

# WIRRAL COUNCIL

## STANDARDS COMMITTEE

19 NOVEMBER 2012

|                                      |   |
|--------------------------------------|---|
| <b>SUBJECT:</b>                      | <b>Disclosure of Investigation Reports under the Ethical Framework (prior to 1 July 2012)</b> |
| <b>WARD/S AFFECTED:</b>              | <b>All</b>  |
| <b>REPORT OF:</b>                    | <b>Acting Director of Law, HR and Asset Management and Monitoring Officer</b>                 |
| <b>RESPONSIBLE PORTFOLIO HOLDER:</b> | <b>Leader</b>   |
| <b>KEY DECISION</b>                  | <b>No</b>   |

### 1.0 EXECUTIVE SUMMARY

1.1 This report provides advice in relation to whether investigation reports carried out under the ethical framework (prior to 1 July 2012) can be disclosed in the public domain given that a new ethical framework is now in place.

1.2 On 21 May 2012, the Council approved new arrangements in relation to the promotion and maintaining of high standards of conduct by Members. The changes included:

- (i) changes to the Article 9 (Terms of Reference of the Standards Committee (and its Panels)) of the Council's Constitution;
- (ii) a new Members' Code of Conduct;
- (iii) a new Protocol dealing with arrangements for investigating and making decisions in relation to allegations made under the Members' Code of Conduct;
- (iv) the new Complaint Form that is to be used in relation to complaints relating to the Members' Code of Conduct; and

### 2.0 BACKGROUND AND KEY ISSUES

2.1 The Localism Bill was published on 13 December 2010 and received Royal Assent on 15 November 2011. As reported to this Committee in January 2011, the Localism Bill, as it was then, sought to devolve greater power and freedoms to councils and neighbourhoods, establish powerful new rights for communities, revolutionise the planning system, and give communities control over housing decisions. The reform covers four broad areas:

- Strengthening local democracy;
- Community empowerment;

- Reform of the planning system; and
- Social housing reform.

2.2 On 21 May 2012, the Council approved new arrangements in relation to the promotion and maintaining of high standards of conduct by Members. The changes included:

- (v) changes to the Article 9 (Terms of Reference of the Standards Committee (and its Panels)) of the Council's Constitution;
- (vi) a new Members' Code of Conduct;
- (vii) a new Protocol dealing with arrangements for investigating and making decisions in relation to allegations made under the Members' Code of Conduct;
- (viii) the new Complaint Form that is to be used in relation to complaints relating to the Members' Code of Conduct.

2.3 The Standards Committee approved the new standards arrangements on 16 April 2012; with Council approving the changes on 21 May 2012.

2.4 The new ethical framework came into force on 1 July 2012.

2.5 In considering whether investigation reports prepared in relation to complaints made under the previous ethical framework can and/or should be disclosed, consideration needs to be had to the following:

- a) Under the previous ethical framework (established under Local Government Act 2000 and the Standards Committee (England) Regulations 2008 (as amended)), where an investigation had been undertaken, the investigation report, its findings and conclusion remained confidential unless disclosed in accordance with the above mentioned Regulations.
- b) The Guidance issued by Standards for England advised that investigation reports be marked 'confidential' and that all interviewees should maintain confidentiality. The member(s) subject to a complaint are required to comply with paragraph 4(a) of the then Code of Conduct regarding the disclosure of information that they receive in confidence (i.e. in relation to an investigation).
- c) Under Paragraph 7C of Schedule 12A Local Government Act 1972 (as amended), the deliberations of the Standards Committee in reaching any finding on a matter relating to the conduct of an elected/co-opted/advisory member can be exempt from disclosure providing the Committee considers the public interest in not disclosing the exempt information outweighs the public interest in disclosing the information.
- d) Under paragraph 17 The Standards Committee (England) Regulations 2008, where the Monitoring Officer's investigation makes a finding of 'no case to answer', which is subsequently accepted by the Standards Consideration Panel, the Monitoring Officer is obliged to publish a notice in a local newspaper unless

the subject member requests that no such notice be published. This is an important issue as there have been a number of matters where a finding of 'no case to answer' has been accepted by the Consideration Panel, however the subject member(s) has decided not to have the notice published in a local newspaper.

To disclose the investigation report would disregard the legal right exercised by certain members not to have the finding of 'no case to answer' published/put into the public domain.

The 2008 Regulations specifically makes provision for a subject member to be publically exonerated through the publication of the notice where a finding of 'no case to answer' has been reached.

- e) With the passage of time, the need to maintain confidential diminishes. However, there remains a number of serving Members and a strong argument still exists for confidentiality of investigation reports.
- f) Moreover, there is a high risk that any disclosure of investigation reports would (at this time and in the short/medium term) give rise to a number of potentially unintended consequences. For example:
  - i. lead to 'unofficial' investigation(s) being conducted by unregulated and unmanaged/able persons– 'double jeopardy';
  - ii. attract unnecessary and unwanted media attention in relation to historic matters that have been concluded;
  - iii. undermine the certainty of closure of a complaint;
  - iv. lead to further expenditure of resources in dealing with issues and matters that would inevitably arise despite the matter having been subjected to an independent investigation;
  - v. discourage legitimate complaints being raised;
  - vi. lead to complainants receiving unwanted attention;
  - vii. risks undermining the changes in culture and behaviour the Council is seeking to embed.

2.6 The Committee must of consider what public benefit would be achieved by the disclosure. The parties involved in a complaint would have all received the investigation report.

2.7 The Council has a duty under the Localism Act 2010 to promote high standards of conduct. The Committee should consider whether disclosure of previous investigation reports is consistent with that duty.

2.8 The Committee is therefore advised to consider all the above issues and implications, including the legal framework and potential implications/impact of disclosing investigation reports in making its decision.

### **3.0 RELEVANT RISKS**

3.1 The Council may be challenged by members and complainants if they consider matters adversely affect their position.

3.2 Disclosure of the investigation reports could lead to reputational harm and damage.

### **4.0 OTHER OPTIONS CONSIDERED**

4.1 Redaction has been considered however it is unlikely that the risks or potential adverse impact will be mitigated adequately.

### **5.0 CONSULTATION**

5.1 No consultation has been necessary for this report. However, the views of members should be canvassed before a final decision is taken in relation to the disclosure of investigation reports prepared under the previous ethical framework.

### **6.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS**

6.1 There are no such implications arising.

### **7.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS**

7.1 There are no such issues arising.

### **8.0 LEGAL IMPLICATIONS**

8.1 The legal implications have been set out in the report.

### **9.0 EQUALITIES IMPLICATIONS**

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

(a) Yes and impact review is attached.

### **10.0 CARBON REDUCTION IMPLICATIONS**

10.1 There are no such implications arising.

### **11.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS**

11.1 There are no such implications arising.

### **12.0 RECOMMENDATION/S**

12.1 That the Standards Committee considers the issues and factors raised in this report in considering whether investigation reports prepared under the previous ethical framework should be disclosed.

### **13.0 REASON/S FOR RECOMMENDATION/S**

13.1 The Committee needs to consider all relevant information before reaching a decision.

**REPORT AUTHOR:** **Surjit Tour**  
Head of Legal & Member Services  
telephone: 0151 691 8569  
email: [surjittour@wirral.gov.uk](mailto:surjittour@wirral.gov.uk)

**APPENDICES**

**REFERENCE MATERIAL**

**SUBJECT HISTORY (last 3 years)**

| <b>Council Meeting</b> | <b>Date</b> |
|------------------------|-------------|
|                        |             |