

# **MEMBERS' CODE OF CONDUCT**

## **PROTOCOL**

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

July 2012

## CONTENTS

		Page
1.	Interpretation	2
2.	Introduction and Summary	2
3.	What Can Be Dealt With Under This Local Protocol	3
4.	What Cannot Deal With Under This Local Protocol	3
5.	Acknowledging Receipt of a Standards Complaint	4
6.	Anonymous Complaints	4
7.	Pre-Assessment Reports and Enquiries	4
8.	Referral of a Complaint for Investigation	7
9.	Production of Documents, Information and Explanations	8
10.	Interviews	8
11.	Investigator's Report	9
12.	Rights and Responsibilities of Members and the Investigator	9
13.	Processing the Investigator's Report	10
14.	Confidentiality of Information gathered during an Investigation	10
15.	Role of Investigator and the Panels	11
16.	Standards Panel	11
17.	Notification of Standards Panel Decision and Right of Appeal	11
18.	Request for permission to Appeal	12
19.	Review Panel	12
20.	Notification of Review Panel Decision	13
21.	Conflicts of Interest	13
22.	Monitoring and Review	13
23.	Failure to Comply with the Requirements of this Protocol	13
24.	Modification of Procedure	13

## **1. Interpretation**

- 1.1 'Chairperson' refers to the relevant person presiding at the Standards Committee or the Standards Panel or Standards Appeal Panel.
- 1.2 'Complainant' means the person who is making the Standards Complaint.
- 1.3 'Investigator' means the Monitoring Officer or other person nominated by the Monitoring Officer (or his/her representative) to investigate a complaint.
- 1.4 'Legal Advisor' means the officer responsible for providing legal advice to the Standards Panel and/or Standards Appeals Panel. This may be the Monitoring Officer, another legally qualified officer of the Council, or someone appointed for this purpose from outside the Council.
- 1.5 'Member(s)' includes all Elected Members of Wirral Council and all non-elected Co-Opted Members of any committee (including the 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.
- 1.6 '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.
- 1.7 '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).
- 1.8 '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.

## **2. Introduction and Summary**

- 2.1 This Protocol has been developed and established pursuant to paragraphs 9.3(f),(g) and (j) of the Terms of Reference of The Standards Committee set out at Article 9 of the Constitution.
- 2.2 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.

### **3. What Can Be Dealt With Under This Local Protocol**

- 3.1 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 Committee Services (or 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.
- 3.2 In order to avoid unnecessary use of public resources, the Complainant must specify on the complaint form template what the Subject Member(s) is alleged to have said or done, any corroborating evidence or details of people who will be able to provide it, and a copy of any documentary evidence the Complainant seeks to rely on.
- 3.3 Standards Complaints must be about a Member(s) breaking any part of the Council's Members' Code of Conduct. This includes:
- Unlawfully discriminating against someone.
  - Failing to treat people with respect.
  - Doing something to prevent those who work for the Council from being unbiased.
  - Revealing information that was given in confidence, or stopping someone getting information they are entitled to by law.
  - Damaging the reputation of their office or Council.
  - Using their position improperly to their own or someone else's advantage or disadvantage.
  - Misusing the Council's resources.
  - Allowing the Council's resources to be misused for the activities of a registered political party.
  - Failing to register a disclosable pecuniary interest or other relevant interest(s).
  - Failing to reveal a disclosable pecuniary interest at a meeting.
  - Failing to register any gifts or hospitality they have received in their role as a member, worth over £25.00.

### **4. What Cannot Deal With Under This Local Protocol**

- 4.1 There are some complaints that are not legally capable of being dealt with under this Protocol, such as:
- Complaints about policy or decisions made.
  - Complaints where a Member(s) is not named.
  - Complaints that are not in writing (with the exception set out in paragraph 6.1 below or otherwise agreed by the Monitoring Officer).
  - Incidents or actions that are not covered by the Members' Code of Conduct or one of the Council's local protocols.
  - Incidents that are about a fault in the way the Council has or has not done something. This is known as maladministration and may be a matter for the Local Government Ombudsman.
  - Complaints about people employed by the Council – they will be dealt with through the Corporate Complaints Procedures or the Council's disciplinary procedures.
  - Complaints about the way in which the Council conducts and records its meetings - these should be referred directly to the Council's Monitoring Officer.

## **5. Acknowledging Receipt of a Standards Complaint**

- 5.1 Unless paragraph 6.1 applies, within five working days of receipt, the Complainant shall be sent a written acknowledgement of the Standards Complaint.
- 5.2 Subject to the application of paragraphs 22.2, 22.4 and 22.6 below, within five working days of receipt of the Standards Complaint, the Subject Member(s) shall be sent a written notification and summary of the Standards Complaint received.
- 5.3 The Subject Member(s) shall not disclose (except to his/her advisor(s) confidentially) any information provided to him/her under paragraph 5.2 above to any other person/body without the express written consent of the Monitoring Officer.
- 5.4 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'.
- 5.5 In the event that further information is provided by the Complainant, pursuant to paragraph 5.4 above, that enables the 'complaint' to be accepted as a Standards Complaint, paragraphs 5.1 and 5.2 above shall apply.
- 5.6 Where no further information is provided by the Complainant, pursuant to paragraph 5.4, no further action shall be taken in relation to the 'complaint' and the Monitoring Officer shall inform the Complainant accordingly.

## **6. Anonymous Complaints**

- 6.1 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.
- 6.3 Details of such allegations will be retained on file by the Monitoring Officer for future reference and monitoring purposes.

## **7. Pre-Assessment Reports and Enquiries**

- 7.1 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 referred to in paragraph 7.2 below.
- 7.2 The Monitoring Officer shall, as soon as practicably possible after receipt of a Standards Complaint (and after receiving any clarification/information requested under paragraph 7.1 above), 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 8 below)
- ("Preliminary Assessment and Evaluation").

7.3 The Preliminary Assessment and Evaluation carried out by the Monitoring Officer under 7.2 above, 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) paragraph 2.2 above.

[\*In the event that the Subject Member is the Political Group Leader, the Monitoring Officer shall seek the views of 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 seek the views of the next most relevant senior Political Group Official/Spokesperson.]

7.4 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.

7.5 The Monitoring Officer, in carrying out the assessment and evaluation under paragraph 7.2 above, 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:

- (a) a pattern of allegations of disrespect, bullying or harassment;
- (b) factionalised groupings within the Council;
- (c) a series of 'tit-for-tat' allegations; or

- (d) ongoing employment issues, which may include resolved or ongoing employment tribunals, or grievance procedures.

7.6 The Monitoring Officer should, as part of any Preliminary Assessment and Evaluation, take a practical approach to considering other action, taking into account the needs of the Council.

7.7 Unless otherwise stated within this Protocol, Standards Complaints that are referred for investigation under paragraph 7.2 (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

7.8 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 the 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.

7.9 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 Council other than as part of a periodic anonymous summary to the Standards Committee for monitoring and review purposes.

7.10 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 7.2;

then the Monitoring Officer 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

7.11 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

- 7.12 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 7.8 and 7.9 above, he/she shall adopt that approach accordingly and endeavour to achieve a resolution of the Standards Complaint.
- 7.13 If the Monitoring Officer, whilst seeking resolution of the Standards Complaint by adopting an alternative approach, under paragraph 7.12, 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 7.2;

then the Monitoring Officer shall refer the Standards Complaint and any other relevant information for investigation; and the investigation report produced shall be considered by the Standards Panel.

## **8. Referral of a Complaint for Investigation**

- 8.1 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.
- 8.2 Within five 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) appoint an Investigator and instruct him/her to conduct an investigation of the Standards Complaint and to report his/her findings to the Monitoring Officer and subsequently to the Standards Panel.
- 8.4 The Monitoring Officer may appoint another person (or other persons) to assist him/her or the Investigator in the conduct of his/her functions.
- 8.5 The investigation will be carried out having regard to any guidance provided by the Standards Committee and/or the Monitoring Officer; and shall normally be completed (i.e. a final report produced) within twelve weeks from the date the decision was made that the Standards Complaint should be investigated. The timescale for investigation may take longer when dealing with complex complaints or where there are large numbers of



witnesses. In such cases the Monitoring Officer will ensure that the process is dealt with in a timely manner; concluded as soon as reasonably practicable; and that the Complainant, Subject Member(s) and Chairperson of the Standards Committee are kept informed as to progress.

- 8.6 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.

## **9. Production of Documents, Information and Explanations**

- 9.1 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.

## **10. Interviews**

### **10.1 Timescale**

The Investigator will make arrangements for interviews with relevant persons within ten working days of being appointed. If it subsequently becomes apparent that there needs to be further interviews (or other evidence provided) this will be dealt with as soon as reasonably practicable.

### **10.2 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 a reasonable period of time (which must not exceed 21 days) of the Investigator requesting a convenient time and date for interview.
- (iii) In the event that the Complainant or Subject Member(s) fail to respond to a request for interview or fail to make him/herself available for interview within 21 days of the Investigator request for interview or fail 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).

### **10.3 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.

#### 10.4 Notes of interviews

Where reasonably practicable, following the interview the Investigator will produce a written note of the material points of the interview, provide two copies of that note to the person interviewed and ask him/her 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.

### 11. Investigator's Report

- 11.1 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.
- 11.2 The draft report will be marked "Confidential" and "Draft". It will also make 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.
- 11.3 The Investigator will then send a copy of his/her draft report 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 ten working days of receipt of the draft report.
- 11.4 The Investigator shall, upon receipt of any comments received under paragraph 11.3 above, will consider such comments when preparing his/her final report.

### 12. Rights and Responsibilities of Members and the Investigator

- 12.1 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.
- 12.2 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.
- 12.3 The Complainant and Subject Member(s) will normally be interviewed face-to-face by the Investigator. Other witnesses may be interviewed by telephone 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.
- 12.4 It is a breach of the Members' Code of Conduct to attempt to intimidate the Investigator or Members of the 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 Standards Committee. Should the Complainant or Subject Member(s) have any queries or concerning in respect of the Standards Complaint or investigation, then he/she should raise them directly with the Monitoring Officer in writing.

12.5 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.

12.6 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.

### **13. Processing the Investigator's Report**

13.1 Within five working days from receipt of the Investigator's report the Monitoring Officer shall send a copy of the Investigator's final report to both the Complainant and the Subject Member(s).

13.2 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.

13.3 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 at a convenient time and date to all parties to consider the Investigator's Report. 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 Panel hearing.

### **14. Confidentiality of Information gathered during an Investigation**

14.1 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 is 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.

14.2 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).

## **15. Role of Investigator and the Panels**

- 15.1 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 Appeals 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.
- 15.2 It is essential that the Investigator acts, at all times, in a manner that is impartial and fair to all parties.
- 15.3 The Standards Panel (and the Standards Appeals 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.

## **16. Standards Panel**

- 16.1 Where a Standards Complaint has been referred for investigation and a finding of a breach has been found by the Investigator, the Standards Panel shall be convened within 20 working days of the Monitoring Officer receiving the Investigator's final report.
- 16.2 The Standards Committee 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
  - (iii) 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.
- 16.3 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 cross-examine each other, they will be entitled to challenge and rebut any evidence adduced or representations made by the other.
- 16.4 Sanctions  
If the Standards Panel determines that the Members' Code of Conduct has been breached, it may impose one or more of the sanctions detailed within its terms of reference.
- 16.5 The Standards Panel may commission further investigation/s or request additional information as necessary to enable it make a decision in relation to the Standards

Complaint; and accordingly adjourn the consideration of a Standards Complaint to another meeting.

## **17. Notification of Standards Panel Decision and Right of Appeal**

17.1 The Standards Panel decision and its reasons shall be confirmed in writing to the Complainant and the Subject Member(s) within normally five 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 18 below.

## **18. Request for permission to Appeal**

18.1 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.

18.2 Any request seeking permission to appeal must be made in writing to the Monitoring Officer within 21 working days of receipt of the Standards Panel's decision.

18.3 The Monitoring Officer shall acknowledge any request seeking permission to appeal made under paragraph 18.2 within 5 working days of receipt.

18.4 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.

## **19. Review Panel**

19.1 The Monitoring Officer shall convene a meeting of the Standards Appeal Panel to consider the appeal within 20 working days (or as soon as practicable thereafter) of his/her decision to allow an appeal under paragraph 18.4 above.

19.2 The Monitoring Officer shall, within 10 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.

19.3 The Standards Appeal Panel will consider and/or have regard to:

- (iv) the Investigator's report;
- (v) the views of the Independent Person;
- (vi) material factors, relevant issues and evidence;
- (iv) relevant representations made by the parties,
- (v) available guidance and advice; and
- (iii) 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.

19.4 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 cross-examine each other, they will be entitled to challenge and rebut any evidence adduced or representations made by the other.

#### 19.5 Sanctions

If the Standards Appeal Panel determines that the Members' Code of Conduct has been breached, it may impose one or more of the sanctions detailed within its terms of reference.

19.6 The Standards Appeals Panel may commission further investigation/s or request additional information as necessary to enable it make a decision in relation to the appeal; and accordingly adjourn the consideration of the appeal to another meeting.

### 20. **Notification of Review Panel Decision**

20.1 The Standards Appeal Panel decision and its reasons shall be confirmed in writing to the Complainant and the Subject Member, within normally five working days of the Standards Appeal Panel considering the Standards Complaint. The Complainant and Subject Member do not have a right to of appeal against the decision of the Standards Appeal Panel.

### 21. **Access to Meetings and Decision Making**

21.1 Where the Standards Panel or Standards Appeals 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, information and the like shall be exempt from disclosure under paragraph 7C of the Council Access to Information Procedure Rules unless the Standards Panel or the Standards Appeals

Panel at its meeting considers that the public interest in lifting the exemption outweighs the public interest in maintaining the exemption.

- 21.2 Agendas and papers for meetings of the Standards Panel and Standards Appeals Panel shall be distributed in accordance with the Council's Access to Information Procedure Rules.
- 21.3 The publication of Standards Panel and Standards Appeals Panel decisions and associated information shall be kept for six years from the date of the decision.

## **22. Confidentiality**

- 22.1 Unless otherwise permitted under this Protocol or required by legislation, a Standard Complaint (and all associated information, documents, information) shall remain confidential until such time that the Monitoring Officer, or Standards 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.
- 22.2 The Subject Member(s) will (unless otherwise stated in this Protocol) be sent a summary of the complaint within five working days of receipt 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.
- 22.3 The Subject Member shall not disclose (except to his/her advisor(s) in confidence) any information provided to him/her under paragraph 22.2 above without the express written consent of the Monitoring Officer.
- 22.4 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.
- 22.5 In exceptional circumstances, despite the Monitoring Officer agreeing to the Complainant's identity being kept confidential under paragraphs, 22.1, 22.2 and/or 22.4 above, the confidential details in question may still become known in the public domain or have to be provided for other reasons and purposes which disclosing them in the public domain.

22.6 The Subject Member will not be informed/notified of the Standards Complaint and/or the identity of the Complainant, in accordance with paragraph until after the Monitoring Officer has considered the Standards Complaint and made a determination in relation to any request for confidentiality made under paragraph 22.4 above.

### **23. Conflicts of Interest**

23.1 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 of 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.

### **24. Monitoring and Review**

24.1 For monitoring and review purposes, the Monitoring Officer shall provide the Standards Committee, at each of its meetings (unless otherwise directed by the 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.

### **25. Failure to Comply with the Requirements of this Protocol**

25.1 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.

### **26. Modification of Procedure**

26.1 The Monitoring Officer, in consultation with the Chairperson of the 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.