



Standards Panel

Date:	Wednesday, 4 December 2019
Time:	6.00 p.m.
Venue:	Cabinet Briefing Room - Wallasey Town Hall

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AGENDA

PART 1

- 1. APPOINTMENT OF CHAIR**
- 2. MEMBERS' CODE OF CONDUCT - DECLARATIONS OF INTEREST**

Members of the Panel are asked to consider whether they have any disclosable pecuniary and/or any other relevant interest, in connection with any of the items on this agenda and, if so, to declare it and state the nature of the interest.

- 3. ARTICLE 9 OF THE COUNCIL'S CONSTITUTION, THE MEMBERS' CODE OF CONDUCT AND PROTOCOL (Pages 1 - 40)**

The following documents are included with the agenda for Members' information:

- (a) Article 9 of the Council's Constitution which relates to The Standards and Constitutional Oversight Committee;
- (b) The Members' Code of Conduct; and
- (c) The Protocol on arrangements for investigating and making decisions in relation to allegations made under the Members' Code of Conduct.

- 4. EXEMPT INFORMATION - EXCLUSION OF THE PRESS AND PUBLIC**

The following items contain exempt information.

RECOMMENDATION: That, under section 100 (A) (4) of the Local Government Act 1972, the public be excluded from the meeting during

consideration of the following items of business on the grounds that they involve the likely disclosure of exempt information as defined by the relevant paragraphs of Part I of Schedule 12A (as amended) to that Act. The Public Interest test has been applied and favours exclusion.

PART 2

5. CONSIDERATION OF A STANDARDS COMPLAINT (Pages 41 - 66)

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 The Committee shall have delegated power and responsibility to act on behalf of the Council as Trustee of the E.F Callister Youth Club.

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>

Securities	<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>
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MEMBERS' CODE OF CONDUCT

PROTOCOL

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

February 2019

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1. Introduction and Summary

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

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

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

- 1.3 Any action/steps taken, discretion exercised and decisions made pursuant to this Protocol must promote the following:

- a. Fairness to all parties and in proceedings;
- b. Accountability;
- c. Transparency of decision making;
- d. Efficiency; and
- e. Value for money.

2. Making a Standards Complaint

- 2.1 Complaints about the behaviour/conduct of a Member(s) must be made in writing using the prescribed ‘complaint form template’ set out at Appendix 1 to this Protocol (unless otherwise accepted by the Monitoring Officer) which is obtainable from the Council’s website and addressed to the Monitoring Officer. In line with the requirements of the Equality Act 2010 (and other related legislation), the Council can make reasonable arrangements to assist people if they have a disability that prevents them from making a Standards Complaint in writing or using the website.

- 2.2 As a matter of fairness and natural justice, a Member should usually be told who has complained about them and the nature of the complaint. The Monitoring Officer will acknowledge receipt of the complaint within 5 working days of receiving it. A full copy of the complaint will, subject to any ruling on disclosure, ordinarily be sent to the Member complained about 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 and they do not attend 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).

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By virtue of paragraph(s) 1, 2, 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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