



## Constitution and Standards Committee

<b>Date:</b>	<b>Wednesday, 25 November 2020</b>
<b>Time:</b>	<b>6.00 p.m.</b>
<b>Venue:</b>	<b>Virtual</b>

**Contact Officer:** Patrick Sebastian  
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### AGENDA

1. **NOMINATION OF CHAIR AND VICE CHAIR OF THE CONSTITUTION AND STANDARDS COMMITTEE**
2. **APOLOGIES FOR ABSENCE**
3. **MEMBERS DECLARATION OF INTERESTS**
4. **PUBLIC AND MEMBER QUESTIONS**
  - 4.1 **Public Questions**

Notice of questions to be given in writing or by email, by 12noon, Friday, 20 November, 2020 to the Council's Monitoring Officer and to be dealt with in accordance with Standing Order 10.
  - 4.2 **Statements and Petitions**

Representations and petitions to be dealt with in accordance with Standing Order 11.
  - 4.3 **Questions by Members**

Questions by Members to be dealt with in accordance with Standing Orders 12.3 to 12.8.
5. **CHANGE IN GOVERNANCE ARRANGEMENTS: UPDATE ON IMPLEMENTATION (Pages 1 - 6)**
6. **REMOTE MEETINGS UPDATE (Pages 7 - 12)**

7. **UPDATE ON THE PREPARATION OF THE MODEL CODE OF CONDUCT (Pages 13 - 38)**
8. **SUMMARY OF STANDARDS COMPLAINTS (Pages 39 - 44)**
9. **ESTABLISHING THE STANDARDS PANEL AND STANDARDS APPEAL PANEL (Pages 45 - 82)**



## CONSTITUTION AND STANDARDS COMMITTEE

25<sup>th</sup> November 2020

<b>REPORT TITLE:</b>	<b>Change in Governance Arrangements: Update on Implementation</b>
<b>REPORT OF:</b>	<b>Director of Law and Governance</b>

### REPORT SUMMARY

This report provides the Committee with an overview in respect to the implementation of the change in governance arrangements following the adoption of a new Constitution by the Council at the Annual Meeting held on the 28<sup>th</sup> September 2020.

The report is divided into three parts:

- Implementation of the Committee programme
- Training Update
- Constitution Review and Work Programme

This is not a key decision.

### RECOMMENDATION/S

The Constitution and Standards Committee are invited to consider and comment on the report and are further requested to nominate Members to sit on the Governance Working Group.

## **SUPPORTING INFORMATION**

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

- 1.1 The Committee are requested to comment on the implementation of the new Constitution and the change in governance arrangements thus far and to agree the appointment of a Governance Working Group to consider any proposed changes/updates to the Constitution so as to enable recommendations of that Group to be submitted to future meetings of the Constitution and Standards Committee for consideration.

### **2.0 OTHER OPTIONS CONSIDERED**

- 2.1 Not to appoint a Governance Working Group at the present time.

### **3.0 BACKGROUND INFORMATION**

- 3.1 Implementation of the Committee Programme

The demands placed on Members and Officers has not prevented thus far the implementation of a full programme of Committee meetings as approved at the Annual Council Meeting. The Policy and Resources Committee meets on a four-weekly cycle with the majority of the remaining Committees meeting on a six-weekly cycle. For each of the seven Policy Committee meetings, two briefing sessions are held for Chairs and Group spokespersons. Session A – is a general discussion on matters effecting the Committee with a view to managing the future work programme and forthcoming meetings' agenda. Session B – is an agenda meeting in advance of the publication of the Committee agenda, which is a focused meeting where senior officers are able to brief the Committee Chair and Group spokespersons and address issues arising in their draft reports.

Thus far, the first cycle of meetings has resulted in each of the Policy Committees having now met. These meetings were held in late October/early November 2020. Regulatory Committees continue to meet on the same cycle and the first meeting of the Partnerships Committee was held on the 9<sup>th</sup> November with partners actively engaged in the meeting. This is, therefore, still very much at an early stage of bedding in as a set of new governance arrangements.

In addition, the truncated municipal year has resulted in a round of workshops for Members to comment on proposals to aid the Policy and Resources Committee in formulating a Budget. These will feed into P&R workshop and the formal meeting, resulting in a draft Budget to be subject to consultation process with the public and formal comment from the Committees prior to P&R making a recommendation in February 2021.

The Coronavirus response continues to tax the resources of the staff and system, with discussions on how the Council might need to respond in terms of meetings and agenda management continuing.

These meetings have been held in remote form, which is the subject of a separate report.

### 3.2 Training Update

One of the key elements of the project plan for the change in governance arrangements was to implement a training programme for both Members and Officers.

Since January 2020, examples of training provided include:-

- Group briefings and all member briefings Jan – March 2020
- Two Chairs' sessions were run by the Centre for Public Scrutiny in July 2020
- Directorate sessions in October/November on Member /Officer engagement
- Committee system training sessions for officers on the Senior Leadership Team (SLT) and Corporate Management Team (CMT) in July 2020
- Two sessions on report writing in July 2020
- Directorate briefing sessions: five directorate teams briefed so far on the change in governance arrangements
- External trainers, Bethan Evans and Kirsty Cole, have been engaged to run tailored training on the committee system and constitutional requirements respectively
- Creation of a Report Author webpage with video tutorials and online training – supported by Team Around the Committee officer support
- Director of Law & Governance/Head of Democratic Services continues to provide report writing support and training sessions

Feedback from Members has been extremely positive. A number of all Member Briefing Sessions have been held in October utilising remote/virtual meeting opportunities for the Senior Leadership Team to engage with and brief Members.

A process has also started to review Member Learning & Development in the wider sense. An officer group has been created led by the Head of Democratic Services and supported by the Group Officer Managers and colleagues in Organisational Development. Immediate successes over the summer included the production of a training booklet for Members detailing both internal and external training opportunities, the holding of individual 1:1 meetings and the undertaking of a pilot for the Members portal. A meeting of the Member & Development steering group is to be held on 23<sup>rd</sup> November 2020 for Members to discuss:-

- The outcomes/findings of the 1:1 sessions with Members and they can support/inform future development and opportunities
- Outcomes from the Member portal trial and next steps
- New Member induction – impact of Covid

### 3.3 Constitution Review

The Constitution as adopted at the Annual Meeting of Council in September 2020 took place at the same meeting as the Council moved into the Committee system form of governance. The Council's Constitution was intended to establish governance arrangements that reflected its desire to move to a streamlined committee system that it felt best met the set objectives of:

- **Accountability** – responsibilities and accountability should be clear, within the Council and to residents;
- **Credibility** – governance should assist good decision making, which involved proper and early scrutiny;
- **Transparency** – the decision making process should be more open and transparent to Members and to the public;
- **Collaboration** - decision making should be more collaborative across parties and less combative;
- **Timeliness** – decision making should be both quick and effective and, when necessary, allow for urgent decision making.

It was noted at the September 2020 meeting of the Standards and Constitutional Oversight Committee that there remained areas of the draft revised Constitution that are due or are mid-way through a process of being updated, but remain outstanding at the time of this report. These in particular are:

- (a) Member Code of Conduct – Subject of a separate report to this meeting.
- (b) Financial Regulations – These have been updated to accommodate the change to the Committee system but are due a further and complete review will be undertaken in coming months. This will seek to simplify the Financial Regulations and give consideration to shortening them, with day to day detailed material transferring to a Financial Handbook.
- (c) Contract Procedure Rules (Standing Orders) – Minor amendments have been made and updates included, such as transposing the Social Value Policy into the rules, but a full review is required in due course.
- (d) Whistleblowing Policy – This is a review, considered by the Audit and Risk management Policy, that is almost complete and a report is to come before Members shortly but has not yet been considered.
- (e) The list of appointments to outside bodies will also require a review in due course.

Members of the then Governance Working Group identified these and noted that experience is likely to highlight a number of issues that members may wish to consider in greater detail after the Annual Council meeting. Officers have also identified issues that they would like Members to give further consideration to. With

that in mind, the Constitution and Standards Committee are requested to nominate Members to sit on a Governance Working Group and further request the Director of Law and Governance to make arrangements for that group to discuss the following:-

- Public Statements – clarification in respect to speaking on non-procedural items and deadline for registering to speak
- Review of the Petition Scheme/deadline for submission
- Interruption of the meeting - clarification in respect to Standing Orders 9.1 and 15.11
- A further discussion in respect to the Media Guidelines
- Meeting times
- Substitutes for Decision Review Committee when a Member has a conflict of interest.

Members of the Committee are requested to identify and further issues that they would like the Working Group to consider.

#### **4.0 FINANCIAL IMPLICATIONS**

4.1 There are no financial implications arising from this report

#### **5.0 LEGAL IMPLICATIONS**

5.1 Section 9P of the Local Government Act 2000 (as amended for England) requires that a local authority must prepare and keep up to date a document (referred to in this section as its constitution) which contains—

- (a) a copy of the authority's standing orders for the time being,
- (b) a copy of the authority's code of conduct (if any) for the time being under section 28 of the Localism Act 2011,
- (c) such information as the Secretary of State may direct, and
- (d) such other information (if any) as the authority considers appropriate

5.2 The additional requirement to comply with a Direction of the Secretary of State as to what information a constitution must contain has been repealed (for England) since the last Council Constitution was drafted. The original Direction remains a useful checklist, however, containing as it does some eighty-two items of information that should be available to the public through a council's constitution. Likewise the Guidance issued concerning the Model Constitution under the Local Government Act 2000 as enacted.

5.3 The Constitution therefore contains a mixture of those standing orders and requirements that are a matter of choice for the Authority and those that are mandatory, including those pursuant to the now applicable Local Authorities (Committee System) (England) Regulations 2012.

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

6.1 There are no resource implications arising directly from this report

## **7.0 RELEVANT RISKS**

7.1 There are no risks arising from this report.

## **8.0 ENGAGEMENT/CONSULTATION**

8.1 Member have been engaged in respect to a number of the issues outlined in this report. Members will be fully consulted on any future changes to the Constitution and the intention is to increase the frequency of meetings of the Member Learning & Development Group.

## **9.0 EQUALITY IMPLICATIONS**

9.1 There are no equality implications arising from this report.

## **10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS**

10.1 There are no direct environment or climate implications arising from this report.

### **REPORT AUTHOR:**

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## **APPENDICES**

### **BACKGROUND PAPERS**

Constitution  
Member L&D Booklet

### **SUBJECT HISTORY (last 3 years)**

<b>Council Meeting</b>	<b>Date</b>
Annual Meeting	<b>28<sup>th</sup> September 2020</b>





## CONSTITUTION AND STANDARDS COMMITTEE

25<sup>th</sup> November 2020

<b>REPORT TITLE:</b>	<b>Remote Meetings Update</b>
<b>REPORT OF:</b>	<b>Director of Law and Governance</b>

### REPORT SUMMARY

This report provides the Committee with an update in respect to the implementation of the programme of remote Committee meetings since April 2020 in direct response to the Covid pandemic and requests the Committee to give consideration to the future application of Standing Order 11.1 'Representations' for remote meetings .

This is not a key decision.

### RECOMMENDATION/S

The Constitution and Standards Committee are requested to

1. consider and comment on the report and
2. recommend to Council that in respect to Standing Order 11.1 'Representations' – the deadline for the public registering to speak be brought forward to no later than midday three working days before the day of the meeting, in line with the deadline for the submission of public questions.

## **SUPPORTING INFORMATION**

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

- 1.1 The Committee are requested to comment on and offer any feedback in respect to the holding and conducting of remote meetings over the last 8 months and give consideration to the future application of Standing Order 11.1 for remote Committee Meetings.

### **2.0 OTHER OPTIONS CONSIDERED**

- 2.1 Not amending Standing Order 11.1 or choosing an alternative deadline for registering to speak.

### **3.0 BACKGROUND INFORMATION**

#### **3.1 Implementation of the Committee Programme**

In spite of the additional demands and challenges placed on Members and Officers by virtue of the Covid pandemic, a full programme of Committee meetings has been embarked upon since the adoption of the new Constitution in September 2020 and prior to that, Regulatory Committees and selected other Committees continued to meet between April and September 2020 predominantly to consider planning and licensing matters. A full list of meetings held between April 1<sup>st</sup> 2020 and 31<sup>st</sup> October 2020 is listed below:-

- ACH O&S Committee Budget Proposals Scrutiny Workshop - 1
- Adult Social Care and Health Committee - 1
- Audit and Risk Management Committee - 1
- Children, Young People & Education Committee - 1
- Council - 3
- Economy Regeneration & Development Committee - 1
- Employment & Appointments Panel (Assistant Director: Asset Management and Investment) - 1
- Employment & Appointments Panel (Assistant Director: HR / Organisational Development) - 1
- Employment & Appointments Panel (Assistant Director: Neighbourhoods, Safety and Transport) - 1
- Environment, Climate Emergency and Transport Committee - 1
- Housing Committee - 1
- Licensing Act 2003 Sub-Committee - 8
- Licensing Act Committee - 2
- Licensing Panel - 3
- Liverpool John Lennon Airport Consultative Committee - 1
- Local Pensions Board - 1
- Noise Monitoring Sub Committee - 2
- Pensions Committee - 1
- Planning Committee - 12
- Policy and Resources Committee - 1

- Regulatory and General Purposes Committee - 3
- Tourism, Communities, Culture & Leisure Committee - 1
- Wirral Growth Company Board Meeting - 2

**Total – 50**

Members should also note that during the same period 408 individual Admission Appeals were held by remote means enabling parents to meet and have their cases heard by the Independent Appeals Panel.

### 3.2 Remote Meetings

The implementation of the Committee programme of remote meetings has been challenging for Members and Officers. The meetings are considerably more labour intensive in respect to the practical arrangements for holding a meeting. This is most evident when considering the arrangements for a Council Meeting. However, the effort has enabled Members to continue to meet remotely, be seen and heard as required by legislation and, significantly, for decisions to continue to be made and where appropriate for the public to be engaged.

The vast majority of Members have responded well to the additional demands placed upon them and can participate with little difficulty. Training has been provided in the use of Teams, Remote Meetings Procedures were adopted at the Council Meeting in July 2020 and were subsequently incorporated into the Constitution. To support Committee Chairs a meeting etiquette protocol was designed which has stood up well to the running of meetings. Additional support has also been provided to Committee Chairs for meeting preparation.

Officers in the IT section have engaged with all Members to address any specific technical difficulties that they may have experienced including connectivity, line speeds and Surface Pro reliability. Group Office Managers and Democratic Services Officers remain on hand to support Members whilst remote meetings continue.

It should be noted that a system which is so reliant on the use of technology has not been without problems. Remote meetings are naturally longer and involve roll calls on attendance and votes to enable members of the public viewing the webcast to see and hear a member's voting intention. Furthermore, the support provided to the Chairs during the course of a meeting is an area that continues to develop. Work is on-going between Democratic Services Officers, IT and Public-i , the Council's software provider to make the webcast of the meetings as reliable as possible.

### 3.3 Public Speaking/Representations

Enabling members of the public to speak and engage at Committee meetings is a difficult process and has proved problematic. One of the main difficulties is that currently under section 11.1 of the Standing Orders 'Representations' it states

*A member of the public may speak on up to two non-procedural items on any Agenda if notice has been given no later than 15 minutes before the start of the meeting. The Mayor may, at his or her discretion, limit the number of speakers and the time each speaker may speak for. No speech should exceed three minutes.*

*Each member of the public may only speak once. Public speaking on any one item shall not exceed 10 minutes, subject to the Mayor's discretion to extend the time if he or she considers it appropriate.*

The 15 minute deadline is not practical for officers to make the necessary arrangements for the public to participate. Consequently, the Constitution and Standards Committee are requested to support the proposal that the deadline for registering to speak be brought forward to no later than midday three working days before the day of the meeting, in line with the deadline for the submission of public questions.

### 3.3 Future Meetings

The use of Microsoft Teams for the holding of remote meetings and likewise Public-i software to enable the continued webcasting of Council and Committee meetings has enabled the continuation of the democratic process and the bringing together of Members to make decisions in a public forum. Members have now also started to meet remotely for Chair and Group spokesperson briefings with Directors, workshops have been held in respect to the setting of the budget and a number of all Member Briefing sessions have been held. Officers continue to plan for a number of eventualities including the potential future return to a meeting room, the continuation of remote meetings or a combination of the two in a hybrid format.

## 4.0 FINANCIAL IMPLICATIONS

4.1 There are no financial implications arising from this report.

## 5.0 LEGAL IMPLICATIONS

5.1 There are no direct legal implications arising from this report. Amending the Constitution does require the consent of full Council.

5.2 Temporary Standing Orders and Protocols were adopted by Council in respect of Remote Meetings and are included in the Constitution as Part 4(1)(a)

## 6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

6.1 There are no resource implications arising from this report.

## 7.0 RELEVANT RISKS

7.1 There are no risks arising from this report.

## 8.0 ENGAGEMENT/CONSULTATION

8.1 Members have been engaged in respect to a number of the issues outlined in this report both formally and informally over the course of the past six months.

## 9.0 EQUALITY IMPLICATIONS

9.1 There are no equality implications arising from this report

## 10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

- 10.1 There are a number of practical environmental benefits associated with the holding of remote meetings including reduced Member and Officer travel and fewer Council buildings being open.

### REPORT AUTHOR:

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## APPENDICES

### BACKGROUND PAPERS

Constitution  
Remote Meeting Procedure Rules

### SUBJECT HISTORY (last 3 years)

<b>Council Meeting</b>	<b>Date</b>
Annual Meeting	28 <sup>th</sup> September 2020

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## CONSTITUTION AND STANDARDS COMMITTEE

Wednesday, 25 November 2020

<b>REPORT TITLE:</b>	<b>UPDATE ON THE PREPARATION OF THE MODEL CODE OF CONDUCT</b>
<b>REPORT OF:</b>	<b>DIRECTOR OF LAW AND GOVERNANCE</b>

### REPORT SUMMARY

This report provides Members of the Constitution and Standards Committee with an update on progress in respect to the preparation of a revised Model Code of Conduct.

The Committee on Standards in Public Life (CoSPL) report published in January 2019 recommended creating an updated model Code of Conduct, by the Local Government Association (LGA) in consultation with representative bodies of councillors and officers of all tiers of local government.

LGA Workshops of Members and Monitoring Officers took place to discuss the approach and content of the revised Code.

Consultation on a draft Code ran for 10 weeks from Monday 8 June until Monday 17 August 2020.

In light of the feedback and discussion on 22 October 2020, the LGA will now review the draft and a final Code will then be prepared for submission to the LGA board for approval on 3 December 2020. The approved Code will then be published.

### RECOMMENDATION/S

The Constitution and Standards Committee are recommended to note the report.

## **SUPPORTING INFORMATION**

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

#### **Timeline**

- 1.1 The Committee on Standards in Public Life (CoSPL) report published in January 2019 recommended creating an updated model code of conduct, by the Local Government Association (LGA) in consultation with representative bodies of councillors and officers of all tiers of local government.
- 1.2 Workshops of members and Monitoring Officers took place to discuss the approach and content of the revised Code.
- 1.3 Consultation on a draft Code ran for 10 weeks from Monday 8 June until Monday 17 August, which included:
  - 4 webinars were conducted with over 1000 participants
  - Over 1600 written responses to the consultation received.
  - Lots of comments questions and feedback provided during the webinar sessions
- 1.4 High level consultation summary response, that included overwhelming support for the Code. But a number of issues were raised:
  - First person or third person
  - Respect or Civility?
  - More on social media including confidentiality.
  - Declaration of gifts £25 too low, £50 too high?
  - Need for accompanying guidance with examples
  - Equality Act - obligation to comply
  - Obligation to cooperate with investigation
  - Compulsory training for members
  - Sanctions
- 1.5 A stakeholder roundtable to discuss the response and next steps took place on 30 September 2020. The revised draft Code was considered at an LGA Councillors Forum on 22 October 2020.

#### **Next Steps**

- 1.6 LGA will now review the draft in light of the discussion on 22 October 2020.
- 1.7 A final Code will then be prepared for submission to the LGA board for approval on 3 December 2020. The approved Code will then be published.

### **2.0 OTHER OPTIONS CONSIDERED**

- 2.1 This report is for information only. No other options to be considered at this time.



### **3.0 BACKGROUND INFORMATION**

- 3.1 Across the United Kingdom, local government is organised and administered in either a two-tier structure of county and district authorities or a unitary structure of borough or city councils. At the local level there are parish and town councils. In England and Wales most local council services are administered by the principal authority which is either the unitary authority or, in a two-tier structure, the county council. Many local authorities now share the administration of local services and some have formally joined forces in new combined authorities, often based on a city region. At the local level, parish, community and town councils also have responsibility for local issues, such as community centres and neighbourhood planning.
- 3.2 It is important to acknowledge the scale and scope of local government as well as the complexity of modern governance arrangements for service delivery. There are tens of thousands of elected councillors representing all the major parties with a growing independent sector. Most of these elected representatives have strong ties with the areas they represent, not least because they live in the locality. This can pose particular challenges in relation to the management of conflicts of interests and can test ethical standards more generally. Local government has a wide range of legal duties and is increasingly contracting out services or work in partnership with neighbouring authorities, the voluntary sector and private providers.
- 3.3 The responsibility for ethical standards in local authorities has undergone much change in recent years, which rather than mirroring the increased codification of standards elsewhere in the standards regime has resulted in much greater freedom across councils to set and maintain standards. The 2011 Localism Act stripped back regulation and oversight to a bare minimum, resulting in a regime that has resorted to “hard law, almost complete local autonomy, with minimum direction and intervention from the centre”.
- 3.4 The Act placed responsibility for the conduct of councillors in the hands of local authorities, which are responsible for maintaining a Code of Conduct and a register of disposable pecuniary interests, and must also deal with alleged breaches of the Code and registration requirements.
- 3.5 There is no requirement for local authorities to provide a Code of Conduct for local authority staff, but many continue to do so.
- 3.6 The 2011 Act dismantled the regime that had been in place since 2000 with centralised powers of oversight and monitoring. The Local Government Act 2000 had instituted measures of oversight, including a model Code of Conduct, which local authorities were required to integrate into their own; a Standards Board for England to promote high standards and investigate complaints; Adjudication Panels to adjudicate on investigations; and Standards Committees in each local authority to promote high standards of conduct.
- 3.7 However, both the functioning and the reception of this system of regulation was highly criticised with the Standards Boards, at least initially, taking an extended time to resolve complaints.

- 3.8 Following significant criticism, including from the CoSPL, a number of adjustments were made through the Local Government and Public Involvement in Health Act 2007, which primarily provided increased opportunities for resolving complaints at the local level. The assessment of the allegations were now to be made by Standards Committees, and the Standards Board (now named Standards England) took on an oversight role and acted as a “strategic regulator”. Despite the changes, sustained criticism led to an overhaul of the regime in 2011, including the abolition of Standards England.

### **Codes of Conduct and Guidance**

- 3.9 Since 2012, local authorities have been responsible for creating their own Codes of Conduct, which should incorporate the Seven Principles of Public Life. These Codes are much less consistent than previously, where the rules and provisions of a model code had to be incorporated. The Department for Communities and Local Government has published an illustrative text but states explicitly that councils can “choose” whether or not they use it as the basis for their own Codes of Conduct. In 2013, the Department also provided a guidance document for Councillors on dealing with their personal interests. The Guidance makes it clear that it is a criminal offence to fail to tell the Monitoring Officer about disposable pecuniary interests, or to knowingly provide false or misleading information.
- 3.10 The Local Government Association also provides a model Code of Conduct for local authorities to use as a basis for their own. In its 2019 review of local government standards, the CoSPL proposed that the Local Government Association should be responsible for updating a model code of conduct, in consultation with councillors at all levels.
- 3.11 The primary upholders of standards in local government are the Local Authorities and the Local Government and Social Care Ombudsman.

### **Breaches of the Code**

- 3.12 There should be mechanisms in place to investigate breaches of the Code, although these can vary depending on the processes put in place by the local authority; these might include the creation (or maintenance) of a Standards Committee, but this is not a requirement.
- 3.13 There are provisions for the appointment of an Independent Person, whomust be consulted during an investigation into an alleged breach of the Code and can also be consulted by the accused individual. The 2011 Act abolished the requirement of having independent lay people on Standards Committees, previously the requirement was for 25%.
- 3.14 The CoSPL criticised the reduced role of lay members in its 2013 report. In 2019, the CoSPL recommended that the views of the Independent Person should be formally recorded in any decision notice or minutes.
- 3.15 The procedures for investigations vary, with some authorities having created a Standards Panel to hear the case or consider the investigation report. The presumption is that hearings should be held in public. There is no higher authority for appeals of decisions, except through the courts, although the Local Government

Ombudsman can investigate the process by which decisions were reached (see below).

## **Sanctions**

- 3.16 There has been a considerable weakening of sanctions in the 2012 regime compared to those that preceded it. Councils have the ability to censure members or remove them from committees, but short of criminal prosecution there is little else that can be used as a sanction.

## **4.0 FINANCIAL IMPLICATIONS**

- 4.1 There are no financial implications arising from this report.

## **5.0 LEGAL IMPLICATIONS**

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

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

Changes to the Council's Standing Orders within the Constitution can only be made with the approval of the Full Council after consideration of the proposal by the Standards and Constitution Committee following receipt of a written report by the Monitoring Officer.

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

- 6.1 There are no resource implications arising from this report.

## **7.0 RELEVANT RISKS**

- 7.1 There are no specific risks associated with this report

## **8.0 ENGAGEMENT/CONSULTATION**

- 8.1 The Standards and Constitutional Oversight Committee working group were consulted on this matter and the Head of Legal Services provided a formal response to the consultation on their behalf.

## **9.0 EQUALITY IMPLICATIONS**

- 9.1 Wirral Council has a legal requirement to make sure its policies, and the way it carries out its work, do not discriminate against anyone. An Equality Impact Assessment is a tool to help council services identify steps they can take to ensure

equality for anyone who might be affected by a particular policy, decision or activity.  
There are no equality implications arising from this report.

## 10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

10.1 There are none arising directly from this report.

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## APPENDICES

- Appendix 1 LGA 'Civility in public life and the review of the model code of conduct'.
- Appendix 2 The Local Government Association Model Member Code of Conduct Consultation Draft.
- Appendix 3 The Committee on Standards in Public Life - Standards Matter 2: Terms of Reference.

## BACKGROUND PAPERS

Committee of Standards in Public Life report 30 January 2019.

## SUBJECT HISTORY (last 3 years)

Council Meeting	Date

## **Civility in public life and the review of the model code of conduct**

There are growing concerns about the impact an increasing level of public intimidation and toxicity of debate is having on our country's democratic processes, particularly at a local level. Responding to these concerns, the LGA is leading on 'civility in public life' and this report sets out our programme of work.

### **Civility in public life**

#### **Background**

One of the most pressing concerns facing those in public office at the moment is the increasing incidents of public intimidation and abuse. These attacks risk the personal safety of our members, undermine local democracy and decision-making, and can put off prospective candidates from standing. Intimidation and physical threats of violence against councillors are a real and growing concern in every area of the country. Whilst debate and having different views is all part of a healthy democracy; abuse, public intimidation and threats are designed to undermine democratic decision making by generating fear in those who represent it.

Intimidation, abuse and harassment of councillors is a crime, as it would be towards any member of the public. However, reports from LGA members indicate that there is not a consistent response from the police across the country and that there is confusion about reporting, support, the legislation, and the broader impacts for our society and democracy. We need a wider discussion with our citizens on how they involve themselves in public debate. We collectively need to be clear that abuse, harassment, intimidation and violence is not the way for anyone to engage in modern-day politics.

Concern has also been raised about incidents of intimidation within councils, involving councillors as well as officers. If we expect decent standards of behaviour from members of the public when they engage with councillors, then good standards of behaviour need to be modelled within the council.

#### **Purpose**

The purpose of the programme is:

- to address the intimidation of local government members and officers
- to address standards of public discourse
- to address standards of political discourse and behaviour in public office
- to provide support and advice to councils and councillors

#### **Objectives**

The LGA's objectives in embarking on this programme of work are:

- to articulate what local government believes are good standards for anyone engaging in public and political discourse and debate, and what is needed to achieve these standards
- to show leadership at a local, national, UK-wide and international level in good standards of political debate, engagement and decision-making, demonstrating the positive impact it can have
- to understand the scale and impact of intimidation and abuse behaviour our membership is experiencing
- to challenge the 'new-norms' of intimidation, abuse, threats and aggressive behaviour by many engaging in political and public discourse
- to demonstrate the impact that intimidation and abusive behaviour in our political system and from the general public has on our democratic system, and recommendations for achieving positive debate and public engagement in local decision-making
- to support its member councils in addressing intimidation and abuse
- to enhance the reputation of local government and local politicians, and encourage more people to become councillors by addressing the issues of intimidation and abuse
- to support all democratically elected local representatives in delivering their best on behalf of their local communities
- to build on the good practice that already exists within member councils

## **LGA Leadership**

The LGA will provide leadership through:

- engaging in positive political discourse
- challenging poor political discourse
- the application of consistent and high standards for all public office
- emphasising the benefits of becoming a councillor, encouraging prospective candidates to stand for public office and encouraging a diversity in candidates
- demonstrating the positive outcomes that can be achieved through civil and respectful debate, discussion and decision-making within and between political parties
- accepting and promoting a council duty of care for the wellbeing, safety and security of councillors
- facilitating a pan-UK local government response

## **The programme of work**

The LGA will focus on three elements – prevention, support and challenge:

### **Prevention**

- improvement support and guidance for our member authorities, building on our existing improvement and leadership programmes and the guide for councillors on handling intimidation
- desktop research into the prevalence, impact, good practice and international action on the intimidation of those in public office

### **Support and intervention**

- the development of policy and legislative proposals with partners, government and stakeholders that address intimidation and standards of public discourse, particularly with a view to gaining a more consistent and robust response from the police and Crown Prosecution Service (CPS). This includes the proposal for a new criminal offence for intimidating a person in public office and engagement with Police Crime Commissioners (PCCs)
- exploring the potential for an informal council ‘duty of care’ towards its councillors as good practice
- a revision of the local government model code of conduct with a view to promoting it as standard for all in public office

### **Challenge**

- the development of a pan-UK commitment and public statement for discussion at the UK Forum for the leaders of all the UK local government associations taking place in November 2019
- exploring opportunities for a public and political-facing campaign

### **Oversight**

- a small member-led steering group will oversee the LGA civility in public life work programme to provide ongoing insight and commentary

## **The review of the model code of conduct**

### **Introduction**

The LGA is reviewing and updating the member model code of conduct. The member model code of conduct is suggested national good practice, and councils can adopt this code, or adopt their own local code.

## Why is the model code of conduct being reviewed?

The LGA is undertaking a review of the member model code of conduct in response to the recommendations made by the Committee on Standards in Public Life, but also in response to rising local government concern about the increasing incidence of public, member-to-member and officer/member intimidation and abuse and overall behavioural standards and expectations in public debate, decision making and engagement.

The LGA aims to develop a code that benchmarks a standard for all public office and for those engaged in public discourse and debate. It will set out the duties and expectations of persons in public office as well as their rights, particularly their right to be protected from abuse and intimidation resulting from their undertaking of public office.

## Objectives

The LGA's objectives in reviewing the model code of conduct are to:

- articulate what local government believes are good standards for all in public office
- show leadership in good standards of conduct for those in public office, both elected and as employees
- achieve consensus between the stakeholders affected by local government conduct
- support its member councils and partners in achieving good standards of conduct
- produce a code that is fit for purpose, useful and held in high regard
- enhance the reputation of local government and local politicians
- support the good running of councils
- support all democratically elected local representatives to deliver their best on behalf of their local communities
- build on the good practice that already exists within member councils

## Why the LGA?

The LGA is well placed to lead on the review and renewal of the model code of conduct because, as set out in the articles of association of the Local Government Association, the LGA's objects are:

- to support, promote and improve local government in England and Wales
- to represent, wherever possible by consensus, the interests of Member Authorities to national governments, to Parliament, to political parties, to European and other international institutions and to other bodies, and to negotiate on behalf of local government
- to formulate policies to support the improvement and development of local governance, effective management in local authorities and the enhancement of local democracy in England, Wales and elsewhere
- to provide forums for discussion of matters of common interest and/or concern to Member Authorities, including groups of Member Authorities, and a means by which **joint views may be formulated and expressed**



- to endeavour to give democratically elected local representatives from different political groups the opportunity to contribute to the Association's work and to the development of policies which represent, as far as possible, **consensus between the political groups and between groups of Member Authorities**
- to support all democratically elected local representatives of Member Authorities

The LGA also has the responsibility to speak for all Member Authorities in matters of local government in general or which concern all Member Authorities. In this way, the LGA is well placed to bring together the different stakeholders under the umbrella of local government to achieve understanding and consensus, which will be vital for the adoption and success of any reviewed and renewed code of conduct. It will be important to understand, respect and bring together the range of views on the code of conduct if it is to be successful.

### **How will the LGA review the model code of conduct?**

The LGA aims to work collaboratively with a range of officer and member stakeholders in a spirit of co-production. As such, the LGA will engage with the representative organisations and also with officers and members across the country.

The LGA will gather evidence and opinion on what is needed in an updated and fit-for-purpose code, including considering the review into local government ethical standards undertaken by the Committee on Standards in Public Life and the evidence submitted to the review. The LGA will research the existing local bespoke codes currently used by councils across the country and will work with elected members and officers to consider and evaluate good practice.

The LGA will seek to identify good practice codes from the range of tiers of government, other sectors, and organisations that address important issues for local government and public office.

The LGA will hold a workshop with members, officers and representative organisations during this period as part of the broader LGA Civility in Politics work. This workshop will also present an opportunity for an exchange of ideas, developing an understanding of the different stakeholders' views with the aim of co-production, collaboration and consensus. From this exercise a collection of suggested propositions for inclusion in the final model code will be presented to the LGA Leadership Board. Following the outcome of the Leadership Board consideration, a draft model code will be prepared for consultation.

The form of consultation will need further discussion and will be determined by how the model code develops. The LGA will use its existing methods of research, communication and engagement with its membership, partners and stakeholders. This could include conferences, round tables, regional meetings, online forums, etc, with the aim of achieving as wide a sector engagement as is possible. It is proposed that the consultation period should be a minimum of 8 weeks.

The outcome of the consultation and a draft final model code will be presented to the LGA Leadership Board for final discussion and approval. It is recommended that Leadership Board put forward the final model code, as part of its broader work on Civility in Politics, to the LGA General Assembly, held at the LGA annual conference in July, for adoption.

## **How will a final renewed code of conduct be agreed?**

The structures of the LGA mean that the final sign-off of the code on behalf of the LGA and its member authorities will be the responsibility of the LGA's Board of Directors / Leadership Board, which they will do on behalf of all member authorities in local government. The LGA will also seek, in a spirit of consensus and collaboration, for NALC, CCN, DCN, SOLACE, Lawyers in Local Government, Cifpa, the Association of Democratic Services Officers, the Society of Local Councils Clerks, Monitoring Officers Network, and MHCLG to also endorse the revised model code of conduct. This is not an exhaustive or exclusive list. It is also proposed to take the updated model code of conduct to LGA General Assembly at the July 2020 annual conference.

## **Developing consensus in the development and adoption of a renewed model code of conduct**

For the model code of conduct to have traction with the sector, it will need to address the expectations, views, opinions and experiences of members and officers, recognise the value of good political discourse and how trust in local government is affected by conduct. The LGA's organisational structures mean that agreement is on behalf of local government, rather than a single interest group within the local government structure and family.

Members at the LGA have expressed their view that, as individuals whose behaviour is being modelled in the code of conduct, it is essential that they oversee and are fully involved in its development and can sign up to it. The LGA has championed the value of peer-to-peer review and support, and we will embrace those principles in the review of the code. It is in the interests of the LGA and all elected members that the office of local councillor is imbued with trust and a high degree of ethics so that their role and decisions can be robustly defended. It is also important in the continued recruitment of future councillors.

Members at the LGA want to ensure that the code will be compatible with upholding the country's democratic principles and structures, and on-going political representation for their residents. They want to see an equal expectation of conduct between members and officers, between members, with the general public, and with others in public office such as Police Crime Commissioners and MPs, so that all are clear about the expected behaviour and the procedures should their behaviour fall short.

Members at the LGA also want to ensure that the code is not used as a tool that could remove members on grounds that may not follow natural justice or that it is abuse for personal or political gain by members, officers or the general public. The code needs to provide safeguards for both members and officers.

We want to achieve a shift in attitudes that sees the code of conduct as a tool to support members in achieving good standards in public office, rather than a tool that simply penalises poor behaviour. The code should be a way of supporting members who have been subjected to poor behaviour by members and/or staff and/or the general public.

It is also important that the impact on staff and the running of the council, should a member's behaviour fall short of what is expected of public office, is given due weight in any review, and that the code provides the tools to address such behaviour.

For the code to be successful we need to seek to build consensus, with the primary objective that the code articulates the standards that are expected for anyone in public office or working for the public.

**For more information please email [ModelCode@local.gov.uk](mailto:ModelCode@local.gov.uk)**

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## **The Local Government Association Model Member Code of Conduct Consultation Draft**

### **LGA introduction**

The LGA is providing this Model Member Code of Conduct as part of its work on supporting the sector to continue to aspire to high standards of leadership and performance.

The role of councillors is a vital part of our country's system of democracy. In voting for a local councillor, the public is imbuing that person and position with their trust. As such, it is important that councillors can be held accountable and adopt the behaviors and responsibilities associated with their role. The conduct of an individual councillor affects the reputation of all councillors. We want the role of councillor to be one that people aspire to and want to participate in. We want to attract individuals from a range of backgrounds and circumstances who understand the responsibility they take on and are motivated to make a positive difference to their local communities.

All councils are required to have a local Member Code of Conduct. This Model Member Code of Conduct has been developed in consultation with the sector and is offered as a template for councils to adopt in whole and/or with local amendments. The LGA will undertake an annual review of the Code to ensure it continues to be fit-for-purpose, particularly with respect to advances in technology, social media and any relevant changes in legislation. The LGA can also offer support, training and mediation to member councils and councillors on the application of the Code.

### **Introduction**

As a Councillor you represent local residents, work to develop better services and deliver local change. The public have high expectations of you and entrust you to represent everyone (in your ward/town/parish), taking decisions fairly, openly, transparently and with civility. You should also be treated with civility by members of the public, other councillors and council employees. Members have both individual and collective responsibility to maintain these standards, support expected behaviour and challenge behaviour which falls below expectations.

### **Purpose**

The purpose of this Code of Conduct is to assist councillors in modelling the behaviour that is expected of them, to provide a personal check and balance, and to set out the type of conduct against which appropriate action may be taken. It is also to protect yourself, the public, fellow councillors, council officers and the reputation of local government. It sets out the conduct expected of all Members and a minimum set of obligations relating to conduct. The overarching aim is to create and maintain public confidence in the role of Member and local government.

### **Application of the Code**

The Code of Conduct applies to you when you are acting [or claiming or giving the impression that you are acting]<sup>i</sup> in [public or in]<sup>ii</sup> your capacity as a Member or representative of your council, although you are expected to uphold high standards of conduct and show leadership at all times. The Code applies to all forms of Member communication, including written, verbal, non-verbal, electronic and social media, [including where you could be deemed to be representing your council or if there are potential implications for the council's reputation.]<sup>iii</sup> Model conduct and expectations is for guidance only, whereas the specific obligations set out instances where action will be taken.

### **The seven principles of public life**

Everyone in public office at all levels – Ministers, civil servants, Members, council officers – all who serve the public or deliver public services should uphold the seven principles of

public life<sup>iv</sup>. This Code has been developed in line with these seven principles of public life, which are set out in appendix A.

### **Model Member conduct**

In accordance with the public trust placed in me, on all occasions I will:

- act with integrity and honesty
- act lawfully
- treat all persons with civility; and
- lead by example and act in a way that secures public confidence in the office of Councillor

In undertaking my role, I will:

- impartially exercise my responsibilities in the interests of the local community
- not improperly seek to confer an advantage, or disadvantage, on any person
- avoid conflicts of interest
- exercise reasonable care and diligence; and
- ensure that public resources are used prudently and in the public interest

### **Specific obligations of general conduct**

This section sets out the minimum requirements of Member conduct. Guidance is included to help explain the reasons for the obligations and how they should be followed. These obligations must be observed in all situations where you act [or claim or give the impression that you are acting] as a councillor [or in public], including representing your council on official business and when using social media.

As a Councillor I commit to:

#### **Civility**

1. Treating other councillors and members of the public with civility.
2. Treating council employees, employees and representatives of partner organisations and those volunteering for the councils with civility and respecting the role that they play.

Civility means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a councillor you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a civil manner. You should not subject individuals, groups of people or organisations to unreasonable or excessive personal attack.

In your contact with the public you should treat them courteously. Rude and offensive behaviour lowers the public's expectations and confidence in its elected representatives.

In return you have a right to expect courtesy from the public. If members of the public are being abusive, threatening or intimidatory you are entitled to close down any conversation in person or online, refer them to the council, any social media provider or if necessary, the police. This also applies to Members, where action could then be taken under the Member Code of Conduct.

#### **Bullying and harassment**

3. Not bullying or harassing any person.



Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. The bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or phone calls, happen in the workplace or at work social events and not always be obvious or noticed by others.<sup>v</sup>

The Equality Act 2010 defines harassment as “unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual”. The relevant protected characteristics are age, disability, gender reassignment, race, religion or belief, sex, and sexual orientation.

### **Impartiality of officers of the council**

4. Not compromising, or attempting to compromise, the impartiality of anyone who works for, or on behalf of, the council.

Officers work for the council as a whole and must be politically neutral (unless they are political assistants). They should not be coerced or persuaded to act in a way that would undermine their neutrality. Although you can question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

### **Confidentiality and access to information**

5. Not disclosing information given to me in confidence or disclosing information acquired by me which I believe is of a confidential nature, unless I have received the consent of a person authorised to give it or I am required by law to do so.
6. Not preventing anyone getting information that they are entitled to by law.

Local authorities must work openly and transparently, and their proceedings and printed materials are open to the public except in certain circumstances. You should work on this basis but there will be times when it is required by law that discussions, documents and other information relating to or held by the council are treated in a confidential manner. Examples include personal data relating to individuals or information relating to ongoing negotiations.

### **Disrepute**

7. Not bringing my role or council into disrepute.

Behaviour that is considered dishonest and/or deceitful can bring your council into disrepute. As a Member you have been entrusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on other councillors and/or your council.

### **Your position**

8. Not using, or attempting to use, my position improperly to the advantage or disadvantage of myself or anyone else.

Your position as a Member of the council provides you with certain opportunities, responsibilities and privileges. However, you should not take advantage of these opportunities to further private interests.

### **Use of council resources and facilities**

9. Not misusing council resources.

You may be provided with resources and facilities by the council to assist you in carrying out your duties as a councillor. Examples include office support, stationery and equipment such as phones, and computers and transport. These are given to you to help you carry out your role as a councillor more effectively, not to benefit you personally.

### **Interests**

10. Registering and declaring my interests.

You need to register your interests so that the public, council employees and fellow Members know which of your interests might give rise to a conflict of interest. The register is a document that can be consulted when (or before) an issue arises, and so allows others to know what interests you have, and whether they might give rise to a possible conflict of interest. The register also protects you. You are responsible for deciding whether or not you should declare an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise.

It is also important that the public know about any interest that might have to be declared by you or other Members, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained. Discuss the registering and declaration of interests with your Monitoring Officer/Town or Parish Clerk and more detail is set out in appendix B.

### **Gifts and hospitality**

11. Not accepting significant gifts or hospitality from persons seeking to acquire, develop or do business with the council or from persons who may apply to the council for any permission, licence or other significant advantage.
12. Registering with the Monitoring Officer any gift or hospitality with an estimated value of at least £25 within 28 days of its receipt.

You should exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you because you are a Member. However, you do not need to register gifts and hospitality which are not related to your role as a Member, such as Christmas gifts from your friends and family, or gifts which you do not accept. However, you may wish to notify your Monitoring Officer of any significant gifts you are offered but refuse which you think may have been offered to influence you.

### **Breaches of the Code of Conduct**

Most councillors conduct themselves appropriately and in accordance with these standards. Members have both individual and collective responsibility to maintain these standards, support expected behaviour and challenge behaviour which falls below expectations.

Section 27 of the Localism Act 2011 requires relevant authorities to promote and maintain high standards of conduct by Members and co-opted Members of the authority. Each local

authority must publish a code of conduct, and it must cover the registration of pecuniary

interests, the role of an 'Independent Person' to advise on and investigate alleged breaches, and sanctions to be imposed on any councillors who breach the Code.

The 2011 Act also requires local authorities to have mechanisms in place to investigate allegations that a Member has not complied with the Code of Conduct, and arrangements under which decisions on allegation may be made.

Failure to comply with the requirements to register or declare disclosable pecuniary interests is a criminal offence. Taking part in a meeting or voting, when prevented from doing so by a conflict caused by disclosable pecuniary interests, is also a criminal offence.

Political parties may have its own internal standards and resolution procedures in addition to the Member code of conduct that Members should be aware of.

Note – items in square brackets [x] refer to recommendations made by the Committee on Standards in Public Life and may be part of a future Government consultation. This includes possible future sanctions and appeals processes.

## **LGA Guidance and recommendations**

### **Internal resolution procedure**

Councils should have in place an internal resolution procedure to address conduct that is in breach of the Member Code of Conduct. The internal resolution process should make it clear how allegations of breaches of the Code of Conduct are to be handled, including the role of an Independent Person, the appeals process and can also include a local Standards Committee. The internal resolution procedure should be proportionate, allow for Members to appeal allegations and decisions, and allow for an escalating scale of intervention. The procedure should be voted on by the Council as a whole.

In the case of a non-criminal breach of the Code, the following escalating approach can be undertaken. If the breach is confirmed and of a serious nature, action can be automatically escalated.

1. An informal discussion with the Monitoring Officer or appropriate senior officer
2. An informal opportunity to speak with the affected party/ies
3. A written apology
4. Mediation
5. Peer support
6. Requirement to attend relevant training
7. Where of a serious nature, a bar on chairing advisory or special committees for up to two months
8. Where of a serious nature, a bar on attending committees for up to two months

Where serious misconduct affects an employee, a Member may be barred from contact with that individual; or if it relates to a specific responsibility of the council, barred from participating in decisions or information relating to that responsibility.

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<sup>i</sup> CSPL recommend that "Section 27(2) of the Localism Act 2011 should be amended to state that a local authority's code of conduct applies to a Member when they claim to act, or give the impression they are acting, in their capacity as a Member or as a representative of the local authority".

<sup>ii</sup> CSPL recommend that “councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly accessible social media. Section 27(2) of the Localism Act 2011 should be amended to permit local authorities to presume so when deciding upon code of conduct breaches.”

<sup>iii</sup> Subject to footnotes 1 and 2 above

<sup>iv</sup> See CSPL website for further details <https://www.gov.uk/government/news/the-principles-of-public-life-25-years>

<sup>v</sup> acas’s definition of bullying.

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## **The Committee on Standards in Public Life**

### **Standards Matter 2: Terms of Reference**

The [Committee on Standards in Public Life](#) is carrying out a landscape review of the institutions, processes and structures in place to support high standards of conduct.

#### **Terms of Reference:**

This review intends to:

1. Review the evidence as to how well ethical standards are upheld in public life in the UK;
2. Review the evidence on the strength of the UK's arrangements for regulating and promoting ethical standards;
3. Review the adequacy and continuing relevance of the Seven Principles of Public Life;
4. Identify examples of best practice in the regulation of ethical standards;
5. Identify examples of best practice in the promotion of cultures that celebrate and encourage high ethical standards.

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## CONSTITUTION AND STANDARDS COMMITTEE

Wednesday, 25 November 2020

<b>REPORT TITLE:</b>	<b>SUMMARY OF STANDARDS COMPLAINTS</b>
<b>REPORT OF:</b>	<b>MONITORING OFFICER</b>

### REPORT SUMMARY

This report provides a summary of Standards complaints received under the Members' Code of Conduct and Protocol for dealing with complaints against Members between 31 October 2019 and 31 October 2020.

### RECOMMENDATION/S

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

## **SUPPORTING INFORMATION**

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

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

### **2.0 OTHER OPTIONS CONSIDERED**

- 2.1 The process for the administration of standards complaints is undertaken in accordance with the revised Protocol for dealing with complaints against Members which was approved by the Committee in February 2019.

### **3.0 BACKGROUND INFORMATION**

- 3.1 The Council is required to deal with complaints made against Members under its approved Ethical Framework.
- 3.2 In order to assist with the effective administration of standards complaints, the Committee, as part of its monitoring role, is invited to consider the nature and handling of complaints received pursuant to the Members' Code of Conduct.
- 3.3 Appendix 1 sets out a summary of the complaints received between 31 October 2019 and 31 October 2020 and their status.
- 3.4 One complaint which was received in July 2019 and was still outstanding at the time of the last report to the Committee in November 2019 was investigated and referred to the Standards Panel on 4 December 2019. The Panel found that there had been a breach of the Code of Conduct and required a number of actions to be undertaken by the subject Member and the Monitoring Officer. The full decision was published on the Council website and all of the required actions have been undertaken by the Monitoring Officer and the subject Member.
- 3.5 The Ethical Framework requires complaints to be dealt with confidentiality and therefore it is not possible to provide extensive details in respect of each complaint.
- 3.6 Between 31 October 2019 and 31 October 2020 a total of 5 complaints in respect of the conduct of 5 Members have been received. The complaints were received from 5 different complainants. There were 2 complaints raised by Members against other Members. No complaints received during this period are ongoing. None of the complaints received were referred for a formal investigation.

### **4.0 FINANCIAL IMPLICATIONS**

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

## **5.0 LEGAL IMPLICATIONS**

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

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

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

## **7.0 RELEVANT RISKS**

- 7.1 The administration of standards complaints should be dealt with as efficiently as possible to ensure matters are concluded quickly and closure of issues secured for both complaint and the subject member(s) involved. The current Covid-19 pandemic has impacted on capacity to deal with complaints and has led to a failure to adhere to the timescales contained in the Protocol for dealing with complaints against Members.

## **8.0 ENGAGEMENT/CONSULTATION**

- 8.1 One of the Independent Persons is consulted every time a complaint is received.

## **9.0 EQUALITY IMPLICATIONS**

- 9.1 Wirral Council has a legal requirement to make sure its policies, and the way it carries out its work, do not discriminate against anyone. An Equality Impact Assessment is a tool to help council services identify steps they can take to ensure equality for anyone who might be affected by a particular policy, decision or activity. There are no specific equality implications arising from this report.

## **10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS**

- 10.1 There are no specific environmental and climate issues arising from this report.

**REPORT AUTHOR:** **Vicki Shaw**  
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and Deputy Monitoring Officer  
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## **APPENDICES**

Appendix 1 – Summary of Standards Complaints

## **BACKGROUND PAPERS**

The Members' Code of conduct

The Protocol for dealing with complaints against Members

**SUBJECT HISTORY (last 3 years)**

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

APPENDIX 1

**Summary of complaints received 31.10.19 – 31.10.20**

No	Date received	Nature of Complaint	Date concluded & outcome
1.	05.11.19	Failed to treat others with respect	17.12.19 Complaint withdrawn
2.	26.03.20	Conduct inconsistent with standards of public life	05.05.20 No further action
3	24.06.20	Conduct inconsistent with standards of public life	07.10.20 No breach
4.	06.08.20	Conduct inconsistent with standards of public life	09.10.20 Alternative resolution – advice to Member
5.	12.08.20	Conduct inconsistent with standards of public life  Failure to declare pecuniary interests	09.11.20 No breach in relation to conduct. Alternative resolution – advice to Member in relation to interests

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## STANDARDS AND CONSTITUTIONAL OVERSIGHT COMMITTEE

25 November 2020

<b>SUBJECT:</b>	<b>Establishing the Standards Panel and Standards Appeal Panel</b>
<b>REPORT OF:</b>	<b>Director of Law and Governance</b>

### 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 Council's Constitution (Part 2, Article 8), and paragraph 14.3 of Part 3B Responsibility for Functions, and the Protocol for Dealing with Complaints against Members.

### RECOMMENDATION/S:

**The Constitution and Standards Committee be recommended to approve that**

- (1) a Standards Panel and Standards Appeal Panel be formally established pursuant to paragraph 14.3 of Part 3B Responsibility for Functions 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 – Law and Governance / 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 paragraph 14.3 of Part 3B - Responsibility for Functions of the Constitution – set out at Appendix 1 to this report.
- 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.

## **10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS**

10.1 No direct climate implications.

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## **APPENDICES**

1. Part 3B - Responsibility for Functions 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)**

<b>Council Meeting</b>	<b>Date</b>
Standards and Constitutional Oversight Committee	11 June 2019

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## **EXTRACT**

### **Part 3B - Responsibility for Functions of the Constitution**

#### **14 CONSTITUTION AND STANDARDS COMMITTEE**

##### **14.1 Composition:**

Eleven (11) Members of the Council who do not need to be appointed in accordance with the proportionality rules (minute N of 2020/21 refers) but shall include at least one members nominated by each of the all Political Groups and then otherwise endeavour to reflect political balance.

Four (4) or more persons who are not Members or officers of the Council (Independent Persons), who will not be entitled to vote at meetings.

##### **14.2 Terms of Reference**

The Constitution and Standards Committee is responsible for overseeing the operation of the Council's Constitution and for promoting and maintaining high standards of ethical conduct and probity within the Council, including the exercise of all functions of the Authority in relation to ethical standards and, in particular, those under Chapter 7 of the Localism Act 2011.

The Committee is charged by full Council to undertake responsibility for the Council's role and functions:-

- (a) to keep the Council's constitutional arrangements under review and to make recommendations as to amendments and improvements to the Council's Constitution, including the codes and protocols;
- (b) 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;
- (c) to hear and determine complaints against members alleging breaches of the Members' Code of Conduct;
- (d) to take an action in respect of a member found to be in breach;
- (e) to oversee and approve the operation of the Council's functions relating to the promotion and maintenance of high standards of conduct amongst members and co-opted members of the Council including:
  - (i) approving and issuing guidance to Members
  - (ii) making recommendations to Full Council regarding the suggested amendment of the Members' Code of Conduct
  - (iii) approving training to be provided to members in the Code of Conduct
  - (iv) monitoring the operation of the Code of Conduct

- (f) to approve the granting, to any Council employee, of a dispensation in relation to disqualification from political activities Local Government and Housing Act 1989;
- (g) to select and recommend to Council persons for appointment as members of the Council's Independent Remuneration Panel;
- (h) to select and recommend to Council persons for appointment as an Independent Person;
- (i) to receive and approve proposals regarding the Council's exercise of powers covered by the Regulation of Investigatory Powers Act;
- (j) to issue dispensations to any member in respect of statutory and non-statutory disclosable interests;
- (k) to monitor and review as necessary the operation of whistleblowing procedures;
- (l) to consider 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; and
- (m) to consider and make recommendations on such other matters as the Committee itself thinks appropriate or which are referred to it by Council, which further the aim of promoting and maintaining the highest standards of conduct within the Council.

### 14.3 Standards Panels

Sub-Committees of between three (3) and five (5) members of the Constitution and Standards Committee with responsibility for arrangements under which decisions can be made on an allegation that a Member of the Council or its committees has breached the Members' Code of Conduct

The Committee or a Panel may regulate, where necessary, its own procedures to deal with any matter arising in connection with its duties, provided that the procedures remain in accordance with the principles set out at Article 13 of this Constitution. This includes that, subject to any statutory rules or procedures detailed elsewhere, a Panel acting as a tribunal is permitted, when all evidence has been submitted and speakers (if any) have finished, will hold discussion in the presence of the speakers and, as appropriate and in compliance with the Access to information Procedure Rules, the public and press, and the decision making may thereafter be taken in private adjournment.

It is expected that decisions will then normally be announced to those present and remaining post-adjournment, at least in summary form, before a decision is issued in writing.



# CONSTITUTION OF THE COUNCIL

## Part 5 Section 1

### THE MEMBERS CODE OF CONDUCT

#### Introduction

The Council has adopted this Code of Conduct to promote and maintain high standards of conduct and underpin public confidence in the authority and its members and co-opted members.

The Code sets out general obligations about the standards of conduct expected of members and co-opted members of the authority, together with provisions about registering and declaring interests. It has been adopted under section 27 of the Localism Act 2011 and is required, when viewed as a whole, to be consistent with the following general principles of conduct identified by the Committee on Standards in Public Life as set out in Appendix 1 - selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

#### Interpretation

In this Code:

- “member” includes a co-opted member or non-voting member;
- “co-opted member” is a person who is not a member of the authority but who is appointed as a member of any of its committees or sub-committees, or a member of and represents the authority on any joint committee or joint sub-committee of the authority, and who is entitled to participate at such meetings;
- “meeting” means;
  - any meeting of the authority or any of its committees, sub-committees, joint committees or joint sub-committees
  - any briefing by officers
  - any site visit to do with business of the authority; and
  - includes for these purposes a time and place where a member may act as an individual consultee.

#### General Obligations

1. When acting in your role as a member of the Authority you are expected to observe the general principles of conduct identified by the Committee on Standards in Public Life (as set out in Appendix 1) and, in particular, that you:
  - (a) **DO** treat others with respect.
  - (b) **DO NOT** conduct yourself in a manner which is contrary to the Authority's duty to promote and maintain high standards of conduct of members.
  - (c) **DO NOT** disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where –
    - (i) you have the consent of a person authorised to give it;
    - (ii) you are required by law to do so;
    - (iii) the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or
    - (iv) the disclosure is –
      - (a) reasonable and in the public interest; and
      - (b) made in good faith and in compliance with the reasonable requirements of the Authority; and
      - (c) you have consulted the Monitoring Officer prior to its release
  - (d) **DO NOT** prevent another person from gaining access to information to which that person is entitled by law.
2. When using, or authorising the use by others of the resources of the Authority –
  - (a) **DO** act in accordance with the Authority's reasonable requirements including the requirements of the Authority's ITC policy and the policies, copies of which have been provided to you and which you are deemed to have read;
  - (b) **DO** make sure that such resources are not used improperly for political purposes (including party political purposes); and
  - (c) **DO** have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986

### Registration of Interests

3. You must within 28 days of
  - (a) this Code being adopted by the authority; or
  - (b) your election or appointment to office (as appropriate)

register with the Monitoring Officer the interests which fall within the description of interests set out in Appendix 2 (Disclosable Pecuniary Interests) and Appendix 3 (Other Interests).

4. You must ensure that your register of interests is kept up-to-date and within 28 days of becoming aware of any new interest in Appendix 2 or 3, or of any change to a registered interest, notify the Monitoring Officer of that new interest or change.

### **Disclosure of Interests and Participation in Meetings**

5. If you are present at a meeting and you or your spouse/partner have an interest as set out in Appendix 2 (Disclosable Pecuniary Interests):
  - (a) you must not participate in any discussion of the matter at the meeting and you must not vote on the matter;
  - (b) you must make a verbal declaration of that interest if an item of business affects or relates to that interest, at or before the item is considered or as soon as the interest becomes apparent;
  - (c) you must leave the room where the meeting is held during any discussion or vote; and
  - (d) if the interest is not registered and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest within 28 days.
6. Where a matter arises at a meeting which relates to an interest as set out in Appendix 3 (Other Interests):
  - (a) you must not vote on the matter;
  - (b) you may speak on the matter only if members of the public are allowed to speak at the meeting;
  - (c) you must declare your interest if you speak on the matter at the meeting or if the interest is not already on your register of interests or if you have not notified the Monitoring Officer of it. Otherwise, you do not need to declare the interest at the meeting.
7. Where a matter arises at a meeting which relates to or is likely to affect any of the interests listed in Appendix 2 in respect of a member of your family (other than your spouse/partner) or a friend or close associate of yours, and you are aware or ought reasonably to be aware of the existence of that interest:
  - (a) you must declare the interest;
  - (b) you must not vote on the matter;
  - (c) you may speak on the matter only if members of the public are allowed to speak at the meeting.

### **Pre-determination and bias**

8. 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 a 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.
9. 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.

### **Gifts and Hospitality**

10. You must within 28 days of receipt notify the Monitoring Officer of any gift, benefit or hospitality with an estimated value of £50 or more which you have accepted as a member from any person or body other than the authority. The notification will be entered on a public register of gifts and hospitality.

### **Sensitive interests**

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



## APPENDIX 1

### The Seven Principles of Public Life

<b>Principle</b>	<b>Description [Revised as of January 2013]</b>
<i>Preamble</i>	The principles of public life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the civil service, local government, the police, courts and probation services, NDPBs, and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The principles also have application to all those in other sectors delivering public services.
<i>Selflessness</i>	Holders of public office should act solely in terms of the public interest.
<i>Integrity</i>	Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
<i>Objectivity</i>	Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
<i>Accountability</i>	Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
<i>Openness</i>	Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
<i>Honesty</i>	Holders of public office should be truthful.
<i>Leadership</i>	Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

## APPENDIX 2

### Disclosable Pecuniary Interests

The definition of a “disclosable pecuniary interest” in relation to a Member is if it is of a description specified in the table below and either—

- (a) it is an interest of the Member's; or
- (b) it is an interest of —
  - (i) the Member's spouse or civil partner,
  - (ii) a person with whom the Member is living as husband and wife, or
  - (iii) a person with whom the Member is living as if they were civil partners,and the Member is aware that that other person has the interest.

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

Subject	Prescribed description
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	Any tenancy where (to M's knowledge) – (a) the landlord is the relevant authority; and (b) the tenant is a body in which the relevant person has a beneficial interest.
Securities	Any beneficial interest in securities of a body where – (a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and (b) either - (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or (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.

The definition above is as set out at section 30(3) of the Localism Act 2011 and the description of interests are as specified in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.

Failure to register these interests, or to participate in any discussion or voting at a meeting in respect of these interest without a dispensation, is a criminal offence.

**Nb.** The definition of a sensitive interest is:

An interest which the elected member or co-opted member and the Monitoring Officer consider, if disclosed, could lead to the elected or co-opted member or a person connected with them being subject to violence or intimidation.

## **APPENDIX 3**

### **Other Interests**

In addition to the requirement to register disclosable pecuniary interests and in the interest of openness and transparency, the Authority also requires you as an elected or co-opted member to register any involvement which you have either as a member of, or as someone who holds a position of general control or management in, the following bodies:

- (i) a body to which you have been appointed or nominated by the Authority as its representative;
- (ii) any public authority or body exercising functions of a public nature;
- (iii) any company, industrial and provident society, charity or body directed to charitable purposes;
- (iv) any body whose principal purposes include the influence of public opinion or policy;
- (v) any trade union or professional association This requirement applies only to you as the elected or co-opted member. It does not require you to register interests (other than the pecuniary interests referred to) of any other person.

## APPENDIX 4

### Standard Dispensations

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

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

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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 the Terms of Reference of The Constitution and Standards Committee set out at Part 3 Section B 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 Constitution and Standards 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 Constitution and Standards 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 Constitution and Standards 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 Constitution and Standards 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 Constitution and Standards 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 Constitution and Standards 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 Constitution and Standards 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 Constitution and Standards Committee, or any witness, potential witness or any other person in relation to the Standards Complaint and any investigation. Neither the Complainant nor Subject Member(s) should attempt to discuss or otherwise communicate matters and issues relating to a Standards Complaint in which they are involved with Members of the Constitution and Standards 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 Constitution and Standards 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 Constitution and Standards 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 Constitution and Standards Committee, or the Standards Panel or the Standards Review Panel, consider it appropriate (if at all) to disclose the Standards Complaint (and all associated information, documents, information) in the public domain.
- 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 Constitution and Standards Committee, at each of its meetings (unless otherwise directed by the Constitution and Standards Committee), an anonymous summary (unless the information is already in the public domain) of all Standards Complaints received, their progress, outcome and any costs incurred.

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

## **25. Interpretation**

- 25.1 'Chair' refers to the relevant person presiding at the Constitution and Standards 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 Constitution and Standards Committee and any Overview and Scrutiny Committee) (or any sub-committee) irrespective of whether they have any voting rights and also the Member's nominated representative.
- 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 Constitution and Standards Committee (unless an Alternate Member is nominated).

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## 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.