leader or Party Spokesperson be requested to confirm the names of the Members who shall be their representative members on the Standards Panel and Standards Appeal Panel to the Director – Governance and Assurance and Monitoring Officer urgently (if that has not already been done); and
- (3) where a representative Member, proposed/confirmed under (2) above, is unavailable to attend a proposed meeting of the Standards Panel or Standards Appeal Panel but that meeting can be attended by all other persons required, then the relevant political group through their Group Leader/Deputy Group Leader or Party Spokesperson shall promptly confirm another representative member who is able to attend that meeting.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 The establishing of the Standards Panel and Standards Appeal Panel is required under the Council's Constitution and the Protocol for Dealing with Complaints against Members.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 No other options were considered.

3.0 BACKGROUND AND KEY ISSUES

- 3.1 The role and purpose of the Standards Panel and Standards Appeal Panel are set out in Part 2, Article 9 of the Constitution – which is set out at Appendix 1.
- 3.2 A Standards Panel is required in order to progress an ongoing standards matter.
- 3.3 While no Standards Appeal Panel is required at this time, it may be required during the Municipal Year and therefore it is considered appropriate to establish one now.
- 3.4 The Members' Code of Conduct and Protocol for Dealing with Complaints against Members are set out at Appendix 2 and 3 respectively for reference.
- 3.5 Moreover, the Committee is asked to re-affirm the procedure for dealing with matters before the Standards Panel and Standards Appeal Panel set out at Appendix 4.

4.0 FINANCIAL IMPLICATIONS

- 4.1 There are none arising directly from this report.

5.0 LEGAL IMPLICATIONS

- 5.1 The Council has a duty to promote high standards of conduct by members and put in place appropriate arrangement to deal with complaints against members.
- 5.2 Under Section 27 of the Localism Act 2011, the Council "must promote and maintain high standards conduct by Member and Co-opted Members of the authority".
- 5.3 In discharging the duty the Council must (under Section 27 of the Localism Act 2011) adopt a code dealing with the conduct that is expected of Members and Co-opted Members of the Council when they are acting in that capacity.

5.4 The Council must (under Section 28 of the Act) also have in place arrangements under which allegations can be investigated; and decisions on allegations can be made.

6.0 RESOURCE IMPLICATIONS: ICT; STAFFING AND ASSETS

6.1 There are none arising directly from this report.

7.0 RELEVANT RISKS

7.1 There are no identified risks arising directly from this report.

8.0 ENGAGEMENT / CONSULTATION

8.1 The Members' Code of Conduct and Protocol for Dealing with Complaints against Members was developed, prepared and approved by members and Council.

9.0 EQUALITIES IMPLICATIONS

9.1 There are none arising directly from this report.

REPORT AUTHOR: Patrick Sebastian
Principal Committee Officer
telephone: (0151) 691 8424
email: patricksebastian@wirral.gov.uk

APPENDICES

1. Article 9 of the 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.

REFERENCE MATERIAL

NONE

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
None	

This page is intentionally left blank

PART 2

Article 9 - The Standards and Constitutional Oversight Committee

9.1 Standards and Constitutional Oversight Committee

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

9.2 Composition

(i) **Membership**

The Standards and Constitutional Oversight Committee will be composed of:

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

(ii) **Independent persons**

Independent members will not be entitled to vote at meetings.

(iii) **Chairing the Committee**

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

9.3 Role and Function

The Standards and Constitutional Oversight Committee will:-

- (i) promote and maintain high standards of conduct by Members, Co-Opted Members and church and parent governor representatives;
- (ii) to advise and recommend to Council the adoption, revision or replacement of the Code(s) of Conduct for Members, Co-Opted Members and Officers.
- (iii) assist the Members and Co-Opted Members and church and parent governor representatives to observe the Members' Code of Conduct;
- (iv) monitor and review the complaints made under the Members' Code of Conduct; including the operation of the Members' Code of Conduct;

- (v) advise, train or arrange to train Members, Co-Opted Members and church and parent governor representatives on matters relating to the Members' Code of Conduct;
- (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).
- (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).
- (viii) support the Monitoring Officer in the exercise of that Officer's ethical standards functions, in particular the duty to establish and maintain registers of interests for the Council.
- (ix) in relation to Members or Co-Opted Members or church and/or parent governor representatives with pecuniary interests, putting in place arrangements to grant dispensations, in appropriate cases, from the restrictions on speaking and/or voting.
- (x) to exercise all other functions of the Council in relation to ethical standards, in particular those under Chapter 7 of the Localism Act 2011.
- (xi) monitoring and reviewing as necessary the operation of whistle-blowing procedures;
- (xii) considering reports arising from external inspections, audit investigations, Ombudsman investigations where maladministration is found, legal challenges and other sources which cast doubt on the honesty or integrity of the Council or its Members;
- (xiii) to consider and make recommendations on such other matters as the Committee itself thinks appropriate or which are referred to it by Council, which further the aim of promoting and maintaining the highest standards of conduct within the Council;

- (xiv) approve the payment of compensation involving sums in excess of £5,000 (or less, if considered appropriate) to settle complaints of maladministration.
- (xv) establishing such sub-committees and/or panel as are required to discharge its role and the functions as set out in these Terms of Reference.
- (xvi) To keep the Council's constitutional arrangements under review and to make such recommendations to the council as it considers appropriate for ways in which it should be amended in order better to achieve the purposes set out in Article 1.
- (xvii) To oversee and agree such minor and consequential changes to the Council's constitutional arrangements as are recommended by the Monitoring officer from time to time.

9.4 *[This paragraph has been removed – no longer applicable]*

9.5 **Establishment of Panels**

The Standards and Constitutional Oversight Committee will establish a Standards Panel and a Standards Appeals Panel.

A. Terms of Reference of the Standards Panel

A1 The Standards Panel will:

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

- (iv) Where the Standards Panel determines that the Members' Code of Conduct has been breached, it 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.

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

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

A2. **Composition**

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

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

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

A3. **Chair**

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

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

A4. **Quorum**

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

A5. **Frequency of Meetings** - The Standards Panel will only meet when required to undertake its role and discharge its functions as set out in these Terms of Reference.

A6. **Access to Information** – Where the Standards Panel is considering allegations that an elected or co-opted Member of the Council has failed, or may have failed, to comply with the Council's Code of Conduct for Members under A1(i) above, the matter shall be exempt from disclosure under paragraph 7C of the Council Access to Information Procedure Rules unless

the Standards Panel at its meeting considers that the public interest in lifting the exemption outweighs maintaining the continued application of the exemption.

B. Terms of Reference of the Standards Appeal Panel

- B1. Where a complainant or Member or Co-opted Member is dissatisfied with the determination of a complaint by the Standards Panel, the Standards Appeal Panel will convene to re-consider the complaint providing that:
- (i) A request for permission to appeal is first made in writing, within 14 days of receipt of the Standards Panel's Decision Notice, to the Monitoring Officer which details the procedural, legal and/or evidential issues relied upon in support of the request for permission; and
 - (ii) The Monitoring Officer being satisfied, having considered the views of the independent person, that (a) the request for permission raises valid procedural, legal and/or evidential issues and matters not previously considered by the Standards Panel, and/or that (b) it is reasonable and equitable in all the circumstances of the case that permission to appeal be granted.
- B2. Where the Standards Appeal Panel has been convened pursuant to paragraph B1 above, the Standards Appeal Panel shall:
- (i) Consider the complaint/allegations that an elected or co-opted Member of the Council has failed, or may have failed, to comply with the Council's Code of Conduct for Members.
 - (ii) Consider and take into account the views of at least one independent person before making a decision on an allegation (falling within its remit) that the Members' Code of Conduct has been breached.
- B3. The Standards Appeal Panel after consideration of a complaint may (pursuant to paragraph 9.3(vi) above):-
- (i) ask for additional information on the allegation before reaching a decision;
 - (ii) determine that no action should be taken in respect of the allegation(s) made;
 - (iii) determine that the Members' Code of Conduct has been proved to have been breached;

Where the Standards Appeal Panel determines that the Members' Code of Conduct has been breached, it may:

- (iv) 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
- (v) 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
- (vi) report the Panel's decision to a public meeting of the Standards and Constitutional Oversight Committee for reference/consideration; and/or
- (vii) 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
- (viii) 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.

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

- (ix) recommend, subject to the agreement of the Member against whom the allegation(s) has been made, a Council press release be issued detailing the nature and outcome of the investigation into the allegations and the decision of the Panel.
- (x) subject to the agreement of the Member against whom the allegation(s) has been made, report the Panel's decision to a public meeting of the Council and/or the Standards and Constitutional Oversight Committee;

B4. Composition

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

The spokesperson for each political group may nominate an 'Alternate Member' from his/her political group to sit on a Standards Appeal Panel,

providing that the Member nominated has undertaken the requisite training on the Members' Code of Conduct (and any other training required by the Standards and Constitutional Oversight Committee).

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

- B5. **Chairperson** – The Chairperson shall be appointed by the Standards Appeal Panel at each meeting. Where the Standards Appeal Panel is considering an allegation of a breach of the Members' Code of Conduct, the Chairperson shall not be a member of the same political party of the Member against whom the allegation(s) have been made.
- B6. **Quorum**
The quorum for a meeting of the Standards Panel shall be the 3 Members that make up its composition.
- B7. **Frequency of Meetings** - The Standards Appeal Panel will only meet when required to undertake its role and discharge its functions as set out in these Terms of Reference.
- B8. **Access to Information** – Where the Standards Appeal Panel is considering allegations that an elected or co-opted Member of the Council has failed, or may have failed, to comply with the Council's Code of Conduct for Members under B1(i) above, the matter shall be exempt from disclosure under paragraph 7C of the Council Access to Information Procedure Rules unless the Standards Panel at its meeting considers that the public interest in lifting the exemption outweighs maintaining the continued application of the exemption.

Part 5A

WIRRAL COUNCIL MEMBERS' CODE OF CONDUCT

Introduction

The Localism Act 2011 (“the Act”) requires the Council to adopt a Members’ Code of Conduct with effect from 1 July 2012. This revised Code of Conduct shall take effect from 1 August 2014.

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

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

Interpretation

In this Code:-

“Disclosable pecuniary interest” means those interests as defined under Schedule 3.

“Meeting” means any meeting of:

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

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

“Member” includes an appointed Member and Co-opted Member.

“Relevant Authority” means Wirral Borough Council (unless otherwise stated).

1. General Obligations

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

- 1.1 **DO** treat others with respect;
- 1.2 **DO NOT** conduct yourself in a manner which is contrary to the Council’s duty to promote and maintain high standards of conduct of Members;

- 1.3 **DO NOT** disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where-
- (i) you have the consent of a person authorised to give it;
 - (ii) you are required by law to do so;
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or
 - (iv) the disclosure is-
 - (a) reasonable and in the public interest; and
 - (b) made in good faith and in compliance with the reasonable requirements of the authority; and
 - (c) agreed with the Monitoring Officer prior to its release.
- 1.4 **DO NOT** prevent another person from gaining access to information to which that person is entitled by law.
- 1.5 **DO NOT** improperly use knowledge gained solely as a result of your role as a member for the advancement of yourself, your friends, your family members, your employer or your business interests.
- 1.6 As a public figure, your public role may, at times, overlap with your personal and/or professional life and interests however when performing your public role as a member, **DO** act solely in terms of the public interest and **DO NOT** act in a manner to gain financial or other material benefits for yourself, your family, your friends, your employer or in relation to your business interests.
2. When using or authorising the use by others of the resources of the authority
- 2.1. **DO** act in accordance with the Council's reasonable requirements including the requirements of the Council's ICT policy and other Council policies (attached to the Council's Constitution), copies of which have been provided to you and which you are deemed to have read;
 - 2.2. **DO** make sure that such resources are not used improperly for political purposes (including party political purposes); and
 - 2.3. **DO** have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986 (as amended).

3. When acting as a nominated representative of the Council

- (a) on another relevant authority (as defined by the Localism Act 2011), you must, when acting for that other relevant authority, comply with that relevant authority's applicable code of conduct;
- (b) on any other body, you must, when acting for that other body, comply with Wirral Council's Code of Conduct, except and so far as it conflicts with any other lawful obligations to which that other body may be subject.

4. Interests

4.1 Disclosable Pecuniary Interests

You must, within 28 days of your election or appointment to office (where that is later), notify the Monitoring Officer in writing:–

- (a) of your disclosable pecuniary interest which are notifiable under the Act and The Relevant Authorities (Disclosable Pecuniary Interest) Regulations (2012) for inclusion in the Register of Interests; and,
- (b) of the details of your other personal interests for inclusion in the register of interests; and,

Thereafter, as soon as reasonably possible (and in any event within 28 days) after becoming aware of any new disclosable or personal interests or change to any disclosable or personal interests, give written notification of such change to the Monitoring Officer or amend your Register of Interest.

Failure to declare or register a pecuniary interest will be a criminal offence if this is done without a reasonable excuse. If you knowingly or recklessly provide false or misleading information about a pecuniary interest this will also be a criminal offence.

4.2 Personal Interests

You have a personal interest in any business of the Council where it relates to or is likely to affect:-

- (i) any body of which you are a Member or in a position of general control or management and to which you are appointed or nominated by the Council;
- (ii) any body:-
 - (a) exercising functions of a public nature;
 - (b) directed to charitable purposes; or

- (c) one of whose principal purposes includes the influence of public opinion or policy (including any political party), of which you are a member or in a position of general control or management.

4.3 You also have a personal interest in any business of the Council:-

- (i) where a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the wellbeing or financial position of a relevant person to a greater extent than the majority of other council taxpayers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision,
or,
- (ii) it relates to or is likely to affect any of the interests you have registered as a disclosable pecuniary interest.

4.4 Sensitive Interests

Where you consider that disclosure of the details of an interest could lead to you, or a person connected with you, being subject to violence or intimidation, and the Monitoring Officer agrees, if the interest is entered on the Register, copies of the Register which are made available for inspection and any published version of the Register will exclude details of the interest, but may state that you have an interest, the details of which are withheld.

5. Disclosure and participation

- 5.1 At a meeting where such issues arise, **DO** declare any personal and/or professional interests relating to your public duties and **DO** take steps to resolve any conflicts arising in a way that protects the public interest.
- 5.2 Certain types of decisions, including those relating to a permission, licence, consent or registration for yourself, your friends, your family members, your employer or your business interests, are so closely tied to your personal and/or professional life that your ability to make a decision in an impartial manner in your role as a member may be called into question and in turn raise issues about the validity of the decision of the authority. **DO NOT** become involved in these decisions any more than a member of the public in the same personal and/or professional position as yourself is able to be and **DO NOT** vote in relation to such matters.

6. Disclosable Pecuniary Interest

- 6.1 Where you disclose a disclosable pecuniary interest, you must withdraw from the meeting room, including from the public gallery, during the whole consideration of any item of business in which you have an interest, except where you are permitted to remain as a result of a grant of a dispensation. Descriptions set out in Schedule 3 below.

7. Personal Interests

7.1 Where you have a personal interest (as described above) in any business of the Council, and where you are aware or ought reasonably to be aware of the existence of the personal interest, and you attend a meeting of the Council at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

8. Where you have a personal interest but, by virtue of paragraph 4.4 above sensitive information relating to it is not registered in the Council's Register of Members' Interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.

9. Where you have a personal interest in any business of the Council, you must consider if this is also an interest that could be deemed as prejudicial.

10. Prejudicial Interests

10.1 If you have a personal interest in any business of the Council, you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest and where that business:

(a) affects your financial position or the financial position of a person or body described in paragraphs 4.2 or 4.3 above; or

(b) relates to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 4.2 to 4.3 above.

11. Subject to paragraph 13.1 below, where you disclose a prejudicial interest, you must withdraw from the meeting room, including from the public gallery, during the whole consideration of any item of business in which you have an interest, except where you are permitted to remain as a result of a grant of a dispensation.

12. Where you have a prejudicial interest in any business of the Council you may attend a meeting, but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose (whether under a statutory right or otherwise) and you leave the room where the meeting is held immediately after making representations, answering questions or giving evidence.

13. Pre-determination or bias
- 13.1 Where you have been involved in campaigning in your political role on an issue which does not impact on your personal and/or professional life you should not be prohibited from participating in a decision in your political role as member, however **DO NOT** place yourself under any financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.
14. When making a decision, **DO** consider the matter with an open mind and on the facts before the meeting at which the decision is to be taken.
15. Gifts and Hospitality
- 15.1 You are required to declare to the Monitoring Officer and register any such gift or hospitality which has (or is estimated to have) a value in excess of twenty five pounds (£25.00) within 28 days of receiving the gift or hospitality.
16. Interests arising in relation to overview and scrutiny functions
- 16.1 In relation to any business before an overview and scrutiny committee of the Council (or of a sub-committee of such a committee) where-
- 16.2 that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and
- 16.3. at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint subcommittee and you were present when that decision was made or action was taken; or
- 16.4. that business relates to a decision made (whether implemented or not) or action taken by you (whether by virtue of the Authority's Constitution or under delegated authority from the Leader):
- 16.5 **You may** attend a meeting of the relevant committee exercising overview and scrutiny functions of the Council or of a sub committee of such a committee but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purposes, whether under a statutory right or otherwise.
17. Dispensations
- 17.1 The Council, through the Standards and Constitutional Oversight Committee, may grant you a dispensation, but only in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest.

17.2 Under this Code, Members are granted dispensations in relation to those matters set out in Schedule 2 below.

THE SEVEN PRINCIPLES OF PUBLIC LIFE

SELFLESSNESS

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

INTEGRITY

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

OBJECTIVITY

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

ACCOUNTABILITY

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

OPENNESS

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

HONESTY

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

LEADERSHIP

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

DISPENSATIONS

Subject to you disclosing the interest at the meeting, where a decision to be taken relates to one of the functions of the Council/Executive set out below, and the condition which follows that function does not apply to you when making that decision, you may participate in the decision:

- (i) housing, where you are a tenant of your authority unless those functions relate particularly to your tenancy or lease;
- (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or a parent governor of a school unless it relates particularly to the school which the child attends,
- (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of such pay;
- (iv) an allowance, payment or indemnity given to members;
- (v) any ceremonial honour given to members;
- (vi) setting council tax or a precept under the Local Government Finance Act 1992; and
- (vii) trade union matter where you are a member (but not in a position of control) of the recognised trade union in question or another recognised trade union (excluding Sponsorship as defined under Schedule 3).

Schedule 3

Disclosable Pecuniary Interests

A 'disclosable pecuniary interest' is an interest of yourself or your partner (which means spouse or civil partner, a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners) within the following descriptions:-

Subject	Prescribed Description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	<p>Any payment or provision of any other financial benefit (other than from the relevant Authority) made or provided within the relevant period in respect of any expenses incurred by the Member in carrying out duties as a Member, or towards the election expenses of the Member.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act (1992).</p>
Contracts	<p>Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant Authority:-</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
Land	Any beneficial interest in land which is within the area of the relevant Authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant Authority for a month or longer.
Corporate Tenancies	<p>Any tenancy where (to the Member's knowledge):-</p> <p>(a) the landlord is the relevant Authority; and</p> <p>(b) the tenant is a body in which the relevant person has a beneficial interest.</p>

<p>Securities</p>	<p>Any beneficial interest in securities of a body where:-</p> <p>(a) that body (to the Member's knowledge) has a place of business or land in the area of the relevant Authority; and</p> <p>(b) either:-</p> <p>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or,</p> <p>(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p>
-------------------	--

This page is intentionally left blank

MEMBERS' CODE OF CONDUCT

PROTOCOL

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

February 2019

		Page
1.	Introduction and Summary	2
2.	Making a Standards Complaint	2
3.	Anonymous Complaints	3
4.	Pre-Assessment Reports and Enquiries	4
5.	Preliminary Assessment & Evaluation	4
6.	Referral of a Complaint for Investigation	7
7.	Production of Documents, Information and Explanations	8
8.	Interviews	8
9.	Investigator's Report	9
10.	Rights and Responsibilities of Members and the Investigator	10
11.	Processing the Investigator's Report	10
12.	Confidentiality of Information gathered during an Investigation	11
13.	Role of Investigator and the Panels	11
14.	Standards Panel	11
15.	Notification of Standards Panel Decision and Right of Appeal	13
16.	Request for Permission to Appeal	13
17.	Review Panel	14
18.	Notification of Review Panel	15
19.	Access to Meetings and Decision Making	15
20.	Confidentiality	16
21.	Conflicts of Interest	16
22.	Monitoring and Review	17
23.	Failure to Comply with the Requirements of this Protocol	17
24.	Modification of Procedure	17
25.	Interpretation	17

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 **within 5 working days of receipt of a valid complaint** 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 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.]

2.4 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.

2.5 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.

2.6 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.

2.7 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

2.8 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, **within 10 working days after receipt of a valid** 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 6 below)
 - (v) **It is appropriate to refer the matter to the Assessment Panel.**
- ("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 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.

5.5 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.

5.6 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. **The terms of reference for the Assessment Panel are set out in Appendix 6.**

5.7 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

5.8 If, following Preliminary Assessment and Evaluation, the Monitoring Officer is of the opinion that a local resolution of the complaint is possible and appropriate, he/she shall approach the Subject Member(s) and ask whether 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.

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

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

- (i) local resolution is unlikely to be achieved at all or within an acceptable timescale; and/or
- (ii) the Subject Member fails to offer an apology or undertake the agreed remedial action within the timescales agreed or within a reasonable time; and/or

- (iii) there has been a material change in circumstances (i.e. further information coming to light and issues being raised) since the Monitoring Officer undertook the Preliminary Assessment and Evaluation under paragraph 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

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

Alternative approach

- 5.12 If, following the assessment and evaluation outlined above, the Monitoring Officer is of the opinion that an alternative approach exists that could achieve a more effective and efficient resolution of the Standards Complaint than that outlined in paragraphs 5.9 and 5.10 above, he/she shall adopt that approach accordingly and endeavour to achieve a resolution of the Standards Complaint.

- 5.13 If the Monitoring Officer, whilst seeking resolution of the Standards Complaint by adopting an alternative approach, under paragraph 5.12, is of the opinion that:

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

8.2 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.

8.3 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.

8.4 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. **However, witnesses may be interviewed by telephone or alternative electronic means** 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 **within 20 working days** 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 **directly** 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. **If the Standards Panel considers that a party or witness should give evidence then the panel will be entitled to give such weight as it considers appropriate to the evidence given.**

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) 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 **10** 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 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 **directly** 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 or 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.
- 25.11 The Assessment Panel, the Standards Panel and the Standards Appeal Panel are Sub-Committees of the Council's Standards Committee. Each of those Panels will comprise of 3 elected Members (one Member from each of the three main political parties) who shall be members of the Council's Standards and Constitutional Oversight Committee (unless an Alternate Member is nominated).

This page is intentionally left blank

APPENDIX 4

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 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 sanctions) 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 sanctions (if any)

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.

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 sanctions) 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 sanctions (if any)

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.



Standards and Constitutional Oversight Committee Tuesday, 11 June 2019

REPORT TITLE:	Webcast Project Update – Viewing Statistics
REPORT OF:	Director: Governance and Assurance (Monitoring Officer)

REPORT SUMMARY

The purpose of the report is:

To provide Members with an update on Council and Committee webcast viewing statistics, as requested by the Standards and Constitutional Oversight Committee at its meeting held on 29 August 2018 (Minute 9 refers).

RECOMMENDATION/S: That

Views of the Standards and Constitutional Oversight Committee are requested.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 The Standards and Constitutional Oversight Committee is requested to keep the Council's constitutional arrangements under review (including meeting procedures) and to make such recommendations to the Council as it considers appropriate.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 Members views are requested.

3.0 BACKGROUND AND KEY ISSUES

- 3.1 Early in 2016 consideration was given to a proposal to introduce Webcasting of the public meetings of Wirral Council, namely the procurement of:

- a) A Webcasting solution to stream / record and digitally store its Council, Cabinet and Committee meetings and associated activities i.e. staff briefings and training events.
- b) An audio / visual solution to replace the current facilities in Wallasey Town Hall (Council Chamber, Civic Hall and Committee Rooms 1, 2 & 3.
- c) A replacement / upgrade of the Council's Electronic voting system in the Council Chamber at Wallasey Town Hall. Including all Council Chamber microphones.

- 3.2 A Capital budget allocation of £225,000 was confirmed by Cabinet at its meeting 20 February 2017, and subsequently by Council on 6 March 2017. An additional Capital sum of £6,401 was agreed by SLT at its meeting on 19 December 2017 and has been met from the departments existing budget allocations (some additional expenditure is also being met from facilities and IT contingency budget heads e.g. Council Chamber carpeting, Committee Room furniture and broadband connections).

- 3.3 Following budget approval at Cabinet, and subsequently by Council on 6 March 2017, a project team was established and tendering for the above products took place.

- 3.4 Following competitive tender process, on 8 January 2018 a contract was awarded to contractor Public-i, the leading supplier of technology and the market leader in provision of webcasting services to local councils in England and Wales. The current contract is in place for a period of 3 years.

Viewing Statistics

- 3.5 At its meeting held on 29 August 2018 the Standards and Constitutional Oversight Committee requested an update on viewing statistics to be presented at the end of the Municipal Year i.e. covering a full 12 month period (Minute 9 refers).

- 3.6 It is well known that attendance at public meetings is dependent upon the business of Council, and the same applies for live broadcast and archive views of Council / Committee meetings.
- 3.7 A number of Wirral's recent Council meetings have generated significant public interest, necessitating use of 'overflow rooms' where members of the public who were unable to access the Council Chamber viewing gallery could watch proceedings via the weblink.
- 3.8 As a result some statistics may not (positively) reflect the full level of public interest for specific meetings. It should also be noted that some archive views of meetings can be generated by council officers who utilise the archive to assist in the preparation of meeting minutes and actions arising as a result of Member debate.
- 3.9 Proposals for dealing with meetings with a high public turnout were reported to the Standards and Constitutional Oversight Committee meeting on 20 November 2018.
- 3.10 At the time of reporting to the November meeting of the Standards and Constitutional Oversight Committee, a total of 23 meetings had been webcast. See summary below (as at midday 5 November):
- 494 'live' views during all meetings
 - 2358 access views to the archive
 - 2852 Total
- 3.11 At the time of preparation of this report, the viewing figures for the Municipal Year 2018/19 (67 meetings) are as follows:
- 1842 'live' views during all meetings
 - 6911 access views to the archive
 - 8753 Total

A breakdown of the above figures is attached at **Appendix 1**.

4.0 FINANCIAL IMPLICATIONS

- 4.1 There are none arising directly from this report.

5.0 LEGAL IMPLICATIONS

- 5.1 There are no legal implications arising from the content of this report.

6.0 RESOURCE IMPLICATIONS: ICT; STAFFING AND ASSETS

- 6.1 General guidance on the resource implications arising from the project were provided to Members in their consideration during planning and procurement (pre-tender) and during options for the delivery stages of the project. Further consultation will take place with Members, HR and other service areas of the Council if required.

7.0 RELEVANT RISKS

7.1 There are no identified risks arising directly from this report.

8.0 ENGAGEMENT / CONSULTATION

8.1 Since its initial inception, the Webcasting Project has been the subject of a range of consultative meetings culminating in budgetary approval via Cabinet and Council in early 2017. During 2018 SLT, the Elected Member Steering Group, Political Leadership and the Standards and Constitutional Oversight Committee have been consulted on a variety of options in respect of the Webcasting Project.

8.2 Members views are sought.

9.0 EQUALITIES IMPLICATIONS

9.1 There are none arising directly from this report.

REPORT AUTHOR: Patrick Sebastian
Principal Committee Officer
telephone: (0151) 691 8424
email: patricksebastian@wirral.gov.uk

APPENDICES

Appendix 1: Webcasting viewing figures

BACKGROUND DOCUMENTS

APPENDIX 1

Webcast title	Live date	All views	Live views	Archive views
Audit and Risk Management Committee	24/04/19 18:00	71	20	51
Planning Committee	17/04/19 18:00	215	90	125
Joint Strategic Commissioning Board	02/04/19 14:00	57	15	42
Pensions Committee	25/03/19 18:00	29	2	27
Cabinet	25/03/19 10:00	71	13	58
Planning Committee	21/03/19 18:00	82	16	66
Adult Care and Health Overview and Scrutiny Committee	19/03/19 18:00	39	0	39
Council	18/03/19 18:00	193	63	130
Council	18/03/19 17:00	94	19	75
Environment Overview and Scrutiny Committee	13/03/19 18:00	39	11	28
Audit and Risk Management Committee	11/03/19 18:00	106	27	79
Business Overview and Scrutiny Committee	05/03/19 18:00	43	6	37
Council	04/03/19 18:00	588	57	531
Children and Families Overview and Scrutiny Committee	27/02/19 18:00	54	12	42
Standards and Constitutional Oversight Committee	26/02/19 18:00	28	5	23
Council	25/02/19 18:00	702	319	383
Cabinet	25/02/19 10:00	95	8	87
Cabinet	18/02/19 10:00	86	15	71
Planning Committee	14/02/19 18:00	56	0	56
Environment Overview and Scrutiny Committee	07/02/19 16:00	184	42	142
Joint Strategic Commissioning Board	05/02/19 14:00	34	8	26
Standards and Constitutional Oversight Committee	31/01/19 18:00	21	5	16
Environment Overview and Scrutiny Committee	30/01/19 18:00	427	138	289
Adult Care and Health Overview and Scrutiny Committee	29/01/19 18:00	56	8	48
Audit and Risk Management Committee	28/01/19 18:00	27	3	24

Children and Families Overview and Scrutiny Committee	24/01/19 18:00	48	12	36
Business Overview and Scrutiny Committee	22/01/19 18:00	75	8	67
Pensions Committee	21/01/19 18:00	42	5	37
Planning Committee	17/01/19 18:00	81	21	60
Environment Overview and Scrutiny Committee	15/01/19 18:00	170	61	109
Cabinet	17/12/18 10:00	173	20	153
Planning Committee	13/12/18 18:00	110	21	89
Council	10/12/18 18:00	510	99	411
Joint Strategic Commissioning Board	04/12/18 14:00	30	12	18
Environment Overview and Scrutiny Committee	29/11/18 18:00	62	9	53
Business Overview and Scrutiny Committee	28/11/18 18:00	53	4	49
Adult Care and Health Overview and Scrutiny Committee	27/11/18 18:00	59	11	48
Adult Care and Health Overview and Scrutiny Committee	27/11/18 16:00	86	32	54
Cabinet	26/11/18 10:00	162	41	121
Standards and Constitutional Oversight Committee	20/11/18 18:00	25	3	22
Audit and Risk Management Committee	19/11/18 18:00	33	4	29
Planning Committee	15/11/18 18:00	95	10	85
Children and Families Overview and Scrutiny Committee	13/11/18 18:00	93	19	74
Adult Care and Health Overview and Scrutiny Committee	12/11/18 18:00	278	51	227
Standards and Constitutional Oversight Committee	07/11/18 18:00	39	3	36
Pensions Committee	29/10/18 18:00	41	4	37
Planning Committee	18/10/18 18:00	125	18	107
Joint Strategic Commissioning Board	16/10/18 14:00	83	19	64
Council	15/10/18 18:00	487	111	376
Cabinet	01/10/18 10:00	80	11	69
Children and Families Overview and Scrutiny Committee	25/09/18 18:00	76	16	60
Environment Overview and Scrutiny Committee	20/09/18 18:00	174	6	168
Business Overview and Scrutiny Committee	18/09/18 18:00	68	8	60
Planning Committee	13/09/18 18:00	164	32	132

Adult Care and Health Overview and Scrutiny Committee	12/09/18 18:00	134	12	122
Council	10/09/18 18:00	515	132	383
Standards and Constitutional Oversight Committee	29/08/18 17:00	23	1	22
Joint Strategic Commissioning Board	21/08/18 14:00	98	3	95
Planning Committee	16/08/18 18:00	85	15	70
Audit and Risk Management Committee	23/07/18 18:00	64	5	59
Cabinet	23/07/18 10:00	229	24	205
Planning Committee	19/07/18 18:00	156	19	137
Cabinet	16/07/18 09:50	48	5	43
Council	09/07/18 17:55	110	17	93
Planning Committee	21/06/18 17:55	82	11	71
Annual Full Council Part 2	15/05/18 17:45	144	10	134
Wirral Mayor Making Annual Council Part 1	14/05/18 18:45	146	15	131
Total Views:		8753	1842	6911

This page is intentionally left blank



STANDARDS AND CONSTITUTIONAL OVERSIGHT COMMITTEE

11 JUNE 2019

REPORT TITLE	<i>Local Government Ombudsman Report (March 2019)</i>
REPORT OF	<i>Graham Hodgkinson, Director of Care and Health</i>

REPORT SUMMARY

The Local Government Ombudsman (LGO) has investigated a complaint about the Council and found the Council at fault. It has made a number of recommendations that have been accepted in full. The Ombudsman has made the decision that the report would be published. The recommendations include that arrangements should be made for the report to be considered at full Council, Cabinet or another Committee with delegated authority. This report seeks to set out the action that has been taken, or will be taken, to avoid similar faults in future and to meet the recommendations of the report in full which have been accepted. The findings and recommendations were specific to the case that was investigated.

This report relates to two of the Wirral Plan pledges: older people live well, and people with disabilities live independently.

The decision is not a key decision. The findings do relate to all wards as some responses to the Ombudsman's recommendations will apply to all wards.

The report refers to Mr X as the son of the former service user, and for ease of reference the same approach has been taken in this report.

RECOMMENDATION/S

Members are asked to note the report and actions that have been or will be taken, in response to the Local Government Ombudsman's recommendations.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

- 1.1 Each case which comes to the Ombudsman takes account of the individual needs and circumstances of the person complaining when recommendations are made to remedy injustice caused by fault.
- 1.2 The Ombudsman has no legal power to force councils to follow recommendations, but they almost always do. Some of the things a council may be asked to do include issuing an apology, paying a financial remedy or improving its procedures so similar problems don't happen again. Most organisations agree to the LGO's recommendations. However if they do not, the LGO can issue a further report explaining how the organisation has not complied with its recommendations.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 The Ombudsman's recommendations have already been accepted in full.

3.0 BACKGROUND INFORMATION

- 3.1 Mr Y had health conditions and disabilities which caused him significant difficulty with mobility and completing daily living tasks. He lived on the ground floor of his home because he was not able to safely use the first floor. His son, Mr Z, lived on the first floor with his partner. They helped Mr Y with household tasks, although they found this difficult because of Mr Z's own health issues.
- 3.2 The Council arranged a package of care and support at home for Mr Y, for which he paid the full cost. The Council paid the care provider, and invoiced Mr Y. At the time of the events relating to the original complaint being made, the package consisted of four calls each day with two carers at each call as carers had to hoist Mr Y for all transfers. The support included help with personal care, meal preparation and medication.
- 3.3 His other son, Mr X, lived over 200 miles away and had a third-party mandate to access Mr Y's bank account.
- 3.4 Safeguarding issues were raised that firstly went unnoticed then, having been delayed for over one month, were not investigated adequately. The safeguarding enquiry was closed without being completed.
- 3.5 The Council's intention to focus on meeting needs rather than timed tasks is not an issue in itself; to some degree support should be flexible. However, the Council commissioned support based on the time it believed it should take to meet Mr Y's needs. With 59% of calls providing less than 75% of the time commissioned, it either commissioned far too much time, or the support fell far short of that planned. Whether Mr Y paid the full cost of his care, or a contribution, he should not pay for support he did not receive, and his care should have been reviewed when it was clear that the amount of time that was commissioned was not being provided.

3.6 The Council was also at fault in the way it dealt with Mr X's complaint. Had the Council dealt properly with Mr X's complaint, it should have picked up on these other problems sooner and acted to protect him.

4.0 Action taken which addresses the concerns from the LGO report

4.1 To remedy the injustice identified in their report the Ombudsman made a number of recommendations which the Council has taken steps to remedy or has plans to remedy.

1. Apologise to Mr X detailing the faults identified above and the action it has taken, or will take, to avoid similar faults in future.	This action has been completed.
2. Waive 50% of Mr Y's care fees to remedy the financial loss it caused.	There is a revised invoice being processed which will be sent to Mr X.
3. Pay Mr X £200 to remedy the frustration and stress it caused him.	This action has been completed.
4. Refer this case to the local safeguarding board for review.	This action has been completed.
5. Ensure all relevant complaints and assessment staff receive appropriate safeguarding training to ensure safeguarding issues are dealt with promptly and appropriately.	This action has been completed.
6. Review the complaint handling in this case and develop an action plan to ensure that there is an improved service in future.	This action has been completed.

4.2 In 2018 the Council ensured Social Work staff undertook a 2 day Safeguarding Training programme presented by an Independent Lecturer from the University.

4.3 The Council has worked with the Trust to be part of a national pilot of the Making Safeguarding Personal outcome questions. These support the development of safeguarding practice locally that is person centred.

4.4 The Council has since significantly improved the way domiciliary care is managed and kept under review, to accommodate changes in circumstances and ensure care packages meet people's needs as they change over time. These steps support how the Council avoids similar faults in future. The level of care commissioned is appropriate to the needs of each individual who receives this care.

4.5 The Council's aim is to ensure each of those who receive domiciliary care have their needs fully met by a care package which works flexibly to meet their specific needs,

and that if there are complaints these are dealt with quickly and fairly. The following sections outline the steps that have been taken to support these improvements.

Trusted Assessor Process

- 4.6 In order to improve the customer journey within domiciliary care, Wirral Health and Care Commissioning (WHCC) has worked closely with Wirral NHS Community Foundation Trust in developing and embedding a business process to allow trusted assessment and review of domiciliary care packages in the community in order to allow Domiciliary Care Providers ('the Provider') to be able to make adjustments to care packages in a very responsive and timely fashion.
- 4.7 This new system was piloted for 6 months from Jan 2017 and following a very successful review, a decision was made to roll it out to all Tier 1 and 2 Providers in Wirral.
- 4.8 Under the Trusted Assessor process, the Provider completes a review of the care package being provided; inclusive of risk assessment and will include any family or significant person reviews and a reminder re potential for changes to charging. The provider continues to keep the case under review over the lifetime of the package of care to ensure that services delivered continue to meet needs and also that people are able to live to their maximum independence level. Under the new care and support at home contract, providers must:
- supply a caring, compassionate workforce of staff that are skilled, have access to training and provide a timely responsive, proactive approach in supporting people and their families. (see training requirements below);
 - adapt a Trusted Assessor approach by working collaboratively with key partners to promote independence, reduce dependency and work collaboratively on streamlined business processes;
 - support early intervention and chronic condition management, preventing the escalation of conditions and individuals entering acute settings inappropriately and minimising the disruption and number of professional interventions in an individual's daily life. (Services are to be rooted in asset-based approaches, embedding different conversation and community connections into the support plan and the care delivered on a day to day basis);
 - ensure that care and support packages meet individual needs, focusing on personalised care and outcomes for individuals. (Their staff will value and respect the individual's home and their personal possessions, demonstrating empathy and sensitivity in the care and support that they provide, acting upon specific cultural or religious requirements requested by the individual and their family);
 - work with partners to develop and embed the innovative use of a wide range of technology to support, efficient and effective care and Support at home, particularly telehealth and telecare, and within the lifetime of the contract be considered as prescribers of equipment to ensure effective capacity and flow, and right time response for people as required;
 - work with all partners to ensure that support is scheduled so that care workers are not rushed; have the time to talk and meet Customers' needs and to ensure that they get to their next visit on; and

- have robust contingency plans in place to ensure the safe, reliable and effective delivery of Care and Support at Home to Wirral residents, where unexpected or unplanned events occur.

Staff Training/Induction

- 4.9 The Provider must ensure that, all staff employed after March 2015, achieve the Care Certificate (as defined by the Department of Health, Skills for Care England and the Care Quality Commission).
- 4.10 All Managers responsible for the service must receive an induction commensurate with Skills for Care's Management Induction Standards completed within the first 12 weeks of employment.
- 4.11 In order to demonstrate their compliance with Contractual obligations, the Provider must:
- submit a monthly Service Quality Performance Report, cover a whole range of Performance Management requirements; and
 - prepare for and attend quarterly monitoring meetings with the Council in order to discuss the information submitted in the Service Quality Performance Report.

The Council has increased the staffing resource available to the complaints team. The team have undertaken safeguarding training. The team have established robust procedures for monitoring its performance.

5.0 FINANCIAL IMPLICATIONS

- 5.1 The Council has agreed to pay £200 as a gesture of goodwill and would waive 50% of the care costs amounting to £13,700.

6.0 LEGAL IMPLICATIONS

- 6.1 The recommendations have no legal implications as the Ombudsman has not made findings or recommendations in relation to policy. Section 31 of the Local Government Act 1974 requires the report of the LGO to be considered by Cabinet or a delegated Committee of the Council.

7.0 RESOURCE IMPLICATIONS: ICT, STAFFING AND ASSETS

- 7.1 The resource implications are financial largely.

8.0 RELEVANT RISKS

- 8.1 The risks are around a similar issue recurring and the mitigation is the action we are taking and proposing to take to prevent this.

9.0 ENGAGEMENT/CONSULTATION

9.1 There is none planned in relation to this report.

10.0 EQUALITY IMPLICATIONS

10.1 N/A.

REPORT AUTHOR: *Simon Garner*
Lead Commissioner for All Age Independence
telephone: (0151) 666 3726
email: simongarner@wirral.gov.uk

APPENDICES: LGO Report

BACKGROUND PAPERS

SUBJECT HISTORY (last 3 years)

Council Meeting	Date

**Report by the Local Government and Social Care
Ombudsman**

**Investigation into a complaint against
Wirral Metropolitan Borough Council
(reference number: 17 020 182)**

28 March 2019

The Ombudsman's role

For 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

Mr X	The complainant, and Mr Y's son
Mr Y	His father
Mr Z	Mr Y's other son

Report summary

Adult social care (home care)

Mr X complains that the Council provided his late father, Mr Y, with a home care service which was not adequate, and charged him for a service he did not receive. When he complained, he says the Council failed to deal with his complaints properly or take effective safeguarding action.

Finding

Fault found causing injustice and recommendations made.

Recommendations

To remedy the injustice caused, we recommend the Council:

- apologise to Mr X detailing the faults identified and the action it has taken, or will take, to avoid similar faults in future;
- waive 50% of Mr Y's care fees to remedy the financial loss it caused;
- pay Mr X £200 to remedy the frustration and stress it caused him;
- refer this case to the local safeguarding board for review;
- ensure all relevant complaints and assessment staff receive appropriate safeguarding training to ensure safeguarding issues are dealt with promptly and appropriately; and
- review the complaint handling in this case and develop an action plan to ensure an improved service in future.

The complaint

1. The complainant, whom I shall refer to as Mr X, complains that the Council provided his late father, Mr Y, with a home care service which was not adequate. He says it:
 - provided fewer hours than it was contracted to deliver;
 - kept inadequate records;
 - issued inaccurate bills;
 - failed to carry out effective safeguarding investigations; and
 - handled his complaints about these issues poorly.
2. Mr X says he spent a lot of time trying to get the right care for Mr Y. The problems caused Mr Y disappointment and distress because of the shortfalls. He could not raise the issues with the Council himself.
3. Mr X also says he does not have a problem with paying for care which was properly provided and invoiced. He does not agree that Mr Y should pay for care he did not receive or which was not properly invoiced.

Legal and administrative background

The Ombudsman's role

4. We investigate complaints about 'maladministration' and 'service failure'. In this report, we have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
5. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*).

In this case, Mr X first raised some of the issues in 2016 and formally complained to the Council in January 2017. The Council provided Mr X with its final response in March 2018 and he then came to us. For this reason, we have exercised discretion to consider the issues back to 2016.

6. We may investigate a complaint on behalf of someone who has died or who cannot authorise someone to act for them. The complaint may be made by:
 - their personal representative (if they have one), or
 - someone we consider to be suitable.(*Local Government Act 1974, section 26A(2), as amended*)
7. In this case, we decided Mr X was a suitable person to complain on Mr Y's behalf.

Safeguarding

8. A council must make necessary enquiries if it has reason to think a person may be at risk of abuse or neglect and has needs for care and support which mean he or she cannot protect himself or herself. It must also decide whether it or another

person or agency should take any action to protect the person from abuse or risk.
(*section 42, Care Act 2014*)

9. The Wirral Multi Agency Adult Safeguarding Procedure says:
 - “A principle of no delay applies to all safeguarding adults work” (p23).
 - “Ideally an investigation should be concluded within 28 days” (p23).
 - “The most important element in determining when a safeguarding enquiry can be concluded will be whether the individual is as safe as they can be and that risk has been appropriately identified and mitigating actions taken where possible” (pp23/24).
 - “The initial enquiries will begin on the day of receipt of referral, to ascertain whether the criterion is met, and to check the immediate safety of the adult has been ensured” (p24).

How we considered this complaint

10. We produced this report after examining relevant documents and interviewing the complainant and relevant employees of the Council.
11. We gave the complainant and the Council a confidential draft of this report and invited their comments. The comments received were taken into account before the report was finalised.

What we found

What happened

12. Mr Y had health conditions and disabilities which caused him significant difficulty with mobility and completing daily living tasks. He lived on the ground floor of his home because he was not able to safely use the first floor. Another son, Mr Z, lived on the first floor with his partner. They helped Mr Y with household tasks, although they found this difficult because of Mr Z's own health issues.
13. The Council arranged a package of care and support at home for Mr Y, for which he paid the full cost. The Council paid the care provider, and invoiced Mr Y. By the time of these events, the package consisted of four calls each day with two carers at each call as carers had to hoist Mr Y for all transfers. The support included help with personal care, meal preparation and medication.
14. Mr X lived over 200 miles away and had a third party mandate to access Mr Y's bank account.
15. In July 2016, the Council wrote to Mr Y about outstanding invoices.
16. In August, Mr X emailed the Council because he had found invoices at Mr Y's home and needed more detail before he could arrange payment. He asked the Council to send him copies of invoices by email in future so that he could pay them. He said it was difficult for Mr Y to deal with in his current state of health.
17. The Council completed a review of Mr Y's care package to ensure it was meeting his needs. The review identified that carers had not been using his hoist and sling for transfers and the assessor had concerns that the methods they used were not safe. An occupational therapist (OT) visited with the assessor a few days later and agreed with this view. The OT updated the records in Mr Y 's home and advised the Care Provider that two carers should use the hoist and sling for all transfers.

-
18. The Council asked the Care Provider about the time it spent on the morning call. The Care Provider advised it had been asked to provide a 45 minute call when it took over, and two carers had always completed the tasks within that time.
 19. In early autumn Mr Y's care provider changed.
 20. The chronology of the assessment documentation is difficult to follow but it appears the Council carried out an assessment in September. It notes that Mr X would support Mr Y with finances if required, but he didn't hold powers of attorney.
 21. In November, Mr X emailed the Council and copied in the Care Provider because he still had not received a response to his August email.
 22. In January 2017, Mr X wrote to the Assistant Director Health and Care Outcomes, thanking him for responding to a message he had left. Mr X said he had not received any response to either his August email, or his November email. He said again that he needed to see invoices to make payment. Also, that he was happy to pay "any relevant, appropriate and justified bills for care services" but did need to see what had been provided. He said Mr Y was "disabled, depressed and not in a fit state to deal with the Council about payment of services". He said Mr Y's funds would not last long with care bills of £1,500 per calendar month and asked whether the Council could provide any support. He also listed five issues which had arisen with the Care Provider since it had taken over the care package.
 - Mr Y's eye drops not administered.
 - Mr Y not strapped into his wheelchair creating a fall risk.
 - Carers not washing up after meals and dirty dishes left in the sink.
 - Carer kicking soiled bedding into the kitchen and used pads/underwear left in open bins in the kitchen.
 - Carers putting heavily soiled clothes in the washing machine without soaking.
 23. The Assistant Director responded five days later. He said he had passed the complaint on and put a hold on any automatic letters chasing unpaid invoices while the complaint was investigated.
 24. On 19 January 2017, the Council wrote to Mr X confirming who would investigate. The deadline for completion was 28 February.
 25. On 27 February, one of the Council's internal emails shows the complaint had not yet been considered. A manager decided some of the issues should have been addressed through safeguarding procedures. The officer dealing with his complaint wrote to Mr X to advise it would not be able to complete the investigation by 28 February but expected to respond by 7 March.
 26. On 1 March, the Council began the safeguarding process.
 27. On 15 March, a Council officer visited Mr Y who confirmed the complaints and raised some new issues. He said the hoist had fallen over with him in it two days previously, and there had been problems with his medication. Mr Y said he was not hurt. The officer found no record of the incident with the hoist but found evidence of discrepancies with medication which had caused an increased risk of seizures. She reported these additional safeguarding concerns. Further enquiries revealed discrepancies with the carers' completion of the communication log and medication not administered although signed for. The carers denied the incident

-
- with the hoist. The officer advised that laundry was not part of the care package and carers had been doing this in their “spare time”.
28. On 17 March 2017, the officer met with the Care Provider. When the Council investigated Mr X’s complaint, it did not find any notes from the meeting and the officer could not recall what specific issues they discussed. The Care Provider believed they had focussed on concerns about the hoist and medication.
 29. On 28 March, the officer met with Mr Z. He felt heavily soiled laundry should be soaked before putting in the washing machine. The officer said she was waiting for feedback on this from the Care Provider. When the Council investigated Mr X’s complaint, it did not find any further contact on this matter which remained unaddressed. The Council closed the original safeguarding case about the five issues raised in Mr X’s original complaint letter of January.
 30. In April, Council records note that visit duration had not improved. It chased the Care Provider who interviewed carer A, one of the regular carers. Carer A had signed for medication he had not given and was on duty when Mr Y said he had fallen in the hoist. Carer A denied the fall from the hoist. He said he could not have picked Mr Y up if he had fallen and said Mr Y made stories up.
 31. On 19 April, the Council wrote to Mr X to advise that some of the issues he had raised were being addressed under safeguarding procedures. It said it would need more time to address the invoice issues.
 32. In May, Mr X wrote to the Council stating he had not heard from the Council since February. He said Mr Y was still receiving letters threatening recovery by the Head of Legal Services if payment was not made within seven days. Fortunately, these had been intercepted by Mr Z as Mr Y was in hospital again. Mr X asked the Council to stop sending threatening letters, to communicate with him by email and treat him as Mr Y’s representative.
 33. The Council wrote back and said although it had put a hold on recovery action, it had a duty to send invoices so people are aware of the financial situation. It said it would not send reminders but would continue to send invoices to Mr Y. It also said it does not have a record that Mr Y lacked capacity to deal with his finances and no record of a power of attorney, so wanted a letter of authority from Mr Y. Mr X replied saying he was content for the bill to go to Mr Y as long as he would not be sent threatening letters, and that he would receive a copy by email.
 34. In June 2017, a district nurse visited Mr Y at home and found he was in his wheelchair without the lap belt and at risk of falling out. Also, the hoist sling was upside down. She called an auxiliary nurse and the Care Provider. When the auxiliary nurse arrived, the nurses made Mr Y safe. The carers who arrived said they had not been trained in hoisting.
 35. A social worker visited Mr Y with a district nurse. Mr Y said carer A had been put out because Mr Y told him about moving the bed quickly and disconnecting the lifeline alert. Mr Z also reported that carer A and carer B, who usually attended with carer A, had been unpleasant about the house and family. Professionals met to discuss the issues and agreed that carers A and B should no longer support Mr Y.
 36. In March 2018, the Council sent its final response to Mr X’s complaint.
In relation to the standard of care issues it found:
 - significant delay sharing the issues with the social work team, identifying safeguarding issues and beginning the safeguarding process; and

-
- it had failed to properly consider the safeguarding concerns, and had not considered some issues at all. It apologised for this.

In relation to the care charges and short visits it found:

- 59% of calls provided less than 75% of the time commissioned;
- a shortfall of 579 hours 19 minutes; and
- a small proportion of calls exceeded the commissioned time; it gave no information about how much extra.

The Council said “the focus is very much on completing the tasks required to meet the need. If that means the calls take longer than the scheduled time or less, that is acceptable”. It pays for care in 15 minute blocks so would round up a call to the nearest 15 minutes. It says the amount charged has been calculated correctly.

In relation to the delays and poor complaint handling it found:

- it did not respond to Mr X’s complaint within the set timescales;
- the response letter contained incorrect information including the date; and
- it had found a clear failing in the service.

It apologised that the complaint had not been managed in an acceptable way and enclosed a cheque for £200 as a gesture of goodwill. It advised that Mr Y’s outstanding balance exceeded £26,000.

37. The Council said, in response to our draft report, that Mr Y cancelled or cut short many calls but the Care Provider has not recorded this information. It also says the Care Provider took on a lot of additional work for the Council at a time of great pressure and this affected its recording.

Conclusions

38. The Council has acknowledged several faults in its response to Mr X’s complaint. Some of these faults were serious, particularly around the way it dealt with the complaint which contained safeguarding issues.
39. We are concerned that these safeguarding issues firstly went unnoticed, then having been delayed for over one month, were not investigated adequately. The safeguarding enquiry was closed without being completed; this is unacceptable. We know from later incidents that carers continued to put Mr Y at a greater risk of harm than he was already. When the Council did follow up on the issues, it asked the Care Provider to interview staff and took its word about Mr Y’s allegation that the hoist fell over with him in it. We found the Council was at fault here in the way it dealt with the safeguarding which was contrary to its own procedure.
40. The Council said it was acceptable for care calls to be shorter than commissioned if the person’s needs are met safely, but Mr Y’s needs were not being met safely. Carers moved the bed too quickly and disconnected the lifeline alert, were not trained in hoisting and did not strap Mr Y in his wheelchair. They also did not complete records adequately and signed for medication they did not give, putting Mr Y at an increased risk of seizures. These are all serious concerns which put Mr Y at a significant and avoidable risk of harm over at least 18 months. Unfortunately, we cannot now put this right for Mr Y as he has since died.
41. The Council’s intention to focus on meeting needs rather than timed tasks is not an issue in itself; to some degree support should be flexible. However, the

Council commissioned support based on the time it believed it should take to meet Mr Y's needs. With 59% of calls providing less than 75% of the time commissioned, it either commissioned far too much time, or the support fell far short of that planned. Whether Mr Y paid the full cost of his care, or a contribution, he should not pay for support he did not receive. The Council has provided some reasons why recording was deficient but we cannot say Mr Y should pay for a service which records suggest he did not receive. The Council was at fault here, and caused Mr Y a significant financial loss.

42. The Council was also at fault in the way it dealt with Mr X's complaint. Had the Council dealt properly with Mr X's complaint, it should have picked up on these other problems sooner and acted to protect him. The repeated delays and lack of response to Mr X's communication, caused Mr X significant and avoidable frustration and stress. Mr Y had told the Council that Mr X would support him with finances if required during his assessment in September 2016. Although there was no legal authority for Mr X to act on his behalf beyond his bank account, the Council does not appear to have had concerns about Mr X's intentions. If it did, it should have taken protective action. Under these circumstances, it could have been more pragmatic about this. Mr X clearly obtained invoices when he visited and it was in Mr Y's interests for Mr X to pay his care bills rather than risk legal action. The Council did not need to treat Mr X as a legal representative; this would be wrong. It just needed to provide Mr X, whom Mr Y had authorised to use his bank account, with copies of the invoices. We found the Council was at fault here and caused Mr X significant and avoidable frustration and stress.

Recommendations

43. To remedy the injustice identified in this report we recommend the Council:
- apologise to Mr X detailing the faults identified above and the action it has taken, or will take, to avoid similar faults in future;
 - waive 50% of Mr Y's care fees to remedy the financial loss it caused;
 - pay Mr X £200 to remedy the frustration and stress it caused him;
 - refer this case to the local safeguarding board for review;
 - ensure all relevant complaints and assessment staff receive appropriate safeguarding training to ensure safeguarding issues are dealt with promptly and appropriately; and
 - review the complaint handling in this case and develop an action plan to ensure an improved service in future.
44. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

Decision

45. We have completed our investigation into this complaint. There was fault by the Council which caused injustice to Mr Y and Mr X. The Council should take the action identified in paragraphs 43 to 44 to remedy that injustice

This page is intentionally left blank