

WIRRAL COUNCIL

STANDARDS AND CONSTITUTIONAL OVERSIGHT COMMITTEE

17 JULY 2013

SUBJECT:	<i>REVIEW AND UPDATE ON THE COUNCIL'S ETHICAL FRAMEWORK</i>
WARD/S AFFECTED:	<i>ALL</i>
REPORT OF:	<i>MONITORING OFFICER</i>
RESPONSIBLE PORTFOLIO HOLDER:	<i>CLLR ANN MCLACHLAN</i>
KEY DECISION?	NO

1.0 EXECUTIVE SUMMARY

1.1 This report provides a review of the Council's Ethical Framework relating to Member conduct.

1.2 Council on 16 April 2012 approved:

- (i) changes to the Article 9 (Terms of Reference of the Standards Committee (and its Panels)) of the Council's Constitution set out at Appendix 1;
- (ii) the Members' Code of Conduct set out at Appendix 2;
- (iii) the Protocol: Arrangements for Investigating and Making Decisions in relation to allegations made under the Members' Code of Conduct set out Appendix 3; and
- (iv) the Complaint Form to be used in relation to complaints relating to the Members' Code of Conduct set out at Appendix 4.

("the Standards Regime")

1.3. The Standards Regime was developed by a cross-party Member Standards Working Group.

1.4. On 16 July 2012, Council appointed Professor R S Jones, Mr C Jones, Mr D Burgess-Jones and Mr B Cummings as 'Independent Persons' for a period of 4 years to support the effective administration of standards complaints and decisions, in accordance with the requirements of the Localism Act 2011.

1.5. Council on 30 April 2013 amended the Council's Constitution which included changes to the terms of the reference of this Committee. The revised terms of reference are attached at Appendix 5 to this report.

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. In summary, the Localism Act 2011 enables greater devolution power and freedoms to Councils and neighbourhoods, establishes greater rights for communities, changes the planning system, and gives communities control over housing decisions. The reform brought about by the 2011 Act covers four broad areas:

- Strengthening local democracy;
- Community empowerment;
- Reform of the planning system; and
- Social housing reform.

2.2 When the Localism Bill was being debated, Government was of the opinion that the arrangements concerning standards matters, consisting of a centrally prescribed model code of conduct, standards committees with the power to suspend a Council Member and regulated by a central quango, was inconsistent with the principles of localism agenda and that the arrangements existing at the time could be used as a vehicle for vexatious or politically motivated complaints.

2.3 On the 15 November 2011, the Localism Bill received Royal Assent and became the Localism Act 2011 ("the Localism Act"). The relevant provisions relating to standards matters are set out in Chapter 7 and Schedule 4 of the Localism Act.

2.4 Standards for England was abolished on 31 March 2012. The 'old' standards regime remained in force until 30 June 2012. The current Standards Regime came into effect from 1 July 2012.

2.5 Appendix 6 is an Explanatory Note detailing the key implications of the Localism Act 2011 on the Standards Regime.

Standards and Constitutional Oversight Committee (Appendix 5)

2.6 Under the Standards Regime, the Council in essence retains its 'Standards Committee'. The Committee has two sub-committees: a 'Standards Panel' and a 'Standards Appeal Panel'.

2.7 The Standards Committee must be politically balanced (unless a 'nem con vote' is taken).

2.8 Under the Localism Act 2012, the 'Independent Member' was replaced by the 'Independent Person'. The Council must appoint at least one 'Independent Person'. The Council agreed to co-opt all 4 Independent Persons onto the Committee (with no voting rights).

2.9 There is an obligation under the Act, which imposes a positive obligation to seek the views of the 'Independent Person' before a decision is made in relation to a complaint that is being investigated. The views of the 'Independent Person' may also be sought where a complaint is not being investigated but relates to a Member's behaviour. The new arrangements, as detailed in the Protocol, addresses this issue.

2.10 With regards the Panels, they will consist of three Members (one member from each political groups) and will be made up of Members of the Standards and Constitution Oversight Committee unless other Members are nominated by party spokespersons to sit on the Panels. Where such a nomination is made the Members nominated will only be allowed to sit on the Panels providing they have undertaken all requisite 'standards' training. The respective roles of the Panels are explained in more detail below.

New Arrangements (Appendix 3)

2.11 The full details of the arrangements for dealing with investigating and making decisions in relation to standards complaints are set out in the "Protocol: Arrangements for Investigating and Making Decisions in relation to allegations made under the Members' Code of Conduct" (set out at Appendix 3). The Protocol does not require Council approval; however it will be approved and reviewed periodically by this Committee.

2.12 A summary of the key features of the new arrangements are set out below:

a. Any action/steps taken, discretion exercised and/or decisions made pursuant to the 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.

b. *Notification of a Complaint*

Where a valid complaint has been received:

The Member against whom a complaint is made ('Subject Member') will be promptly provided details of the complainant and the complaint (unless there is good reason why such information should be withheld).

c. *Preliminary Assessment and Evaluation*

Monitoring Officer will assess and evaluate every complaint to determine whether it:

(i) can be dealt with by local resolution;

If the complaint is considered suitable for local resolution then this course of action will be pursued.

(ii) is frivolous and/or vexatious;

If this is the view of the Monitoring Officer, the complaint will not be progressed.

(iii) can be dealt with by adopting another approach that is considered more effective and/or efficient;

This enables alternative options to be considered and pursued, thereby enabling the new regime to be adaptable to change and flexible so as to allow 'common sense' to prevail.

- (iv) is appropriate to be referred for investigation.

This option ensures that more serious matters are dealt with appropriately.

The Monitoring Officer when undertaking the assessment and evaluation of a complaint must take into account of (i) the views of the Independent Person; (ii) the public interest, (iii) the comments of all three Political Group Leaders; (iii) any guidance provided by Standards Committee; and (iv) promote (a) above.

d. *Obligation to Co-operate with Investigations*

Where an investigation is undertaken, the Subject Member will be required to co-operate with the investigation and make him/herself available for interview within 21 days of the investigator's request for interview. Where there is an unjustifiable delay caused by the Subject Member, the Monitoring Officer can direct that the investigation progresses without any input from the Subject Member.

e. *No breach found by Investigator*

Where the Investigator concludes that the Members' Code of Conduct has not been breached, no further action will be taken in relation to the complaint. Unless otherwise requested by Subject Member, the Monitoring Officer shall arrange for a Council media statement to be published on the Council's website in relation to the complaint and the findings/outcome of the investigation.

a. *Standards Panel*

Where the Investigator has concluded that there has been a breach of the Members' Code of Conduct, the matter will be considered by the Standards Panel within 20 working days. The Panel may decide to agree with the findings and conclusions of the Investigator; or reach an alternative decision (such as decide there has been no breach and decide that no further action be taken).

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 in support of their respective positions. Whilst the parties will not be entitled to cross-examine each other, they will be entitled to challenge and rebut any evidence adduced or representations made by the other. (This applies equally to the Standards Appeal Panel).

g. Appeal Rights

If either 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. Any request seeking permission to appeal must be made to the Monitoring Officer in writing within 21 days of receipt of the Standards Panel decision notice.

A request seeking permission to appeal will only be valid and accepted providing:

- (i) it confirms the procedural, legal and/or evidential issues 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/or material evidential issue has been raised; and/or (b) it is considered reasonable and equitable in the circumstances that the request for appeal be permitted.

h. Standards Appeal Panel

The Standards Appeal Panel will consider, within 20 working days, any appeal that is allowed by the Monitoring Officer. The Panel may decide to agree with the findings and conclusions of the Investigator; or reach an alternative decision.

There is no further right of appeal in relation to a standards complaint.

i. Confidentiality

The Subject Member will be provided with the name of the complainant and a summary of the complaint promptly unless the Monitoring Officer believes to do so would:

- (i) put the complainant at risk of bullying, harassment or intimidation;
- (ii) put other witnesses at risk of bullying, harassment or intimidation;
- (iii) prejudice any investigation;
- (iv) prejudice any other action from being taken;
- (v) not be in the public interest; and/or
- (vi) not be consistent with guidance provided by the Standards Committee or Secretary of State.

or, a request for confidentiality has been made by the complainant and the Monitoring Officer determines that the request should be approved.

Unless otherwise permitted under the Protocol or required by legislation, a Standards Complaint (and all associated information, documents, information) shall not be disclosed in the public domain until such time that the Monitoring Officer, or Standards Committee, or the Standards Panel or the Standards Review Panel, consider it appropriate (if at all) to disclose them in the public domain.

This approach will help ensure that standards complaints can be dealt with fairly, promptly and effectively; and without any potential investigation or Panel hearing being undermined or prejudiced.

The Council's Access to Information Rules shall apply to meetings of the Standards Panel and Standards Appeal Panel.

Sanctions

- 2.13 Under the Act, where a Member or Co-opted Member of the Council has been found to have breached the Members' Code of Conduct (whether or not the finding is made following an investigation), the Council **may** have regard to the failure in deciding (a) whether to take action in relation to the Member or Co-opted Member, and (b) what action to take.
- 2.14 The 2011 Act does **not** prescribe the range of 'actions' that the Council can take; but does envisage that some action **can** be taken against a Member or Co-opted Member who fails to comply with the Members' Code of Conduct.
- 2.15 It was recognised by the cross-party Members Standards Working Group that in the absence of the range of sanctions available under the previous regime, it was imperative that all Members, particularly senior political figures within the respective political groups, understood their obligations to lead, support and actively promote high standards of conduct.
- 2.16 Accordingly, the following sanctions were defined and made available to either the Standards Panel or Standards Appeal Panel where they determined that the Members' Code of Conduct has been breached:
- (i) 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
 - (ii) 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
 - (iii) report the Panel's decision to a public meeting of the Standards Committee for reference/consideration; and/or
 - (iv) 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

- (v) 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.

2.17 The timescales within which actions need to be taken are detailed with the Protocol.

Dispensations

2.18 All requests for dispensations seeking to relieve a Member or Co-opted Member from either (a) participating, or participating further, in any discussion of the matter at the meeting, or (b) participating in any vote, or further vote, taken on the matter at the meeting, must be made to the Monitoring Officer who shall refer all such requests to the Standards Committee for determination. The remit of the Standards Committee, which is detailed in the draft Terms of Reference, addresses this issue.

Current Position

2.19 The new Standards Regime has now been in place for a little over 12 months. It would seem an opportune time for this Committee to review the arrangements and consider whether any amendments should be made or alternative arrangements considered given the Council's statutory duty to promote and maintain high standards of conduct amongst Members.

2.20 By way of summary, five complaints have been received under the new Standards Regime (i.e. since 1 July 2012) of which there remains two 'live' matters. A summary of the complaints is attached at Appendix 8 to this report.

2.21 Committee is asked to consider whether a cross-party Standards Working Party should again be established to undertake the review of the Standards Regime and report back any recommendations to this Committee for consideration. Proposed Terms of Reference of the Working Group are set out at Appendix 7 to this report for the Committee consideration.

Merseyside Waste Disposal Authority Request

2.22 A request has been received from the Merseyside Waste Disposal Authority ("MWDA") that the Council's Members' Code of Conduct be amended to include a requirement that members appointed to outside bodies (such as the MWDA) be required to comply with any relevant Codes of Conduct of those outside bodies. Details of the resolution passed by the MWDA, its' Code of Conduct and procedure for handling complaints made under their Code is attached at Appendix 9.

2.23 The MWDA does fall within the definition of a 'relevant authority' under the Localism Act 2011 and therefore does not have the same legal duties and responsibilities as the Council.

2.24 The Committee can of course decide whether to recommend to Council that the Members' Code of Conduct be amended to require Members who are appointed to outside bodies to comply with any relevant Codes of Conduct of those outside bodies (and be subject to the applicable arrangements/procedures dealing with any complaints made). Alternatively, it may be an issue that the Working Group is asked to consider the request by MWDA (assuming the Committee agrees to establish the Working Group).

3.0 RELEVANT RISKS

3.1 The Council is required to comply with the provisions of the Act with regards the arrangements for dealing with standards matters. Should it fail to do so, the Council exposes itself to risk of challenge and reputational harm.

4.0 OTHER OPTIONS CONSIDERED

4.1 The Working Group considered and debated various issues and options with regards the arrangements for dealing with standards matters. A review of the current Standards Regime provides a further opportunity for Members to consider revised/alternative arrangements.

5.0 CONSULTATION

5.1 The consultation with Members should be undertaken in relation to any revisions/alternative arrangements (if applicable).

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 The Standards Regime is more effective and efficient in dealing with standards complaints/matters. However, the resource implications are (and have always been) predominantly affected and determined by the conduct and behaviour of Members.

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) No – not applicable

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 Committee:

- a. Notes this report;
- b. Determines whether to establish a cross-party Member Working Group in accordance with the Terms of Reference set out at Appendix 7 to review the current Standards Regime and report back its recommendation to this Committee for consideration.
- c. Subject to b. above, determine whether Council be recommended to amend the Members' Code of Conduct to include an obligation that Members who are appointed to an outside body be required to comply with any relevant Code of Conduct of that outside body (and be subject to the body's arrangements/procedures dealing with any complaints made under the Code).

13.0 REASON/S FOR RECOMMENDATION/S

13.1 The Council is required to comply with the provisions of the Localism Act 2011 and ensure appropriate arrangements are in place to promote and maintain high standards of conduct by Members.

REPORT AUTHOR: **Surjit Tour**
Head of Legal & Member Services
and Monitoring Officer
Telephone: 0151 691 8569
Email: surjittour@wirral.gov.uk

APPENDICES

Appendix 1 - Terms of Reference of the Standards Committee and its Panels (16 April 2012)

Appendix 2 - Members' Code of Conduct

Appendix 3 - Protocol: Arrangements for Investigating and Making Decisions in relation to allegations made under the Members' Code of Conduct

Appendix 4 – Complaint Form

Appendix 5 - Terms of Reference of the Standards and Constitutional Oversight Committee

Appendix 6 – Explanatory Note: Localism Act and the Standards Regime

Appendix 7 – Proposed Terms of Reference for the Cross-party Standards Committee Working Group

Appendix 8 – Summary of Standards Complaints between 1 July 2012 and 9 July 2013

Appendix 9 – Merseyside Waste Disposal Authority arrangements for Member conduct.

REFERENCE MATERIAL

SUBJECT HISTORY (last 3 years)

Council Meeting	Date