

**Body:** Council

**Date:** 9 May 2012

**Subject:** Localism Act 2011 and the new standards regime:  
Committee, constitutional and related changes

**Report of:** Head of Corporate Development

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**Ward(s):** All

**Purpose:** To revise the Council's standards regime and amend associated committee and decision making arrangements.

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**Recommendations:** That the Council approve the following:

(1) That the Standards and Audit Committees be disbanded on 30 June 2012.

(2) That the appointments of the three independent members of the Standards Committee be terminated as at 30 June 2012.

(3) That an Audit and Governance Committee (with a Standards Panel) be established as from 1 July 2012.

(4) That the Audit and Governance Committee and Standards Panel terms of reference and composition be as set out in appendix 2 to this report.

(5) That the draft code of conduct set out in appendix 3 to the report be approved in principle and that the Monitoring Officer be authorised to continue working on the draft with a view to the Council giving formal approval at their next ordinary meeting on 18 July 2012. In the meantime the Council retain its current code of conduct.<sup>1</sup>

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<sup>1</sup> If after the 1 July but before the final code is approved there is any conflict between the code and the Localism Act and / or the documents approved by Council, the Act and the documents approved by Council will take precedence.

(6) That the procedure documents (appendices 4, 5 and 6) in respect of the arrangements for dealing with complaints be approved and to note that the responsibility for reviewing and updating these documents will in future rest with the Audit and Governance Committee.

(7) That the matters to be included in the register of members' interests be as described in the code of conduct and regulations.

(8) That the Monitoring Officer be given delegated authority, in consultation with the lead Cabinet member and the lead opposition member, to recruit, select and submit recommendations to full Council in respect to the appointment of the independent persons

(9) That the remuneration of independent persons appointed by the Council be delegated to the Head of Corporate Development but that initially payments should be in line with the remuneration amount currently provided for the independent members of the Standards Committee.

(10) That the Council's scheme of delegation to officers and proper officer list be amended to add to the Monitoring Officer's delegated powers the power to:

- Decide whether to investigate allegations of misconduct (but with ability to consult with the independent person and/or refer to the Standards Panel) and exercise discretion in accordance with the document 'Arrangements for dealing with standards allegations under the Localism Act 2011, during the process for dealing with complaints .
- Establish, maintain and publish the register of interests.
- Grant dispensations for relief of interest restrictions but with ability to consult with the independent person and/or refer to Standards Panel).

and add to Head of Paid Service's functions:

- The grant and supervision of exemptions from political restriction.

(11) That subject to approval of the foregoing recommendations, the Monitoring Officer be authorised make all necessary changes to the Council's constitution and supporting procedural documentation to bring them into line with the new standards regime.

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## **1.0 Introduction**

1.1 Following initial consultation with Group Leaders, a report was considered by the Standards Committee on 10 April 2012, advising the committee of the latest developments regarding implementation of the various provisions in the Localism Act 2011 relating to a new ethical framework and seeking the committee's approval to the future course of action to be taken. That report indicated that a number of matters would require the approval of full Council; hence this report.

- 1.2 The Standards Committee report is appended (appendix 1) as this provides a full explanation of the steps that need to be taken and highlights current issues; not least the absence of detail in relation to various anticipated regulations. In addition, the appendices to that report have been updated and appended (appendices 2-6) in line with comments made by the committee and further developments nationally as additional information concerning the likely content of expected regulations become better known. Material changes are summarised below in the 'update' section of this report.
- 1.3 As discussed in greater detail in section 2.3 below, appendix 3 is the current working model of the 'Sussex Code' which is based on the existing code. It is proposed that Council approve this as a draft document. The existing code (not appended) remains until the 'Sussex Code' is finalised.
- 1.3 A key aim of the legislation and this Council's response is to simplify our processes and reduce the workload on councillors and officers whilst retaining a commitment to maintaining high standards of conduct. The opportunity can be taken to merge the existing Standards and Audit Committees and streamline any future activity in relation to allegations of misconduct through a sub-committee, to be called a 'Standards Panel'; whose work will be supported by the Monitoring Officer and informed by the 'independent person' which the legislation now requires the Council to appoint in place of the independent members of the current Standards Committee.
- 1.4 It should be noted that certain decisions such as the adoption of the code of conduct and the appointment of independent persons can only be made by full Council and cannot be delegated to a committee or an officer.

## **2.0 Update**

- 2.1 **Terms of reference.** Minor changes have been to the terms of reference. In light of comments at the Standards Committee, no restriction has been placed on any category of member being members of the Audit and Governance Committee. This will allow an executive member to be a committee member.
- 2.2 **Chair of Audit and Governance Committee.** No recommendation is made as to whether or not the chairman of the new Audit and Governance Committee should receive a special responsibility allowance (SRA) under the provisions of the Council's members' allowances' scheme. The current Audit chair does not receive an SRA. If the Council is minded to propose an SRA for this new position a resolution will be required at this stage and before being finally agreed, the Council will need to consider the views of the Independent Remuneration Panel at a future meeting.
- 2.3 **Code of conduct.** As is set out in the previous report to the Standards Committee, the authorities in East Sussex have been working together on a

code. This direction was supported by the Standards Committee and clearly it is desirable that there is a common code. Since the Standards Committee the Local Government Association (LGA) have produced a template code of conduct, whilst the Department for Communities and Local Government (DCLG) has published an 'illustrative text' for a code of conduct. The authorities now need to consider whether they would like to incorporate any or all aspects of either model in their 'Sussex Code'.

- 2.4 Progress on drafting a code of conduct is also being slowed by the continued absence of regulations on 'disclosable pecuniary interests' which will form a key part of the code.
- 2.5 It has also emerged since the last Standards Committee that the DCLG has indicated that the current code of conduct will continue to apply after 1 July. It is therefore proposed that the Monitoring Officer continues to work with neighbouring authorities to ensure that there is common agreement on an effective but user friendly code to be adopted by all East Sussex authorities. Once the regulations have been published, the Monitoring Officer will ensure that members are made aware of their obligations.
- 2.6 **Independent persons.** It is proposed that Council should delegate authority for all aspects of the appointment process of the independent persons to the Monitoring Officer, in consultation with the lead cabinet member and the lead opposition member, with a view to recommendations as to the appointments to be made being submitted to the next ordinary meeting of the Council on 18 July 2012.
- 2.7 The DCLG has indicated that transitional provisions will enable the Council to appoint existing independent members to serve as independent persons. Hopefully these transitional provisions will be published before the appointment takes place and a slight delay in the recruitment is necessary to await these regulations. The Localism Act requires us to have provisions in place for the appointment of at least one independent persons so this delegation ensures we comply with the legislation. Members will note that the legislation requires the Council to carry out an open recruitment exercise.
- 2.8 It is also proposed that the independent persons are appointed for 4 year terms and that the Head of Corporate Development sets the level of remuneration. Initially it will remain at the same rate as is currently paid to the independent members.
- 2.9 **Powers of Monitoring Officer.** The terms of reference have been updated to reflect the wording of the draft code as this envisages the Monitoring Officer will grant dispensations for relief of interest restrictions in all routine cases.
- 2.10 **Powers of Head of Paid Service.** The Localism Act removes the powers of the Standards Committee in relation to the grant and supervision of

exemptions from political restriction of officers and transfers them to the Head of Paid Service.

- 2.11 **Register of Members Interests.** The Localism Act requires the Monitoring Officer to establish and maintain a register of interests. This will reflect the existing code and the regulations initially and may need to be revised following the adoption of the final code.

### **3.0 Consultation**

- 3.1 The Standards Committee considered a report from the Monitoring Officer on 10 April 2012. Group Leaders and lead members of both Groups (Councillors Tester and Howlett) received a draft copy of this report and had an opportunity of commenting.

### **4.0 Implications and conclusion**

- 4.1 It is anticipated that implementation of the new standards regime and associated changes will reduce member and officer workloads and simplify the process for dealing with complaints. Greater discretion is to be given to the Monitoring Officer and the Standards Panel in making decisions about complaints and there will be more opportunity for informal resolution of allegations of misconduct.

**Peter Finnis**  
**Head of Corporate Development**

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#### **Background Papers:**

- LGA Template Code of Conduct
- DCLG 'illustrative text'
- As set out in the report to the Standards Committee

(der\P:council\12.05.09\Localism Act 2011 and the new standards regime)



***Monitoring Officer's report to Standards Committee 10  
April 2012:***

**Body:** STANDARDS COMMITTEE

**Date:** 10 APRIL 2012

**Subject:** LOCALISM ACT

**Report Of:** LAWYER TO THE COUNCIL AND MONITORING OFFICER

**Ward(s)** All

**Purpose** To approve steps to implement the new standards regime required by the Localism Act 2011.

**Recommendations:**

- That the Committee approves the terms of reference for a new Audit and Governance Committee
- That the Committee approves the draft code of conduct, 'arrangements for dealing with complaints', draft investigations procedure and a draft hearings procedure.
- That the Committee authorises the Monitoring Officer to respond to developments and make adjustments to the documents attached to this report.
- That the Committee instruct the Monitoring Officer to advertise the posts of Independent Person and to make recommendations to Full Council as to who they should appoint.

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**1.0 Background**

1.1 Members will recollect previous reports relating to the Localism Act. The new regime needs to be implemented ready to commence on 1 July. It will therefore be necessary to seek the necessary approvals and delegations from Full Council on 9 May. Your comments and approval for the direction set out in the attached documents is therefore sought but it is acknowledged that there may need to be changes to them. You are therefore asked to authorise the Monitoring Officer to amend the

documents as appropriate and then to present them to Full Council to be approved.

## **2.0 New Standards and Audit Committee**

- 2.1 As set out in the previous report on the Localism Act, there is no longer a requirement to have a Standards Committee. The proposal is to merge the current standards and audit functions in a new Audit and Governance Committee. A Sub-Committee, known as the Standards Panel will deal with individual complaints. This proposal seeks to strike a balance between the need to give proper priority to standards issues and the relatively low workload which has historically been carried out by the Standards Committee. The new Committee will retain oversight of the regime to ensure that the Council retains its excellent record in relation to standards and meets its duty to promote and maintain high standards of conduct by members under the Localism Act 2011.
- 2.2 The composition of any Standards Committee will be governed by proportionality unless Council votes otherwise with no member voting against. Despite the support previously expressed by this Standards Committee, I understand it may not receive the support of all members. I understand that ESCC is not planning to suspend the normal rule.
- 2.3 Attached to this report as Appendix 1 is the draft Terms of Reference for this new committee, which has been drafted by David Robinson, Local Democracy Manager. It also contains an introductory note setting out the reasons for taking this course.
- 2.4 Given that there are no Borough elections this year, it is proposed that the existing Standards Committee and its membership carry on till the end of June. We will be formally contacting the current independent members to confirm that their roles come to an end at the end of June.

## **3.0 Code of conduct**

- 3.1 All authorities are required to have a code of conduct. The authorities in East Sussex have worked together on a draft code which is largely based on the current code, with suitable amendments to reflect the new law (Appendix 2). This direction was supported at the previous Standards Committee.
- 3.2 The main problem with drafting the new code is that the Government has not published the regulations under the Localism Act to define "disclosable pecuniary interests" which members will have to register and declare. You will recall that it will be a criminal offence to fail to do so.
- 3.3 The Local Government Association is working on a code of conduct which authorities may choose to adopt. They may produce two codes: a more detailed one and a simpler version, but we have yet to see anything from them.

3.4 At this stage, it is not possible to recommend a code to you but the current draft of the code which has been drafted by the authorities in East Sussex is available for your comments. As you can see it is envisaged at present that the category of "disclosable pecuniary interests" will be added to the code. It may be that the number of categories of interests can be reduced, for example if disclosable pecuniary interests are largely the same as prejudicial interests.

#### **4.0 Arrangements**

4.1 The Localism Act requires all authorities to have arrangements for dealing with complaints. It is up to individual authorities to decide what arrangements to adopt. It was clear from the last Standards Committee that members supported the idea of making the procedures for dealing with complaints much simpler and giving the Monitoring Officer more discretion to deal with minor complaints in an informal way to avoid the need to resort to more formal measures.

4.2 Peter Keith-Lucas, a leading solicitor in this area, has drafted model 'arrangements' which meet these requirements. This document is attached as Appendix 3. Your Monitoring Officer has not altered his document except to remove references to parishes and to give the Monitoring Officer the opportunity if he/she feels it is necessary to seek the views of the Panel. This is to deal with situations where the Monitoring Officer felt in a difficult position and wanted the support of members in rejecting or supporting the request for an investigation.

4.3 It has also been amended to include some guidance as to what kind of complaints should lead to investigations. All of these changes are shown as tracked changes on the attached document.

4.4 You will note that the right of review no longer exists under these arrangements, though complainants could complain to the Local Government Ombudsman.

4.5 Unfortunately Peter Keith-Lucas has not drafted the investigation and hearings procedure which he envisages being appended to the 'arrangements' document. Your Monitoring Officer has drafted the attached documents (appendices 4 and 5) which are hopefully fairly brief and simple. The intention is to give the Monitoring Officer, the Standards Panel and the Investigating Officer as much discretion as possible and to keep the procedures straightforward.

## **5.0 Sanctions**

- 5.1 The arrangements document has been amended to reflect the more recent advice obtained by ACSeS from Counsel about the sanctions available. Counsel has indicated that the following are lawfully available, subject of course to the particular facts and circumstances and lawful and proportionate manner of application:
- i. A formal letter to the councillor found to have breached the code;
  - ii. Formal censure by motion;
  - iii. Removal by the authority of the member from committee(s) subject to statutory and constitutional requirements;
  - iv. Press release/other appropriate publicity;

(Again the amendments can be seen as tracked changes.)

- 5.2 As can be seen, these sanctions are much more limited than currently available and it can only be hoped that they are enough to provide a sufficient deterrent and preserve public confidence. This will no doubt be monitored by the new Committee.

## **6.0 Independent Persons**

- 6.1 The Independent Person(s) must be consulted before a decision is taken on an allegation that the authority has decided to investigate. Their views may be sought at any other stage and they may be consulted by the member against whom the allegation has been made. As can be seen from the arrangements documents they will also be consulted in relation to the decision to start an investigation.
- 6.2 Members will recall that your Monitoring Officer advised in her last report that current independent members could not become Independent Persons. ACSeS have been informed by the CLG that Ministers are minded to make transitional provision for a council to appoint a person as an independent person who although not a chairman or member of a standards committee at the time of appointment or thereafter, has held such a post within the last 5 years. This implies that the appointments should not overlap. It appears that authorities will still need to comply with the requirements of S28(8)(c) -advertising, application and approval by the authority. These provisions seem to be so worded that appointments can be made prior to 1 July, when the Section is to come into force (so you do not have a vacuum after 1 July when decisions under the arrangements cannot be made), but with effect from 1 July. Existing standards committees and the appointments of current independent members will need to cease at 30 June.
- 6.3 As members will recall there were discussions at the last Standards Committee in relation to the proposals to set up a panel of Independent Person's from which authorities could draw. Given the indication from

government, it now seems likely that we will not have to lose the expertise that our highly respected independent members have built up and the Committee may therefore feel that the benefits of keeping a direct relationship with local Independent Persons outweighs the potential benefits of that scheme.

- 6.4 Members are asked for their views on the number of independent persons that should be recruited. It seems essential to have two as one may be consulted by the member against whom the complaint has been made so will not be able to advise the Standards Panel. It may be useful to have three to ensure that there are no difficulties getting hold of an independent person to consult. The fees of independent persons will be the subject of further internal dialogue.
- 6.5 The Localism Act requires the authority to advertise the position and to receive an application. It is proposed that the Monitoring Officer organises this recruitment process and recommends applicants for appointment to Council. It is proposed that the Monitoring Officer consults the portfolio and shadow portfolio holders in undertaking this exercise.

## **7.0 The Register of Members Interests**

- 7.1 Members will recollect that your Monitoring Officer had proposed to seek approval of a register of members' interests. It is the duty of the Monitoring Officer to establish and maintain a new register of members' interests which must contain the matters which the Council, in its code, considers appropriate. There will be at least 2 categories – disclosable pecuniary interests and other interests. Given that we still have not had the regulations which would be essential to make this a meaningful process this Standards Committee is not being requested to consider a register. It is noted that you have previously expressed support for maintaining the requirement to register those interests which are declared under the current regime.
- 7.2 As at present the Monitoring Officer will have the power to exclude sensitive interests from the register.

## **8.0 Dispensations**

- 8.1 As you will see from the draft East Sussex Code, it is proposed that the Standards Committee, or a Sub-Committee, or the Monitoring Officer may grant dispensations in the circumstances set out in the code.

## **9.0 Disclosure of Interests and Withdrawal from Meetings**

- 9.1 At the last Standards Committee support was expressed for continuing with the same provisions in relation to disclosing interests and withdrawing from the meeting room. The East Sussex code preserves these rules.

## **10.0 Consultation**

10.1 Consultation has taken place with group leaders and officers.

## **11.0 Resource Implications**

11.1 The merging of the two Committees may lead to a reduction in the resources required to support them.

## **12.0 Financial**

12.1 None

## **13.0 Staffing**

13.1 The implementation of the new standards regime continues to take up a considerable amount of Officer time.

## **14.0 Conclusion**

14.1 Whilst it has not been possible to provide a comprehensive set of final drafts of the documents necessary to implement the new regime, the current Standards Committee now has a opportunity to comment on the documents and provide a critical steer to the authority. The code preserves a commitment to a robust and comprehensive set of rules in relation to conduct, and places a high expectation on members.

14.2 The attached documents increase the discretion given to the Monitoring Officer and the Standards Panel in the dealing with complaints and simplify the processes for making decisions about complaints. They provide more opportunity for informal resolution of allegations of misconduct.

14.3 The Act provides a new role for Independent Persons and it is to be welcomed that our current independent members will be able to apply for these positions if they wish to.

ALICE ROWLAND  
LAWYER TO THE COUNCIL AND MONITORING OFFICER

## Appendices

- 1) Terms of Reference for new Audit and Governance Committee
- 2) Draft Code of Conduct
- 3) Draft Arrangements for Dealing with Complaints
- 4) Draft Investigations Procedure
- 5) Draft Hearings Procedure

Background Papers:

Articles in the Law Gazette, Local Government Lawyer, ACSeS bulletins

Advice obtained from Counsel by ACSeS

Model Report to Standards Committee and Model Arrangements for Dealing with Complaints (written by Peter Keith-Lucas, Bevan Britten)

Draft documents supplied by neighbouring authorities  
(AR/DF/LG/160/1)



# Audit and Governance Committee terms of reference

## Introductory note

In essence the intention is that the current terms of reference of the Council's Standards Committee and Audit Committee are combined. Adjustments will need to be made to reflect the changes in legislation brought about by the Localism Act 2011 and other regulatory change. The opportunity is also being taken to include a number of governance type functions within the remit of the new committee. In addition, a Standards Panel will act as a sub-committee to deal with allegations of misconduct and grant of dispensations in relation to pecuniary interests.

## Summary of purpose

The audit functions of the committee relate to the Council's arrangements for the discharge of its powers and duties in connection with financial governance and stewardship, risk management and audit.

The standards functions of the committee seek to ensure that the members, co-opted Members and officers of the Council observe high ethical standards in performing their duties. These functions include advising the Council on its codes of conduct and administering related complaints and dispensation procedures.

The governance functions of the committee relate to the monitoring and operation of the Council's constitution and its review, the members' allowances scheme and other member issues including support to members and meeting their training and development needs, civic protocol and certain electoral functions. The committee will also act as a general purposes committee in relation to functions not otherwise allocated.

## A. General delegated functions (audit, standards and governance)

1. To receive reports on and monitor the operation of the Council's constitution.
2. To appoint, co-opt or (in any case where only the Council has power) to recommend the appointment or co-option of a minimum of two independent persons:
  - To give general assistance to the committee in the exercise of its functions; and;
  - to give views on allegations of failure to comply with a code of conduct as required by Chapter 7 of the Localism Act.
3. To have an overview of:

- The Council's whistle-blowing policy.
- Complaints handling and Local Ombudsman investigations.

4. To deal with any audit or ethical standards issues which may arise in relation to partnership working, joint committees and other local authorities or bodies.

5. To ensure arrangements are made for the training and development of Members, Co-opted Members and Officers on audit, ethical and probity matters, including Code of Conduct issues

6. To support and advise the Chief Finance Officer and the Monitoring Officer in their statutory roles.

## **B. Delegated audit functions**

1. To carry out independent scrutiny and examination of the Council's financial and non-financial processes, procedures and practices to the extent that they affect the Council's control environment and exposure to risk, with a view to providing assurance on the adequacy and effectiveness of:

- The work of internal and external audit.
- The governance arrangements of the council and its services.
- The risk management and performance management frameworks and the associated control environment.
- The financial management process.
- Arrangements for the prevention and detection of fraud and corruption.

2. To meet the requirements of the Accounts and Audit Regulations Act 2011 in respect of:

- Conducting an annual review of the effectiveness of the system of internal control.
- Conducting an annual review of the effectiveness of internal audit,
- Reviewing the outcome of annual review of governance arrangements and approving the annual governance statement, ensuring it contains any actions for improvement.
- Considering and approving the Council's annual statement of accounts.

3. To consider the External Auditor's annual audit and inspection plan, annual governance report, annual audit letter and other relevant reports.

4. Consider and agree the internal strategy and annual audit plan, receive the Audit Manager's annual report, periodic progress reports and other relevant internal audit reports. The Audit Manager to have delegated authority to make in-year changes to the annual plan in liaison with the Chairman of the Committee.

5. Review effectiveness of management arrangements to ensure probity and legal and regulatory compliance, including, but not limited to contract and

financial procedure rules and related protocols relating to the management, acquisition and disposal of assets including land and property; codes of conduct; anti-fraud and corruption arrangements; policies on raising concerns at work and the Council's complaints process and implement or make recommendations for change as appropriate.

### **C. Delegated governance functions**

1. To make recommendations to Council, the Cabinet or Scrutiny as appropriate with a view to improving the effectiveness, accountability and transparency of the decision making process and in relation to the Council's governance arrangements.
2. Other than when made at the annual meeting of the Council, to make appointments to outside bodies where such appointments relate to non-executive functions.
3. To consider the recommendations of the Council's Independent Remuneration Panel and advise the Council as appropriate and the arrangements for the appointment of members to and the operation of the Independent Remuneration Panel.
4. To approve the annual member development plan, in-year adjustments to the plan to reflect changing circumstances and needs, review past activity in including receiving regular monitoring reports on learning and development activities undertaken.
5. To consider any other matter relating to the role of and support for members and make recommendations to Council or the Cabinet.
6. Receive reports from the Monitoring Officer on any instance of a member or co-opted member persistently failing to undertake or attend learning or development activity that the Council or a committee of the Council has directed should be undertaken as a requirement for their participation in particular activities and decision making with a view to making a recommendation to Full Council that the member's appointment should be revoked (or in the case of a Cabinet appointment, to the Leader of the Council).
7. To make recommendations to Council in relation to community governance reviews.
8. To make recommendations to the Council in relation to electoral matters, including the statutory 4-yearly review of polling districts, polling places and polling stations and make recommendations in respect of the Council's scheme of elections and changes of name of electoral areas.
9. To approve polling district, polling place and polling station arrangements where reviews are undertaken on an ad hoc basis outside the 4-yearly review.

10. To make recommendations to the Council in relation to civic matters, including recommendations and protocols in respect of honorary aldermen and freemen, visits of dignitaries, public celebrations and nominations for honours.

#### **D. Delegated standards functions**

1. To advise the Council on the adoption, revision or replacement of codes of conduct for (a) members and co-opted members and (b) officers.
2. To exercise all other functions of the Council in relation to ethical standards, in particular those under Chapter 7 of the Localism Act, including the following:-
  - Promoting and maintaining high standards of conduct within the Council and monitoring the operations of the Council's codes of conduct and registers of interests.
  - In relation to allegations that a member or co-opted member has failed to comply with the code of conduct, putting in place arrangements to investigate and make decisions.
  - Supporting the Monitoring Officer in the exercise of that officer's ethical standards functions, in particular the duty to establish and maintain registers of interests for the Council.
  - In relation to members or co-opted members with pecuniary interests, putting in place arrangements to grant dispensations, in appropriate cases, from the restrictions on speaking and/or voting.

**NOTE:** With the exception of the adoption, revision or replacement of the codes of conduct referred to above, the Audit and Governance Committee may develop and adopt its own procedures and protocols.

#### **E. Standards Panel**

**Explanatory note.** The Panel of the Audit and Governance Committee is a sub-committee and its main role is to carry out any functions delegated to it by the Audit and Governance Committee in relation to (a) allegations that members or co-opted members have breached the code of conduct and (b) the granting of dispensations to members or co-opted members with pecuniary interests.

Panel membership is determined in accordance with procedures approved by the Audit and Governance Committee.

**Delegated functions.** In accordance with procedures approved by the Audit and Governance Committee:-

1. To carry out any arrangements delegated to the Panel by the Audit and Governance Committee in connection with investigating and making decisions on allegations that a member or co-opted member has failed to comply with the

code of conduct. (Note: The Panel is required to have regard to the views of the Council's independent person when making their decision.)

2. In respect of applications in relation to the grant of dispensations from members or co-opted members with pecuniary interests, which have been referred to the Panel by the Monitoring Officer where the Monitoring Officer has chosen not to exercise his/her delegated powers, to hear and determine such applications and in appropriate cases to grant dispensations from the restrictions on speaking and/or voting at meetings of the Council, its committees, sub-committees, joint committees or joint sub-committees.

3. To discharge any other functions of the Audit and Governance Committee which the Committee delegates to the Panel.

## **F. Other**

1. Any other matter not reserved to the Council or delegated to another committee or sub-committee and related to a non-executive function.

## **G. Suggested composition of the Committee**

1. 8 councillors, membership to be balanced to the political proportions on the council (unless the Council agrees to other composition arrangements which shall be subject to a vote at the annual meeting of the Council each year with no votes being cast against the proposition).

2. The Council's "independent person(s)" (appointed by the Council under Chapter 7 of the Localism Act 2011) shall have the right to attend meetings of the committee and of any sub-committee established for the purposes of dealing with a matter relating to any allegation against a member or co-opted member of the authority. Such attendance shall be in a non-voting capacity.

3. The committee may co-opt one person in a non-voting capacity to provide independent advice, primarily, but not exclusively, in relation to its audit functions.

4. Substitution of councillor members is allowed in accordance with Rule 4 of the Council's Procedure Rules (up to 4 named substitute members may be appointed).

5. All members (including substitute members) are expected to attend training and briefings events and otherwise undertake appropriate training in order that they can effectively carry out their role as Audit and Governance Committee members.

### **G. Suggested composition of a Standards Panel**

At least 3 members of the committee and to be politically balanced (unless the Council agrees to other composition arrangements which shall be subject to a vote at the annual meeting of the Council each year with no votes being cast against the proposition).

**Draft Code of Conduct for Members  
(based on the draft East Sussex Code)**

On their election or co-option to the Eastbourne Borough Council, members are required to sign an undertaking to comply with the authority's Code of Conduct.

This Code of Conduct, adopted by the authority on [add date], is set out below. It is made under Chapter 7 of the Localism Act 2011 and includes, as standing orders made under Chapter 7 of that Act and Schedule 12 of the Local Government Act 1972, provisions which require members to leave meetings in appropriate circumstances, while matters in which they have a personal interest are being considered.

**Part 1 – General provisions**

**Introduction and interpretation**

**1.** –(1) This Code applies to **you** as a member of the authority, when acting in that capacity.

(2) This Code is based upon seven principles fundamental to public service, which are set out in **Appendix 1**. You should have regard to these principles as they will help you to comply with the Code.

(3) If you need guidance on any matter under this Code you should seek it from the authority's monitoring officer or your own legal adviser – but it is entirely your responsibility to comply with the provisions of this Code.

(4) It is a criminal offence to fail to notify the authority's monitoring officer of a disclosable pecuniary interest, to take part in discussions or votes at meetings, or to take a decision where you have disclosable pecuniary interest, without reasonable excuse. It is also an offence to knowingly or recklessly provide false or misleading information to the authority's monitoring officer.

(5) Any written allegation received by the authority that you have failed to comply with this Code will be dealt with by the authority under the arrangements which it has adopted for such purposes. If it is found that you have failed to comply with the Code, the authority has the right to have regard to this failure in deciding –

(a) whether to take action in relation to you and

(b) what action to take.

(6) In this Code—

“authority” means Eastbourne Borough Council

"Code" means this Code of Conduct

"co-opted member" means a person who is not a member of the authority but who-

(a) is a member of any committee or sub-committee of the authority, or

(b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority,

and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee.

"meeting" means any meeting of—

(a) the authority;

(b) the executive of the authority;

(c) any of the authority's or its executive's committees, sub-committees, joint committees, joint sub-committees, or area committees;

"member" includes a co-opted member.

"register of members' interests" means the authority's register of members' pecuniary and other interests established and maintained by the authority's monitoring officer under section 29 of the Localism Act 2011.

## **Scope**

**2.** —(1) Subject to sub-paragraphs (2) and (3), you must comply with this Code whenever you—

(a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or

(b) act, claim to act or give the impression you are acting as a representative of your authority,

and references to your official capacity are construed accordingly.

(2) This Code does not have effect in relation to your conduct other than where it is in your official capacity.

(3) Where you act as a representative of your authority—

(a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or

(b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

### **General obligations**

**3.** —(1) You must treat others with respect.

(2) You must not—

(a) do anything which may cause your authority to breach any of its the equality duties (in particular as set out in the Equality Act 2010);

(b) bully any person;

(c) intimidate or attempt to intimidate any person who is or is likely to be—

(i) a complainant,

(ii) a witness, or

(iii) involved in the administration of any investigation or proceedings, in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or

(d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.

**4.** You must not—

(a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—

(i) you have the consent of a person authorised to give it;

(ii) you are required by law to do so;

(iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or

(iv) the disclosure is—

(a) reasonable and in the public interest; and

(b) made in good faith and in compliance with the reasonable requirements of the authority; or

(c) prevent another person from gaining access to information to which that person is entitled by law.

**5.** You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

**6.** You—

(a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage;

(b) must, when using or authorising the use by others of the resources of your authority—

(i) act in accordance with your authority's reasonable requirements;

(ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and

(c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

**7.** —(1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by—

(a) your authority's chief finance officer; or

(b) your authority's monitoring officer,

where that officer is acting pursuant to his or her statutory duties.

(2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

## **Part 2 – Interests**

### **Personal interests**

8. – (1) The interests described in paragraphs 8(3) and 8(5) are your personal interests and the interests in paragraph 8(5) are your pecuniary interests which are disclosable pecuniary interests as defined by section 30 of the Localism Act 2011.

(2) If you fail to observe Parts 2 and 3 of the Code in relation to your personal interests-

(a) the authority may deal with the matter as mentioned in paragraph 1(5) and

(b) if the failure relates to a disclosable pecuniary interest, you may also become subject to criminal proceedings as mentioned in paragraph 1(4).

(3) You have a personal interest in any business of your authority where either—

(a) it relates to or is likely to affect—

(i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;

(ii) any body—

(a) exercising functions of a public nature;

(b) directed to charitable purposes; or

(c) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),

of which you are a member or in a position of general control or management;

(iii) any employment or business carried on by you;

(iv) any person or body who employs or has appointed you;

(v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;

(vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);

(vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);

(viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;

(ix) any land in your authority's area in which you have a beneficial interest;

(x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;

(xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or

(b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;

(4) In sub-paragraph (1)(b), a relevant person is—

(a) a member of your family or a [close] friend; or

(b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;

(c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or

(d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

(5) Subject to sub-paragraphs (6) and (7), you have a personal interest which is also a disclosable pecuniary interest as defined by section 30 of the Localism Act 2011 in any business of your authority where (i) you or (ii) your partner-  
[add list of interests]

(6) In sub-paragraph (5), your partner means—

(a) your spouse or civil partner,

(b) a person with whom you are living as husband and wife, or

(c) a person with whom you are living as if you were civil partners,

(7) In sub-paragraph (5), any interest which your partner may have is only treated as your interest if you are aware that that your partner has the interest.

### **Disclosure of personal interests (See also Part 3)**

**9.** —(1) Subject to sub-paragraphs (2) to (4), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which any matter relating to the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

(2) If the personal interest is entered on the authority's register there is no requirement for you to disclose the interest to that meeting, but you should do so if you wish a disclosure to be recorded in the minutes of the meeting.

(3) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.

(4) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest and, if also applicable, that it is a disclosable pecuniary interest, but need not disclose the sensitive information to the meeting.

### **Prejudicial interest generally**

**10.** —(1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where either-

(a) the interest is a disclosable pecuniary interest as described in paragraph 8(5), or

(b) the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

(2) For the purposes of sub-paragraph (1)(b), you do not have a prejudicial interest in any business of the authority where that business—

(a) does not affect your financial position or the financial position of a person or body described in paragraph 8;

(b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or

(c) relates to the functions of your authority in respect of—

(i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;

- (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
- (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
- (iv) an allowance, payment or indemnity given to members;
- (v) any ceremonial honour given to members; and
- (vi) setting council tax or a precept under the Local Government Finance Act 1992.

### **Interests arising in relation to overview and scrutiny committees**

**11.** You also have a personal interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where—

(a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and

(b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

### **Effect of prejudicial interests on participation**

**12.** —(1) Subject to sub-paragraph (2) and (3), where you have a prejudicial interest in any matter in relation to the business of your authority—

(a) you must not participate, or participate further, in any discussion of the matter at any meeting, or participate in any vote, or further vote, taken on the matter at the meeting and must withdraw from the room or chamber where the meeting considering the matter is being held—

- (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;
- (ii) in any other case, whenever it becomes apparent that the matter is being considered at that meeting;

unless you have obtained a dispensation from your authority's monitoring officer or standards committee; and

(b) you must not seek improperly to influence a decision about that matter.

(2) Where you have a prejudicial interest in any business of your authority which is not a disclosable pecuniary interest as described in paragraph 8(5), you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

(3) Where you have a prejudicial interest which is not a disclosable pecuniary interest as described in paragraph 8(5), arising solely from membership of any body described 8(3)(a)(i) or 8(3)(a)(ii)(a) then you do not have to withdraw from the room or chamber and may make representations to the committee but may not participate in the vote.

### **Part 3 – Registration of Interests**

#### **Registration of members' interests**

**13.** —(1) Subject to paragraph 14, you must, within 28 days of—

(a) this Code being adopted by the authority; or

(b) your election or appointment to office (where that is later),  
register in the register of members' interests details of—

(i) your personal interests where they fall within a category mentioned in paragraph 8(3)(a) and

(ii) your personal interests which are also disclosable pecuniary interests where they fall within a category mentioned in paragraph 8(5)

by providing written notification to your authority's monitoring officer.

(2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest falling within sub-paragraphs (1)(i) or (1)(ii) or any change to any personal interest registered under sub-paragraphs (1)(i) or (1)(ii), register details of that new personal interest or change by providing written notification to your authority's monitoring officer.

## **Sensitive information**

**14.** —(1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, the monitoring officer shall not include details of the interest on any copies of the register of members' interests which are made available for inspection or any published version of the register, but may include a statement that you have an interest, the details of which are withheld under this paragraph.

(2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in the register of members' interests.

(3) In this Code, "sensitive information" means information, the details of which, if disclosed, could lead to you or a person connected with you being subject to violence or intimidation.

## **Dispensations**

**15** - (1) The standards committee, or any sub-committee of the standards committee, or the monitoring officer may, on a written request made to the monitoring officer of the authority by a member, grant a dispensation relieving the member from either or both of the restrictions in paragraph 12(1)(a) (restrictions on participating in discussions and in voting), in cases described in the dispensation.

(2) A dispensation may be granted only if, after having had regard to all relevant circumstances, the standards committee, its sub-committee, or the monitoring officer—

(a) considers that without the dispensation the number of persons prohibited by paragraph 12 from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business,

(b) considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business,

(c) considers that granting the dispensation is in the interests of persons living in the authority's area, or

(d) considers that it is otherwise appropriate to grant a dispensation.

(2) A dispensation must specify the period for which it has effect, and the period specified may not exceed four years.

(3) Paragraph 12 does not apply in relation to anything done for the purpose of deciding whether to grant a dispensation under this paragraph.

## **APPENDIX 1**

### **The Seven Principles of Public Life**

#### *Selflessness*

**1.** Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

#### *Integrity*

**2.** Members should not place themselves in situations where integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour. Members should show integrity by consistently treating other people with respect, regardless of their race, age, religion, gender, sexual orientation, disability or position, for example as an officer or employee of the authority.

#### *Objectivity*

**3.** Members should make decisions in accordance with the law and on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

#### *Accountability*

**4.** Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

#### *Openness*

**5.** Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

#### *Honesty*

**6.** Members should not place themselves in situations where their honesty may be questioned, should not behave dishonestly and should on all occasions avoid the appearance of such behaviour. Members should declare any private interests relating to their public duties and take steps to resolve any conflicts arising in a way that protects the public interest.

#### *Leadership*

**7.** Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.



# Arrangements for dealing with standards allegations under the Localism Act 2011

## **1 Context**

These "Arrangements" set out how you may make a complaint that an elected or co-opted member of this has failed to comply with the authority's Code of Conduct, and sets out how the authority will deal with allegations of a failure to comply with the authority's Code of Conduct.

Under Section 28(6) and (7) of the Localism Act 2011, the Council must have in place "arrangements" under which allegations that a member or co-opted member of the authority or of a Committee or Sub-Committee of the authority, has failed to comply with that authority's Code of Conduct can be investigated and decisions made on such allegations.

Such arrangements must provide for the authority to appoint at least one Independent Person, whose views must be sought by the authority before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the authority at any other stage, or by a member against whom an allegation as been made.

## **2 The Code of Conduct**

The Council has adopted a Code of Conduct for members, which is attached as Appendix One to these arrangements and available for inspection on the authority's website and on request from Reception at the Town Hall.

## **3 Making a complaint**

If you wish to make a complaint, please write or email to –

"The Monitoring Officer  
Address

Or –

alice.rowland@eastbourne.gov.uk or  
victoria.simpson@eastbourne.gov.uk

The Monitoring Officer is a senior officer of the authority who has statutory responsibility for maintaining the register of members' interests and who is responsible for administering the system in respect of complaints of member misconduct.

In order to ensure that we have all the information which we need to be able to process your complaint, please complete and send us the model complaint form, which can be downloaded from the authority's website, next to the Code of Conduct, and is available on request from Reception at the Town Hall.

Please do provide us with your name and a contact address or email address, so that we can acknowledge receipt of your complaint and keep you informed of its progress. If you want to keep your name and address confidential, please indicate this in the space provided on the complaint form, in which case we will not disclose your name and address to the member against whom you make the complaint, without your prior consent. The authority does not normally investigate anonymous complaints, unless there is a clear public interest in doing so.

The Monitoring Officer will acknowledge receipt of your complaint within 5 working days of receiving it, and will keep you informed of the progress of your complaint.

#### **4 Will your complaint be investigated?**

The Monitoring Officer will review every complaint received and, after consultation with the Independent Person, take a decision as to whether it merits formal investigation. This decision will normally be taken within 14 days of receipt of your complaint. The Monitoring Officer may decide a complaint does not merit investigation if:

- It is about someone who is no longer a member of the Council
- There has been a long delay before the complaint was made
- The complaint appears to be minor, politically motivated, malicious or not sufficiently serious to warrant further action.

This list is not intended to be exhaustive and the Monitoring Officer will decide that a complaint does not merit formal investigation for any other reason which appears to him/her to be relevant.

The Monitoring Officer has the discretion to refer the decision as to whether a complaint merits an investigation to the Standards Panel if it appears appropriate to do so.

Where the Monitoring Officer or the Standards Panel has taken a decision, the Monitoring Officer will inform you of his/her decision and the reasons for that decision.

Where he/she requires additional information in order to come to a decision, he/she may come back to you for such information, and may request information from the member against whom your complaint is directed.

In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for a formal investigation. Such informal resolution may involve the member accepting that his/her conduct was unacceptable and offering an apology, or other remedial action by the authority. Where the member or the authority make a reasonable offer of local resolution, but you are not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.

If your complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer has the power to call in the Police and other regulatory agencies.

## **5 How is the investigation conducted?**

The Council has adopted a procedure for the investigation of misconduct complaints, which is attached as Appendix Two to these arrangements.

If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer, who may be another senior officer of the authority, an officer of another authority or an external investigator. The Investigating Officer will decide whether he/she needs to meet or speak to you to understand the nature of your complaint and so that you can explain your understanding of events and suggest what documents the Investigating Officer needs to see, and who the Investigating Officer needs to interview.

The Investigating Officer would normally write to the member against whom you have complained and provide him/her with a copy of your complaint, and ask the member to provide his/her explanation of events, and to identify what documents he needs to see and who he needs to interview. In exceptional cases, where it is appropriate to keep your identity confidential or disclosure of details of the complaint to the member might prejudice the investigation, the Monitoring Officer can delete your name and address from the papers given to the member, or delay notifying the member until the investigation has progressed sufficiently.

At the end of his/her investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to you and to the member concerned, to give you both an opportunity to identify any matter in that draft report which you disagree with or which you consider requires more consideration.

Having received and taken account of any comments which you may make on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer.

**6 What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?**

The Monitoring Officer will review the Investigating Officer's report and, if he is satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will write to you and to the member concerned, notifying you that he is satisfied that no further action is required, and give you both a copy of the Investigating Officer's final report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he may ask the Investigating Officer to reconsider his/her report.

**7 What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?**

The Monitoring Officer will review the Investigating Officer's report and will then either send the matter for local hearing before the Standards Panel or, after consulting the Independent Person, seek local resolution.

**7.1 Local Resolution**

The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with the Independent Person and with you as complainant and seek to agree what you consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such resolution may include the member accepting that his/her conduct was unacceptable and offering an apology, and/or other remedial action by the authority. If the member complies with the suggested resolution, the Monitoring Officer will report the matter to the Audit and Governance Committee for information, but will take no further action. However, if you tell the Monitoring Officer that any suggested resolution would not be adequate, the Monitoring Officer may refer the matter for a local hearing.

**7.2 Local Hearing**

If the Monitoring Officer considers that local resolution is not appropriate, or you are not satisfied by the proposed resolution, or the member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer may report the Investigating Officer's report to the Standards Panel which will conduct a local hearing before deciding

whether the member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the member.

The Council has agreed a procedure for local hearings, which is attached as Appendix Three to these arrangements.

Essentially, the Monitoring Officer will conduct a "pre-hearing process", requiring the member to give his/her response to the Investigating Officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing, and the Chair of the Standards Panel may issue directions as to the manner in which the hearing will be conducted. At the hearing, the Investigating Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the member has failed to comply with the Code of Conduct. For this purpose, the Investigating Officer may ask you as the complainant to attend and give evidence to the Standards Panel. The member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Standards Panel as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

If the Standards Panel, with the benefit of any advice from the Independent Person, may conclude that the member did not fail to comply with the Code of Conduct, and so dismiss the complaint. If the Standards Panel concludes that the member did fail to comply with the Code of Conduct, the Chair will inform the member of this finding and the Standards Panel will then consider what action, if any, the Standards Panel should take as a result of the member's failure to comply with the Code of Conduct. In doing this, the Standards Panel will give the member an opportunity to make representations to the Panel and will consult the Independent Person, but will then decide what action, if any, to take in respect of the matter..

## **8 What action can the Standards Panel take where a member has failed to comply with the Code of Conduct?**

The Council has delegated to the Standards Panel such of its powers to take action in respect of individual members as may be necessary to promote and maintain high standards of conduct. Accordingly the Standards Panel may –

- 8.1 Publish its findings in respect of the member's conduct,
- 8.2 Write a formal letter to the councillor found to have breached the code,

- 8.3 Report its findings to Council for information,
- 8.4 Seek formal censure by motion,
- 8.5 Recommend to the member's Group Leader (or in the case of ungrouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council,
- 8.6 Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities,
- 8.7 Instruct the Monitoring Officer to arrange training, mediation or other appropriate remedy, for the member.

The Standards Panel has no power to suspend or disqualify the member or to withdraw members' or special responsibility allowances.

## **9 What happens at the end of the hearing?**

At the end of the hearing, the Chair will state the decision of the Standards Panel as to whether the member failed to comply with the Code of Conduct and as to any actions which the Standards Panel resolves to take.

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Standards Panel, and send a copy to you, to the member, make that decision notice available for public inspection and report the decision to the next convenient meeting of the Council.

## **10 Who are the Standards Panel?**

The Standards Panel is a Sub-Committee of the Council's Audit and Governance Committee., It is appointed by the Head of Corporate Development on the nomination of party group leaders in proportion to the strengths of each party group on the Council. The Panel will elect one of its members to act as Chairman.

The Independent Person is invited to attend all meetings of the Standards Panel and his views are sought and taken into consideration before the Standards Panel takes any decision on whether the member's conduct constitutes a failure to comply with the Code of conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

## **11 Who is the Independent Person?**

The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is appointed by a positive vote from a majority of all the members of Council. The definition of an Independent Person can be found in the Localism Act.

## **12 Revision of these arrangements**

The Council may by resolution agree to amend these arrangements, and has delegated to the Chair of the Standards Panel the right to depart from these arrangements where he/she considers that it is expedient to do so in order to secure the effective and fair consideration of any matter.

## **13 Appeals**

There is no right of appeal for you as complainant or for the member against a decision of the Monitoring Officer or of the Standards Panel

If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.



## **Investigations Procedure**

### Introduction

This document sets out the procedure which will be followed once a decision has been taken that an allegation of misconduct by a member should be investigated.

It should be read in conjunction with the document "Arrangements for dealing with standards allegations under the Localism Act 2011" ([link](#)).

### The appointment of the Investigating Officer

Upon deciding to refer an allegation for investigation, the Monitoring Officer will appoint an Investigating Officer and instruct him/her to conduct an investigation of the allegation and report on it. The Monitoring Officer may appoint a replacement if the Investigating Officer is unable to complete the investigation. The Investigating Officer may be an Officer of the authority or another authority or an external investigating officer. They should not be connected with the Standards Committee.

### The role of the Investigating Officer

The role of the Investigating Officer is to ensure, as far as possible, that all the information which is relevant to the allegation is identified and presented in their report.

Subject to the agreement of the Monitoring Officer, the Investigating Officer may appoint a person(s) to assist him/her in the conduct of his/her functions and may obtain such professional advice as may be necessary for the conduct of the investigation.

### Notification requirements

Once they have appointed an Investigating Officer, the Monitoring Officer will notify the Subject Member against whom the allegation has been made that the matter is being referred for investigation and inform them who is conducting the investigation.

The Monitoring Officer will notify the complainant that an investigation will take place and that they may be contacted in relation to that investigation.

### Conduct of the investigation

The Investigating Officer shall have a broad discretion as to how they conduct the investigation.

They may require the Subject Member and the complainant to provide them with information and /or documents which are relevant to the investigation. They may require them to provide details of other people who may be able to assist with the investigation.

It may assist the Investigating Officer to set out a plan for how they are going to conduct the investigation and they may consult the Monitoring Officer at any stage of the investigation.

The Investigating Officer may request any person to attend an interview with them and/ or provide them with documents and / or information.

Any person who is interviewed may arrange to have a friend or solicitor with them (provided they are not connected to any matter under investigation).

The Investigating Officer will take a note of any interviews that they conduct.

The Monitoring Officer may agree that the authority will pay such expenses, fees or allowances to any persons providing documents, information, advice or explanation, as they consider appropriate.

#### Referral to the Monitoring Officer

The Investigating Officer may refer the matter back to the Monitoring Officer if it appears to them appropriate to do so. For example, if the Member is seriously ill or the decision to investigate should be reconsidered in the light of new evidence.

#### Deferral of investigation

The Monitoring Officer has discretion to defer the investigation if it appears appropriate to do so. For example, if there is a criminal investigation taking place.

#### Confidentiality

The Investigating Officer shall request that anyone contacted in relation to the investigation maintain confidentiality in order to maintain the integrity of the process.

#### Draft Report

When the Investigating Officer is satisfied that he/she has sufficient information, or has obtained as much information as is reasonably practicable to obtain, he/she shall prepare a confidential draft report setting out the details of the allegation, the relevant sections of the code, a summary of the allegation, the response of the Subject Member, the information, documents and evidence taken during the course of the investigation, a statement of his/her draft

findings, and the Investigating Officer's conclusion as to whether the member has breached the code.

The draft report should be sent to the Monitoring Officer, the complainant and the Subject Member for their comments. The Investigating Officer may wish to conduct further investigations once he/she has received those comments, before producing their final report.

### Final Report

The final report should include the same sections as the draft report and a final conclusion as to whether there has been a breach of the code.

It may be helpful to include a chronology, summary of disputed facts and /or to append witness statements or other documents.

### Action on receipt of Report

If the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct, the Monitoring Officer will review the report and, if satisfied that the report is sufficient will write to the complainant and the Subject Member notifying them that no further action is required and enclosing a copy of the report.

If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he /she may ask the Investigating Officer to reconsider his / her report.

If the report concludes that there is evidence of a failure to comply with the Code of Conduct they will either send the matter for local hearing before the Standards Panel or, after consulting the Independent Person, seek local resolution.

The Hearings process is the subject of a separate procedure ([link](#))

More information on the local resolution of complaints can be found in the arrangements document ([link](#)).



## Appendix 6

### Hearings Procedure

The following process will be followed when a decision has been taken that a hearing, as to whether a member has breached the code of conduct, is required.

#### Pre-hearing process

The Monitoring Officer will, where possible, arrange for the Standards Panel to meet to hear the complaint within 3 months of receiving the Investigating Officer's report. They should aim to find a date which the witnesses, the Investigating Officer, the complainant and the Subject Member (the member against whom the complaint has been made) can attend. They should give all those involved, particularly the Subject Member, sufficient notice of the hearing. The Monitoring Officer should aim to arrange a hearing which can take place in one day or consecutive days without the need to have gaps between sittings or lengthy days.

The Audit and Governance Committee and the Standards Panel are subject to the normal requirements on confidential and exempt information as any other Committee under ss100 A to K and Schedule 12A of the Local Government Act 1972. The Monitoring Officer will consider whether these provisions apply in advance of the hearing and may consult any person for their views.

The Monitoring Officer will require the Subject Member to give his/her response to the Investigating Officer's report in order to identify what is likely to be agreed and what is likely to be in contention at the hearing.

If the Subject Member wishes to rely on evidence at the hearing, they should provide it to the Monitoring Officer as soon as possible. The Investigating Officer may have taken a witness statement from them or set out their comments in their report but if the Subject Member wishes to add to what the Investigating Officer has written they should provide a witness statement to the Monitoring Officer as soon as possible.

The Panel may not allow new arguments or evidence to be presented at the hearing.

The Monitoring Officer will decide what evidence will need to be heard, and what written evidence can be read at the hearing. The Monitoring Officer should take account of the views of the witnesses and the Subject Member in reaching such decisions.

The Monitoring Officer can consult the Chair of the Standards Panel if he/she feels their guidance would assist and ask the Chair to issue directions in relation to the pre-hearing process.

The Monitoring Officer may wish to offer to cover the expenses of witnesses associated with their attendance at the hearing.

The Monitoring Officer will consider whether it is appropriate to hear two complaints together, for example if they relate to the same member, or relate to the same incident or occasion.

The Subject Member should be provided with the Investigating Officer's report and any evidence which will be heard at the hearing.

The Monitoring Officer should provide the members of the Standards Panel with all the evidence in advance of the hearing so that they can read it to identify any potential conflicts of interest.

The Monitoring Officer will provide the Standards Panel with a report which summarises the allegation. This should include a list of agreed facts and disputed issues and outline the proposed procedure for the hearing.

The Monitoring Officer will act as a point of contact for the Subject Member, the complainant, the Independent Person and any witnesses who will give evidence.

### The Hearing

The hearing will generally take place in public.

An Independent Person will be invited to attend the hearing and may be asked to comment if the Panel thinks it is appropriate. This will be an Independent Person who has not previously been consulted by the Subject Member.

If the Subject Member does not attend the hearing, the Panel may adjourn the hearing or may continue to reach a decision on the basis of the Investigating Officer's report and any evidence they hear, if they decide to hear evidence.

Whilst the hearing is a meeting of the authority, it is not a court of law. It does not hear evidence under oath. The rules of natural justice should nevertheless be carefully followed and the Hearing Panel will have due regard to the seriousness of the proceedings for those involved, the Council and the public.

The Panel will decide disputed issues and whether the Subject Member has breached the code on the balance of probabilities.

### Representation

The Subject Member may choose to be represented by a Barrister, Solicitor or any other person they wish. They will have to bear the cost of being

represented. The Panel may refuse to allow a representative to remain at the hearing if they are disruptive. The Panel will have the discretion to hear opening or closing arguments from the Subject Member and the Investigating Officer if they feel it would assist them in reaching a decision.

### Evidence

The Panel will control the procedure and evidence presented at a hearing, including the number of witnesses and the way they are questioned. All matters relating to the evidence and procedure are within their discretion.

Generally the subject member is entitled to present their case as they see fit.

The Panel will usually have regard to submissions from the Subject Member if they are considering whether to hear particular evidence.

Witnesses of facts that are disputed would normally be expected to attend to be questioned. Character witnesses will normally provide written evidence which can be read at the hearing.

Witnesses should be treated with courtesy throughout the pre-hearing stage and at the hearing.

Witnesses may be questioned by the Panel, the Monitoring Officer and the Subject Member. This discretion should generally be unfettered by the Panel unless there is good reason to do so.

The onus is on the Subject Member to ensure the attendance of witnesses who they would like to give evidence to assist them. The Panel can limit the number of witnesses or the issues which can be covered by them.

Neither the Panel nor the Subject Member will have any power to compel witnesses to give evidence.

### At the Hearing

At the hearing, the Investigating Officer will present his/her report, call such witnesses as he/she considers necessary and make representations to substantiate his/her conclusion that the member has failed to comply with the Code of Conduct. The Investigating Officer is likely to ask the complainant to attend and give evidence to the Panel. The Investigating Officer may be asked about their report or any matters relating to their involvement.

### Role of Monitoring Officer

References to the Monitoring Officer should be read to include any representative of the Monitoring Officer.

The Monitoring Officer has a key role in ensuring the smooth running of the pre-hearing and hearing process. They will remain neutral throughout and will provide independent advice to the Panel

### Role of the complainant

The role of the complainant will usually be limited to being a witness and they are not a party to the proceedings. However, the Panel may wish to consult them at any stage in the hearing if they feel their comments would assist them.

### Decision

The Panel must consult the Independent Person in reaching their decision.

The Panel may wish to retire to consider their decision. The Monitoring Officer may assist them in constructing the reasons for their decision. The Monitoring Officer should not express any view on the evidence heard or the decision to be reached.

The Panel will reach a decision as to whether the subject member has breached the code of conduct. If they decide that the Subject Member has not breached the code of conduct they will take no further action. If they decide that the Subject Member has breached the code of conduct they should go on to decide what sanction, if any, is appropriate.

### Sanctions

The Panel must consult the Independent Person before imposing any sanction and give the Subject Member the opportunity to make representations.

The Panel should consider all the mitigating and aggravating circumstances that appear to them to be relevant. For example, they may wish to consider:

- What were the actual and potential consequences of the breach?
- How serious was the breach?
- What is the attitude of the subject member now? Have they apologised?
- Has the subject member previously been dealt with for a breach of the code?

The following are example of mitigating and aggravating factors but these lists should not be regarded as exhaustive.

### Mitigating Factors

- An honest but mistaken belief that the action was not a breach of the code
- A previous record of good service
- Evidence that they were suffering from ill health at the time of the breach

### Aggravating Factors

- Dishonesty
- Continuing to deny the facts or blaming other people
- Evidence of a failure to follow advice or warnings

The priority of the Panel should be to ensure that there are no further breaches of the code and that public confidence is maintained.

### Sanctions

The sanctions available to the Panel are:

- Publish its findings in respect of the member's conduct,
- Write a formal letter to the councillor found to have breached the code,
- Report its findings to Council for information,
- Seek formal censure by motion,
- Recommend to the Member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council,
- Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities,
- Instruct the Monitoring Officer to arrange training, mediation or other appropriate remedy, for the Member.

### Notice of decision

As soon as is reasonably practicable after the hearing, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Standards Panel, and send a copy to the complainant, the Subject Member, make that decision notice available for public inspection and report the decision to the next convenient meeting of the Council.