

**Local Protocol**

**on**

**Local Assessment and Investigation of  
Allegations of Misconduct by Members**

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## **1. Interpretation**

- 1.1 'Member' means the member of the Council who is the subject of the allegation unless stated otherwise or the context so requires. 'Member' 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.
- 1.2 '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.
- 1.3 'Investigator' means the Monitoring Officer or other person nominated by the Monitoring Officer to investigate a complaint.
- 1.4 'The Committee Services Officer' means an officer of the authority responsible for supporting the Standards Committee/Panel discharge of its functions and recording the decisions of the Standards Committee/Panel.
- 1.5 'Legal Advisor' means the officer responsible for providing legal advice to the Committee/Sub-Committee. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.
- 1.6 'The Chair' refers to the relevant person presiding at the Standards Committee/Panel.

## **2. Introduction and Summary**

- 2.1 This Protocol has been developed in accordance with the guidance issued by Standards for England ('SFE'). It should be read in conjunction with the "Local Assessment of Complaints" guidance published by Standards for England and The Standards Committee (England) Regulations 2008.

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

- 3.1 Complaints about the behaviour of a Member must be made in writing (by letter or email) using the official form 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 complaint in writing.
- 3.2 In order to avoid unnecessary use of public resources, the complainant must specify on the form what the subject member 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 needs to rely on.
- 3.3 Complaints must be about a Member breaking any part of their Council's Code of Conduct. This includes:

- Unlawfully discriminating against someone.
- Failing to treat people with respect.
- Bullying.
- 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 financial or other interests.
- Failing to reveal a personal interest at a meeting.
- Taking part in a meeting or making a decision where the member has an interest that is so significant that it is likely to affect his or her judgment.
- 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 procedure which is solely for dealing with alleged member misconduct:

- Complaints about policy or decisions made.
- Complaints where a member is not named.
- Complaints that are not in writing (with the exception set out in paragraph 6.1 below).
- Incidents or actions that are not covered by the 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 direct to the Council's Monitoring Officer.

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

5.1 Within five working days of receiving a complaint against a member, the complainant shall be sent an acknowledgement of their complaint.

#### **6. Anonymous Complaints**

6.1 Further action will not be taken in respect of anonymous complaints unless 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.

6.2 Details of the allegation will be retained by the Monitoring Officer for future reference and monitoring purposes.

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

- 7.1 Where a complaint is not about an allegation of member misconduct or there is insufficient information provided on the complaint form, the Monitoring Officer will inform the complainant of this issue within five working days of receipt of the complaint form. The Monitoring Officer may carry out a preliminary investigation in accordance with SFE guidance, to assist a decision (in consultation with the Chair of the Standards Committee).
- 7.2 Where the Monitoring Officer is of the opinion that there is the potential for local resolution, he/she may approach the member complained against and ask whether the member admits, denies or otherwise wishes to comment on the alleged breach and whether he/she would be prepared to offer an apology or undertake other remedial action.
- 7.3 The Monitoring Officer will decide (and if considered appropriate in consultation with the Chair of the Standards Committee) whether to refer the complaint to the Initial Assessments Panel or to respond to the complainant explaining why the matter is not being taken further. In reaching decisions on the assessment, the Monitoring Officer will take full account of Standards for England Guidance and decided case law.

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

- 8.1 In accordance with Regulation 8 of The Standards Committee (England) Regulations 2008, meetings of the Initial Assessments Panel and Review Panel will not be open to the public and are not subject to the notice and publicity requirements of Part 5A of the Local Government Act 1972. The press, Members, officers (except the Monitoring Officer, Legal Advisor and Committee Services Officer), members of the public and complainant are not permitted to attend meetings of the Initial Assessments Panel and Review Panel. Meetings of the Standards Hearing Panel will also not be open to the public unless the Standards Hearing Panel agrees to lift the exclusion.
- 8.2 Agendas and papers for meetings of the Initial Assessments Panel, Review Panel and Standards Hearing Panel will normally be sent to the Monitoring Officer, Committee Services Officer and Members of the relevant Panel at least four clear working days before the date of the meeting. There is no legal entitlement to copies of agendas, reports and associated documents, minutes and background papers of meetings of the Initial Assessments Panel, Review Panel and Standards Hearing Panel in accordance with Regulation 8, but such information will be available to the member complained about once the Monitoring Officer is satisfied that sufficient investigation or other action has been undertaken and that the potential prejudice to any investigation or the public interest in withholding the information no longer applies.
- 8.3 In accordance with the Standards Committee (England) Regulations 2008, a summary of an Initial Assessments Panel, Review Panel and Standards Hearing Panel decision will normally be available to the public upon request. However if the member complained has not been found to breach the Members' Code of Conduct, that member has the right to request that the decision not be published. All decisions and information relation to them will be kept for six years from the date of the decision of the Sub-Committee.

## **9. Confidentiality**

- 9.1 The member will (unless otherwise stated in this Local Protocol) be sent a summary of

the complaint within five working days of receipt unless the Monitoring Officer believes that this would be likely to:

- (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 Standards for England.

9.2 Requests for the complainant's name or details of the complaint to be kept confidential will not automatically be granted. The complainant shall be informed of Monitoring Officer's decision within five working days of receipt of any such request. If a complainant's request for confidentiality is not granted, the complainant may, if considered appropriate by the Monitoring Officer, in consultation with the Chair of the Standards Committee, be afforded the opportunity to withdraw their complaint.

9.3 However, where the matter complained about is very serious, the complaint will proceed. In these exceptional circumstances the complainant's identity may become known or have to be given out, even if the complainant has requested confidentiality.

9.4 Where a request is made for confidentiality, the member complained against will not be notified of the receipt of the complaint against them until after the Monitoring Officer has considered the complaint and the request for confidentiality considered. In all other cases the Committee Services Officer will inform the Member complained against within five working days of receipt of the complaint unless the Monitoring Officer advises otherwise on grounds detailed in paragraph 9.1 above.

## **10. Referrals to the Initial Assessment Panel**

10.1 The Initial Assessment Panel will be made up of one Independent Member of the Standards Committee and two Wirral Councillors. The selection of the two Wirral Councillors shall be in accordance with the relevant provisions Council's Constitution. The Initial Assessments Panel must be chaired by an Independent Member of the Standards Committee.

10.2 In order to avoid unnecessary use of public resources, the Initial Assessments Panel must be satisfied that there is some degree of likelihood that appropriate evidence may be found and that the complaint, if proven, might be a breach of the Code or local protocol. The complainant must provide sufficient information to enable the Initial Assessments Panel to conclude that there is prima facie evidence of a breach of the Code. The Initial Assessments Panel should, when considering a complaint, consider whether the complaint is vexatious, malicious, politically motivated, 'tit-for-tat', or made at least six months after the event (unless the pattern of behaviour complained about has been recently repeated or the evidence relied upon is predominantly documentary).

10.3 The Initial Assessments Panel will meet within twenty working days of the complaint being received and will consider any request for confidentiality or withdrawal of the

complaint. It will then reach one of the following decisions in respect of the complaint:

- (a) Refer the complaint to the Monitoring Officer of the Council for investigation or other action.
- (b) Refer the complaint to Standards for England.
- (c) Decide that no action should be taken in respect of the complaint.

10.4 When a matter is referred for investigation or other action, it does not mean that the Initial Assessments Panel (or, on appeal, the Review Panel) has made a decision on the merits of the complaint, or whether there has been a breach of the Code of Conduct. It simply means that Initial Assessments Panel believes the alleged conduct, if proven, may amount to a failure to comply with the Code (or local protocol) and that some action should be taken in response to the complaint. The Initial Assessments Panel will only take into account information in the agenda papers or provided by the Monitoring Officer in reaching its decision.

### **Referral of a Complaint to the Monitoring Officer for Investigation**

10.5 Where a matter is referred to the Monitoring Officer for investigation, the Monitoring Officer shall determine the person to undertake that investigation and the appropriate manner of that investigation. The Monitoring Officer shall have regard to all relevant considerations, including: the views of the Initial Assessments Panel; the seriousness of the allegations; the extent to which allegations are supported by any evidence; the Council's financial position; and the public interest.

10.6 An investigation may be undertaken by: the Monitoring Officer, in person or another person appointed by the Monitoring Officer, including; a Deputy Monitoring Officer; another appropriate officer (having regard to the nature of the allegations); a Monitoring Officer, or Deputy Monitoring Officer, at another local authority; or by an external investigator of appropriate experience and standing.

10.7 Within five working days of a Initial Assessments Panel decision that a matter be investigated the Monitoring Officer will:

- a) begin to investigate the matter personally; or
- b) appoint an Investigator and instruct him/her to conduct an investigation of the allegation and to report their findings to the Monitoring Officer and subsequently to the Initial Assessments Panel.

10.8 The Monitoring Officer may appoint another person (or other persons) to assist him/her or the Investigator in the conduct of his/her functions.

10.9 A local investigation will be carried out having regard to the guidance provided by SFE and normally completed (i.e. a final report produced) within twelve weeks from the date the Initial Assessments Panel resolves that an allegation of a breach of the Code of Conduct or a local protocol 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, complained about Member and Chair of the Standards Committee are kept



informed as to progress.

- 10.10 The Monitoring officer shall ensure that an 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.

### **Referral of a Complaint to the Monitoring Officer for Other Action**

- 10.11 When the Initial Assessments Panel considers a new complaint, it can decide that action other than an investigation should be taken and it can refer the matter to the Monitoring Officer to carry this out. It may not always be in the interest of good governance to undertake or complete an investigation into an allegation of misconduct. The Initial Assessments Panel must consult the Monitoring Officer or the Legal Advisor before reaching a decision to take other action.

- 10.12 The suitability of other action is dependent on the nature of the complaint. Certain complaints that a member has breached the Code of Conduct may indicate that there is a wider problem. Deciding to deal pro-actively with a matter in a positive way that does not involve an investigation can be a good way to resolve matters that are less serious. This may be the simplest and most cost effective way of getting the matter resolved, helping the Council work more effectively and of avoiding similar complaints in the future.

- 10.13 The Initial Assessments Panel can decide that the other action should be applied to the member complained against or that working practices or policies should be amended in light of the issues raised. Other action may be appropriate if it appears that members have a poor understanding of the Code or authority procedures. Evidence of this may include:

- (a) a number of members failing to comply with the same paragraph of the Code;
- (b) officers giving incorrect advice;
- (c) failure to adopt the Code; or
- (d) inadequate or incomplete protocols for use of authority resources.

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.

- 10.14 The Initial Assessments Panel will take a practical approach to considering other action, taking into account the needs of the Council. It will be made clear to everyone involved in the process that the decision to refer a matter for other action is made as an

alternative to investigation. Where other action is agreed no conclusion or decision will be made on whether the member complained against failed to comply with the Code of Conduct or local protocol.

10.15 Complaints that have been referred for other action will not be referred back to the Initial Assessments Panel if the other action is perceived to have failed. This would be unfair to the member complained against and a case may be jeopardised if it has been discussed as part of the mediation process.

10.16 The following are some examples of alternatives to investigation:

- (a) arranging for the member complained against to attend a training course;
- (b) arranging for the member complained against and the complainant to engage in a process of conciliation; or
- (c) instituting changes to the Council's procedures if they have given rise to the complaint.

10.17 Within three months of the date the direction for 'other action' was received, the Monitoring Officer will submit a written report to the Initial Assessments Panel giving details of the action taken or proposed to comply with the direction. If the Initial Assessments Panel is not satisfied with the action specified in the report, it shall give a further direction to the Monitoring Officer. If the Initial Assessments Panel is satisfied with the action specified in the report it will give written notice to that effect to the complainant, member complained against.

### **Decision to Take No Action**

10.18 The Initial Assessments Panel may decide that a complaint will not be investigated or referred for other action for one or more of a number of reasons which could include those listed in paragraph 4. In addition, the Initial Assessments Panel may decide not to investigate the complaint because:

- the complainant has not provided adequate evidence, and there is insufficient likelihood of adequate evidence being found, which might indicate a breach of the Code to justify the use of resources involved in an investigation.
- the complaint is not serious enough to justify the use of resources involved in an investigation;
- the complaint appears to be simply malicious, politically motivated or tit-for-tat;
- the complaint has already been investigated and there is no significant new information; or
- the length of time that has elapsed since the alleged conduct took place and the complaint was made was too long ago to merit any action being taken.

### **Referral of a Complaint to Standards for England ('SFE')**

10.19 Sometimes there will be issues in a case, or public interest considerations, which make it difficult for the Council to deal with a complaint fairly and speedily. In these cases the Initial Assessments Panel may wish to refer a complaint to SFE. The reasons for doing this are set out in SFE guidance. If the Initial Assessments Panel decides to refer a matter to SFE it should decide which paragraphs of the Code of Conduct it believes the

allegation refers to and the reasons why it cannot be dealt with locally.

- 10.20 SFE may accept such cases for investigation, take no action, or refer cases back to the Council's Standards Committee. SFE will normally inform the Monitoring Officer within ten working days whether they will accept a case or whether they will refer it back to the Standards Committee, with a reason for doing so. There is no right of appeal against the SFE's decision.
- 10.21 If SFE decides not to investigate a case referred to them, they may offer guidance or give a direction to the Standards Committee, which may assist them in making their decision. They may also refer the matter with a direction to the Monitoring Officer to deal with.
- 10.22 Within three months of the date the direction for 'other action' was received by the Monitoring Officer, he/she will submit a written report to the Ethical Standards Officer (ESO) giving details of the action taken or proposed to comply with the direction. If the ESO is satisfied with the action specified in the report he/she will give written notice to that effect to the complainant, member complained against. If the ESO is not satisfied with the action specified in the report, he/she may require the Monitoring Officer to arrange for a statement to be published in at least one local newspaper giving:
- (a) details of the direction given by the ESO;
  - (b) the ESO's reasons for being dissatisfied; and
  - (c) the Monitoring Officer's response to the ESO's reasons for being dissatisfied.
- 10.23 In exceptional circumstance, SFE may decide to take no further action on a complaint referred to them by the Initial Assessments Panel. This is likely to be where circumstances have changed so much that there would be little benefit arising from investigation or other action, or because they do not consider the complaint discloses a breach of the Code of Conduct.
- 10.24 If SFE refers a complaint back to the Standards Committee, the Initial Assessments Panel will meet within 20 working days of receiving the referral, and decide what action should be taken next. The Initial Assessments Panel will make one of the following decisions:
- (a) not to take any further action;
  - (b) refer the matter to the Monitoring Officer for local investigation; or
  - (c) refer the matter to the Monitoring Officer for some other form of action,

As the Initial Assessments Panel initially decided that the matter was serious enough to be referred to Standards for England for investigation, it is likely that it will still think that it should be investigated. However, if the circumstances of the complaint have changed since the original decision, it may be reasonable to make a different decision. The complainant and the member complained against will be notified in writing of the Initial Assessments Panel's decision and the reasons for that decision, normally within five working days of the meeting.

## **11. Notification of Initial Assessments Panel Decision and Right of Review**

- 11.1 If the Initial Assessments Panel decides not to refer a complaint for investigation or other action, the Committee Services Officer will write to the complainant and the member complained against to explain why, normally within five working days. The complainant has a right to appeal to the Review Panel about a decision by the Initial Assessments Panel not to refer the complaint for investigation or other action. This must be done within 30 working days of receipt of the Initial Assessments Panel's decision. Further information is set out in paragraph 12 below.
- 11.2 If the Initial Assessments Panel decides to refer the complaint for investigation or other action the Committee Services Officer will within five working days write to the complainant and the member complained against to explain why.

## **12. Review Panel**

- 12.1 If a complainant is dissatisfied with the Initial Assessments Panel's decision, he/she may appeal, in writing, to the Review Panel. The protocol requirements applicable to the Initial Assessments Panel shall apply to the Review Panel.
- 12.2 The Review Panel will normally be made up of one Independent Members of the Standards Committee and two Wirral Councillors. These must be different Independent and elected members to those who sat on the original Initial Assessments Panel. The Review Panel must be chaired by an Independent Member of the Standards Committee.
- 12.3 The Review Panel will review a decision of the Initial Assessments Panel to take no action. The Review Panel must also take into account any additional relevant evidence submitted to it by the complainant, member complained about or anybody else (e.g. the Monitoring Officer).
- 12.4 Within five working days of receiving a request for a review of the Initial Assessments Panel's decision the Committee Services Officer will write to the complainant and member complained against to acknowledge receipt of the request for review.
- 12.5 The Review Panel will reach one of the following decisions within twenty working days of the receipt of a request for a review:
- (a) Uphold the original decision of the Initial Assessments Panel not to refer the complaint for investigation or other action.
  - (b) Overturn the decision of the Initial Assessments Panel and refer the complaint to the Council's Monitoring Officer for investigation or other action.
  - (c) Overturn the decision of the Initial Assessments Panel and refer the complaint to Standards for England for investigation.

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

- 13.1 The Committee Services Officer will write to the complainant, member complained against and advise them of the Review Panel's decision and reasons for their decision, normally within five working days of the meeting.

## **14. Investigation Reports**

- 14.1 When an investigation has been completed, the Initial Assessments Panel will consider the investigation report and may ask the Investigator questions (but will not interview witnesses or take representations) in deciding one of the following actions:
- (a) it accepts the investigating officer's findings of no failure to observe the Code of Conduct or local protocol; or
  - (b) the matter should be referred for consideration at a hearing before the Standards Hearing Panel; or
  - (c) the matter should be referred to the First Tier Tribunal for determination.
- 14.2 The Initial Assessments Panel may only make a finding under paragraph 14.1(c) if it has decided that the action it could take against the member would be insufficient if a finding of failure was made and if the President or Deputy President of the First Tier Tribunal (Standards for England) has agreed to accept a referral.

## **15. Standards Hearing Panel**

- 15.1 Where the Initial Assessments Panel refers an investigation report to the Standards Hearing Panel, the Standards Hearing Panel will hold a formal hearing into the matter.
- 15.2 The Standards Hearing Panel will normally be made up of two independent members of the Standards Committee and three Wirral Councillors. The quorum for the Panel is three members including at least one Independent Member of the Standards Committee. The Standards Hearing Panel must be chaired by an Independent Member of the Standards Committee. As the Initial Assessments Panel and Review Panel make no findings of fact in respect of the complaint, members who sat on the Initial Assessments Panel or Review Panel have not automatically predetermined matters and may sit on the Standards Hearing Panel.
- 15.3 The Standards Hearing Panel has the power to issue one or more sanctions including power to suspend or partially suspend a member for up to six months and to restrict a member's access to Council buildings or resources. The process for dealing with this is set out in this Protocol.

## **16. Conflicts of Interest**

- 16.1 Members and officers shall not take part in meetings of the Initial Assessments Panel, Review Panel or Standards Hearing 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 case in any way.
  - (c) A family member, friend or close associate of the member or officer is involved in the case.

- (d) The member or officer has an interest in any matter relating to the case. 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.

16.2 An officer acting as legal adviser in the above panel process must not be involved in the investigation of that matter.

## **17. Roles of Investigator and the Panels**

17.1 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 / Panels, to enable the Panels to come to an informed decision as to whether the member has failed to comply with the Council's Code of Conduct for Members or local protocol.

17.2 It is essential that the Investigator at all times acts in a manner that is completely impartial and fair to all parties.

17.3 The Panels shall act in an inquisitorial manner seeking the truth in relation to the conduct of the member on the balance of the information available to it.

17.4 The Panels may commission further investigation/s or request additional information where it needs to do so in order to come to a decision.

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

18.1 Information gathered during an investigation will be treated as confidential until it is reproduced in the form of a final report. People who are involved in the investigation or who are interviewed will be asked to maintain confidentiality and members will be reminded of their obligation under paragraph 3(a) of the Code of Conduct not to disclose information they have received in confidence.

18.2 If a draft report is issued on the outcome of the investigation it will be marked "confidential", to preserve the integrity of any further investigation that may need to be carried out.

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

19.1 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.

19.2 In the event of a member failing to assist the Investigator, the matter may be referred to the Ethical Standards Officer who has legal powers to compel assistance to be given which if not complied with, are punishable by a level 3 fine (currently £1,000).

## **20. Interviews**

20.1 Timescale

The Investigator will make arrangements for interview 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.

## 20.2 Requesting attendance

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 for the purpose of paragraph 19, as he/she thinks necessary for the purposes of carrying out the investigation. The Investigator will request members and other persons to provide responses within five working days of receipt of the request.

## 20.3 Representation

Any person who appears before the Investigator may arrange to be accompanied (at their own expense) by one friend/adviser provided that they are not someone who is a witness.

## 20.4 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 them 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.

## 21. Refer Back to Standards for England

21.1 At any stage prior to the completion of the investigation, the Investigator may (after consulting the Monitoring Officer, if separate) suspend his/her investigation and refer the matter, together with any supporting information, to Standards for England for an Ethical Standards Officer to consider.

21.2 When a matter is referred to an Ethical Standards Officer (ESO), they are required to respond to the request within 21 days of receipt and may:

- (a) direct that the matter be referred to an ESO for him/her to undertake an investigation, in which case the Monitoring Officer concerned will terminate the investigation; or
- (b) direct that the Monitoring Officer concerned continue his/her investigation in accordance with The Standards Committee (England) Regulations 2008 in which case the Monitoring Officer concerned will continue his/her investigation and may not make any further request under paragraph 5 of the Regulations in respect of that matter.

## 22. Investigator's Report

22.1 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 parties and/or any other persons interviewed during the investigation.

- 22.2 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 Initial Assessments Panel once the Investigator has considered any comments received on the draft report.
- 22.3 The Investigator will then send a copy of his/her draft report to the member and the person making the allegation and will normally request that they send any comments on the draft report to him/her within ten working days.
- 22.4 Within five working days after the expiry of that period (or such extended period as the Investigator may allow), the Investigator will reconsider his/her draft report in the light of any comments received and will produce and send to the Monitoring Officer a final report.

### **23. Meetings of the Initial Assessments Panel and the Standards Hearing Panel**

- 23.1 The Standards Committee (England) Regulations 2008 allow for the investigation report to be considered as exempt information. The Regulations also allow for the member complained about to require that the authority does not publish a notice stating that the sub-committee has found that there has been no failure to comply with the Code. In the event of a finding of no failure to comply with the Code, arrangements will be made to publish such a notice, unless the member complained about requests at the end of the meeting that such a notice be not published. In view of this legal option available to the member complained about, the investigation report will be treated as exempt information in accordance with Regulation 8(6) unless and until a decision is made that it should be referred to a hearings sub-committee.
- 23.2 If a decision is made by the Initial Assessments Panel that the investigation report should be referred to the Standards Hearing Panel, in accordance with the statutory procedures it will cease to be regarded as exempt information unless the Initial Assessments Panel resolves that the subject member’s interest in limiting publication of an improper allegation yet to be determined by the Standards Hearing Panel should outweigh the public interest in transparent decision making.
- 23.3 Regulation 8(6) of the Standards Committee (England) Regulations 2008 allows the consideration of the investigation report to be considered as exempt information.

### **24. Rights and Responsibilities of Members and the Investigator**

- 24.1 No member, including the member complained about, has any right to address the Initial Assessments Panel or Review Panel. No member may address the Standards Hearing Panel other than in accordance with the procedures laid down in accordance with the Standards Committee (England) Regulations 2008 and Standards for England Guidance.
- 24.2 The Investigator will seek to interview the member complained about and the complainant.
- 24.3 Depending upon the seriousness of the allegations and the available evidence, the Investigator may also interview other persons named by the member complained about or the complainant whom the Investigator considers could reasonably further assist the investigation. Neither the member complained about nor the complainant may seek to interview such other persons themselves.



- 24.4 The member complained about or the complainant may supply the Investigator with any documents they would like the Investigator to examine as part of the investigation, or the contact details of people they would like the Investigator to interview.
- 24.5 The complainant and the complained-about Member 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 complained-about Member will normally be given an opportunity to comment upon all evidence submitted by the complainant (or others) to substantiate the complaint.
- 24.6 It is a breach of the 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 complaint. No attempt should be made to communicate with members of the Standards Committee about any matter relevant to the investigation.
- 24.7 Anyone seeking to participate in the investigation will be directed to the Monitoring Officer or the Investigating Officer in the first instance.

To avoid misunderstanding, any communication of this nature should be made in writing wherever possible.

- 24.8 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. It is the responsibility of the Investigator to seek to discover the facts in an impartial and thorough manner in accordance with Standards for England Guidance. It is the responsibility of the Standards Hearing Panel to determine the facts and decide whether there has been a failure to comply with the Code of Conduct.

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

- 25.1 Within three working days from receipt of the Investigator's report the Committee Services Officer will write to the complainant and the members complained about:
- (a) enclosing a copy of the report; and
  - (b) informing them of the date of the Initial Assessments Panel at which it will be considered.
- 25.2 The Initial Assessments Panel will consider the report and make a finding that:
- (a) it accepts the Investigator's finding of no breach or
  - (b) the matter should be referred to the Standards Hearing Panel or the Local Government Standards Tribunal.
- 25.3 Within three days after the Initial Assessments Panel's decision, the Committee Services Officer will
- (a) give written notice of the decision to:
    - (i) the member complained about;

- (ii) the Investigator; and
- (iii) the complainant; and

(b) if the decision is to accept that no breach has been committed, arrange for a notice to be published in at least one newspaper circulating in the Borough of Wirral (unless the member concerned is found not to have committed any breach of the Code of Conduct and/or local protocol(s) and requests that it is not published) stating that the Standards Committee has found that there has not been a failure on the part of the member whom the finding of no failure relates to, to comply with the Code of Conduct for Members (and/or local protocols).

25.4 If the Initial Assessments Panel has referred the matter to the Standards Hearing Panel, the Committee Services Officer will, within three working days, write to the member complained about asking them to complete the forms prescribed by SFE and return them to the Committee Services Officer within ten working days. If the member does not reply, a reminder will be sent allowing a further five working days to reply, after which, if no reply, it will be assumed that the member does not dispute the findings of fact and does not wish to participate in the hearing.

25.5 Within three working days of receipt of the completed forms, the Committee Services Officer will write to the Investigator asking them to complete a further form within five working days.

## **26. Pre Hearing**

### 26.1 Pre-Hearing Process

Within five working days of the receipt of the completed form from the Investigator by the Committee Services Officer, a Pre-Hearing discussion will be held between the Monitoring Officer (or other legal advisor to the Standards Hearing Panel if the Monitoring Officer is the Investigator or unable to attend) and the complainant to deal with the procedural issues.

### 26.2 Pre-Hearing Process Summary

Once the Pre-Hearing discussion has taken place, the Monitoring Officer will address the issues raised and prepare a Pre-Hearing Process Summary setting out the following details:

- (a) The findings of fact in the Investigator's report that are agreed.
- (b) The findings of fact in the Investigator's report that are not agreed.
- (c) Whether or not the member and/or the Investigator will attend or be represented.
- (d) The names of any witnesses who will be asked to give evidence.
- (e) An outline of the proposed procedure for the hearing.
- (f) Any other matters the Monitoring Officer considers appropriate.

The Monitoring Officer will send a copy of the Pre-Hearing Process Summary to the member complained against, the complainant(s) and the members of the Standards

Hearing Panel within five working days after the conclusion of the Pre-Hearing Meeting.

- 26.3 Should the member complained against or complainant(s) intend to raise any procedural issue or point of order at the meeting of the Standards Hearing Panel, then the member or complainant(s) must provide full written details of the same (together with any supporting documents or evidence to be relied upon) to the Monitoring Officer at least seven days prior to the Standards Hearing Panel meeting.

## **27. Consideration of Investigator's Report**

- 27.1 Within fifteen working days of circulation of the Pre-Hearing Process Summary, the Standards Hearing Panel will meet to consider the allegations. The agenda for the meeting will normally be despatched at least seven working days before the date of the meeting. The Monitoring Officer may disclose a copy of the Investigator's report to the complainant prior to the despatch of the Standards Hearing Panel agenda (but may remove any confidential information from the documents).
- 27.2 If the member complained against or complainant(s) intend to raise any procedural issue or point of order at the meeting of the Standards Hearing Panel under paragraph 26.3 above, the Monitoring Officer, in consultation with the Chair, shall have the right to postpone the Standards Hearing Panel to another date. In such circumstances a further agenda shall be despatched at least seven clear working days before the date of the meeting.
- 27.3 The member against whom the allegation(s) may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the Standards Hearing Panel another person. **Note:** the member must meet the cost of such representation.
- 27.4 The Standards Hearing Panel may take legal advice from its legal advisor at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Standards Hearing Panel will be shared with the member and the Investigator if they are present. The Standards Hearing Panel may adjourn to hear legal advice but this advice will then be repeated by the legal advisor in the public forum.
- 27.5 At the Standards Hearing Panel, it will not normally be permitted to raise new disagreements over findings of fact in the final report unless there are good reasons for doing so (for example, new evidence becoming available). It is therefore important that the member complained against raises any such issues of concern on the forms sent to the member by the Committee Services Officer before the hearing.

## **28. Preliminary Procedural Issues**

- 28.1 Before the Standards Hearing Panel considers the Investigator's report it will consider any procedural issues, including requests for paperwork to be withheld from the public and/or for any part of the meeting to be held in private. The Standards Hearing Panel will then resolve any other issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process.
- 28.2 The Standards Hearing Panel may adjourn at any time to require further information or investigation to be carried out (in accordance with the Regulations).

## **29. Presentation of evidence (Stage 1)**

- 29.1 After dealing with any preliminary issues, the Standards Hearing Panel will then move to consider the Investigator's report.
- 29.2 The Investigator will be invited to summarise his/her report and make any necessary representations to support the relevant findings of fact in the report. With the Standards Hearing Panel permission, the Investigator may call any necessary supporting witnesses to give evidence. The Standards Hearing Panel may give the member complained against and complainant(s) an opportunity to challenge any representations and evidence put forward by the Investigator and his/her witnesses.
- 29.3 The Standards Hearing Panel may then give the complainant(s) an opportunity to make representations to support his or her version of the facts and, with the permission of the Standards Hearing Panel, call any witness(es) to give evidence. The Standards Hearing Panel may give the member complained against the opportunity to make representations in relation to any representations and/or evidence presented by the complainant(s) or the complainant(s) witness(es). The member complained against is not entitled to cross-examine the complainant(s) or the complainant(s) witness(es).
- 29.4 The Standards Hearing Panel may then give the member complained against an opportunity to make representations to support his or her version of the facts and, with the permission of the Standards Hearing Panel, call any witness(es) to give evidence. The Standards Hearing Panel may give the complainant(s) the opportunity to make representations in relation to any representations and/or evidence presented by the member complained against or his/her witness(es). The complainant(s) is not entitled to cross-examine the complainant(s) or the complainant(s) witness(es).
- 29.5 At any time, the Standards Hearing Panel may question any party or any witness and may allow the Investigator to challenge any evidence put forward by any party or witness.
- 29.6 If the member complained against disagrees with any relevant fact in the Investigator's report, without having given prior notice of the disagreement during the Pre-Hearing process, he or she must give good reasons for not mentioning it before the hearing. If the Investigator is not present, the Standards Hearing Panel will consider whether or not it would be in the public interest to continue in his or her absence. After considering the member's explanation for not raising the issue at an earlier stage, the Standards Hearing Panel will then:
  - (a) continue with the hearing, relying on the information in the Investigator's report;
  - (b) allow the member to make representations about the issue, and invite the Investigator to respond and call any witnesses as necessary; or
  - (c) postpone the hearing to arrange for appropriate witnesses to be present, or for the Investigator to be present if he or she is not already.
- 29.7 The complainant(s) may be invited to make any final submissions to the Standards Hearing Panel.
- 29.8 The member complained against will be given the opportunity to make final submissions to the Standards Hearing Panel.

29.9 Following final submissions, the Standards Hearing Panel will consider all the representations and evidence presented and deliberate in private having regard to all relevant guidance and advice..

29.10 The Standards Hearing Panel may, at any time, seek clarification on any representations or evidence presented during the meeting.

**30. Did the Member fail to follow the Code of Conduct for Members (or Local Protocol)? (Stage 2)**

30.1 Following consideration and deliberation, the Chair of the Standards Hearing Panel will announce the Standards Hearing Panel's findings of fact. The Standards Hearing Panel will also confirm whether or not, based on the facts it has found, the member complained against has failed to follow the Council's Members' Code of Conduct (or local protocol).

**31. If the Member has not failed to follow the Code of Conduct for Members (or Local Protocol)**

31.1 If the Standards Hearing Panel decides that the member complained against has not failed to follow the Code of Conduct (or local protocol), the Standards Hearing Panel will move on to consider whether it should make any recommendations to the authority.

**32. If the Member has Failed to Follow the Code of Conduct (or Local Protocol) (Stage 3)**

32.1 If the Standards Hearing Panel decides that the member complained against has failed to follow the Code of Conduct (or local protocol), the member will be invited to provide any mitigation he/she would like the Standards Hearing Panel to take into account before determining whether:

- (a) whether or not the Standards Hearing Panel should impose a sanction; and if so
- (b) what form any sanction should take in accordance with the statutory powers available to the Standards Hearing Panel.

32.2 When deciding on a sanction, the Standards Hearing Panel will make sure that it is reasonable and in proportion to the member's behaviour. Before deciding what sanction to set the Standards Hearing Panel will consider the criteria on sanctions approved by the Standards Committee.

32.3 The Standards Hearing Panel will consider whether or not to impose a penalty on the member complained against and, if so, what the penalty should be in private. On their return, the Chair will then announce the Standards Hearing Panel's decision.

**33. Recommendations to the Council**

33.1 After considering any verbal or written representations from the Investigator, the Standards Hearing Panel will consider whether or not it should make any recommendations to the Council, with a view to promoting high standards of conduct among members.

### **34. The Written Decision**

- 34.1 The Standards Hearing Panel will announce its decision on the day and provide a short written decision on that day. A full written decision prepared by the Committee Services Officer and approved by the Monitoring Officer and Chair of the Standards Hearing Panel will be published within ten working days.
- 34.2 Following the closure of the hearing, the Committee Services Officer will prepare a formal written notice of the Standards Hearing Panel's determination for approval by the Monitoring Officer and Chair and will arrange for the distribution and publication of that notice within five days (in accordance with the Regulations).
- 34.3 The notice comprises a formal written notice which must:
- (a) State that the Standards Hearing Panel has found either:
    - (i) That the member had not failed to comply with the Code of Conduct or local protocol; or
    - (ii) That the member had failed to comply with the Code of Conduct or local protocol but that no action needs to be taken in respect of the failure; or
    - (iii) That the member had failed to comply with the Code of Conduct or local protocol and the sanction imposed.
  - (b) Specify the details of any such failure.
  - (c) Give reasons for the Standards Hearing Panel reaching that finding.
  - (d) Specify any sanction which the Sub-Committee has imposed on the member.
  - (e) State that the member may apply for permission to appeal against the finding (where the Standards Hearing Panel has found that there had been a failure to comply with the Code of Conduct or local protocol) and provide the address to write to and relevant time limit.
- 34.4 The formal written notice must be sent to:
- (a) The member concerned.
  - (b) The Investigator concerned.
  - (c) The Standards Committee (as the determination was made by the Standards Hearing Panel).
  - (d) The Standards Committee of any other authority of which the member is also a member.
  - (e) The complainant.
  - (f) One or more newspapers circulating in the area of the authority (unless the Standards Hearing Panel finds that there has not been a breach the member

requests that the notice is not sent to the press).

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

- 35.1 Failure by a member to comply with the reasonable requirements of the Investigator, or this protocol, may result in a further complaint being made to the Monitoring Officer and may be referred to the Standards Committee. This will be a breach of paragraph 20 of the Code of Conduct for Members. Officers are also required to comply with the reasonable requirements of the Investigator and this Protocol. Any failure to do so may result in disciplinary action being taken against the individual concerned.

### **36. Modification of Procedure**

- 36.1 The Chair of the Standards Committee, on the advice of the Monitoring Officer or Legal Advisor, after consulting the complained about Member and complainant, may vary the application of the procedure and practice detailed in this Protocol in any particular instance where the Chair is satisfied that such a variation is necessary in the interests of fairness; any such variation will be recorded in writing and signed by the Chair, with reasons given for the variation, and filed on the case file.