

Extraordinary Council – 25 June 2012

The Localism Act 2011 - The Amended Standards Regime

1. Purpose of report

The Localism Act 2011 makes fundamental changes to the system of regulation standards of conduct for elected and co-opted members. The Council must adopt the new arrangements by 1 July 2012. This report describes changes and recommends the necessary actions for the Council to implement the new standards arrangements.

2. Recommendations

- 2.1 That the Council adopt the Code of Conduct as set out in Appendix 1 of this report.
- 2.2 That the Council appoint Dr.A.Sen and Mr.C.Topliss to be Independent Persons under the Councils Standards Regime.
- 2.3 That Council adopt the arrangements for dealing with complaints of breach under the Code of Conduct as set out in Appendix 2 of this report.
- 2.4 That the Council establish a Standards Committee, comprising of seven members of the Council, with the Leader of the Council nominating only one member of the executive to this committee.
- 2.5 That council approve that the Standards Committee have the power to set up hearing sub-committees of three elected members, without the requirement for political balance in respect of those sub-committees.
- 2.6 That Council delegate the function of investigating and determining complaints, and managing the arrangements for dealing with complaints to the Standards Committee of the Council, and the Monitoring Officer.
- 2.7 That the Council delegate power to grant dispensations as set out in paragraph 3.10 of this report.

3. Background information

- 3.1 The Localism Act 2011 was enacted on 15 November 2011 and amongst its provisions was the repeal of the existing standards regime as set out in the Local Government Act 2000. This included, amongst other changes, the abolition of the Standards Boards for England and the repeal of the ten General Principals governing standards in public life, the national Code of Conduct, the existing requirements for local investigation and determination of complaints, the requirement for

Independent Members on Standards Committee, and the abolition of personal and prejudicial interests.

- 3.2. The Localism Act 2011 however does place a duty upon the authority to promote and maintain high standards of conduct by members and co-opted members of the authority. To discharge this duty the authority must adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity. There is an element of discretion as to what is included in the Code, and in the arrangements for investigating complaints made under the Code.
- 3.3. Any code of conduct adopted must, when viewed as a whole, be consistent with the following principles, which are based upon the “Nolan” principles of standards in public life :
 - selflessness;
 - integrity;
 - objectivity;
 - accountability;
 - openness;
 - honesty;
 - leadership.
- 3.4. The Act requires the authority to have in place arrangements under which allegations of a breach of the Code can be investigated, and decisions made in respect of such allegations. The arrangements require the authority to appoint at least one Independent Person, whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate. His views may be sought by a member if that person's behaviour is the subject of an allegation. The way the legislation is drafted means that previous Independent Members of the standards committee are not eligible to act as Independent Persons, save for a transitional period of time under the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. The Independent Persons, subject to appointment by Council, have been selected through a process of public advertisement, application, and interview.
- 3.5. The Act repeals section 55 Local Government Act 2000, which provides for the current statutory Standards Committee. However the Council will have to have a committee to deal with standards issues and casework therefore the Council will require a normal committee the Council to be a Standards Committee. This Committee will be governed by political proportionality. The proposed terms of reference and functions of this committee is included herewith at Appendix 3. This includes the provision for the appointment of any Sub-Committees, as appropriate, to hear and determine complaints against Members and Co-Opted Members under the provisions of the Members Code of Conduct.

- 3.6 The Localism Act 2011 abolishes the concepts of personal and prejudicial interests, replacing them with “Disclosable Pecuniary Interests” (DPI’s). These have been defined under regulation as of 8 June 2012, and are contained in paragraph 4(2) of the proposed Code of Conduct at Appendix 1. The intention behind the legislation was to simplify the registration requirements for interests however the act extends requirement registration to cover not just the members own interests, but also those of the members spouse or civil partner, or someone living with a member in a similar capacity. The Monitoring Officer is required to maintain a register of interests, which must be published and available for inspection on the Council's website. The provisions of the Act in respect of the Code of Conduct require an authorities code to contain appropriate requirements for the registration (and disclosure) of disclosable pecuniary interests and other pecuniary interests, and non-pecuniary interests.
- 3.7 Each elected or co-opted member must register all DPI’s within 28 days of becoming a member. Failure to register, without reasonable excuse, is now a criminal offence under the Act, and is punishable on conviction with a fine of up to £5000 and disqualification from office for up to 5 years. The failure to register any other interest required by the Council would not be a criminal offence however it may be a failure to comply with the Code of Conduct.
- 3.8 It is proposed that elected and co-opted members should still withdraw from any meeting where they have a disclosable pecuniary interest in any matter to be considered or being considered at the meeting. In addition the elected member may not participate in any discussion of the matter at the meeting, or vote on the matter, unless they have obtained a dispensation.
- 3.9 The provisions on dispensations are significantly changed by the Localism Act 2011. In future, a dispensation will be able to be granted in the following circumstances.
- (i) That so many members of the decision-making body have DPI’s in a matter that it would "impede transaction of the business". In practice this means that the decision-making body would be inquorate as a result;
 - (ii) That, without the dispensation, the representation of different political groups on the body transacting business would be so upset as to alter the outcome of any vote on the matter. This assumes that members are predetermined vote on party lines on the matter, in which case it would be inappropriate to grant a dispensation to enable them to participate;
 - (iii) That the authority considers that the dispensation is in the interests of persons living in the authority's area;
 - (iv) That, without a dispensation, no member of the Cabinet would be able to participate on this matter; or

- (v) That the authority considers that it is otherwise appropriate to grant a dispensation.

3.10 Under the Localism Act there is a discretion for this power to be delegated to the Standards Committee, or a Sub-Committee, or to the Monitoring Officer. Grounds 3.9 (i) and (iv) are objective so it may be appropriate to delegate the dispensations on these grounds to the Monitoring Officer. The other grounds are more subjective therefore it is proposed that dispensations on the grounds of 3.9 (ii), (iii), and (v) are left to the discretion of the Standards Committee, after consultation with the Independent Person.

4. Resource and Legal Considerations

4.1 There are no significant resource considerations arising directly from this report. This will have to be assessed on an ongoing basis and will be dependent upon the volume of complaints made. As the Standards Committee will in essence be a new committee of the Council there will be a requirement for the Independent Remuneration Panel to consider whether or not the role of the Chairman of the Standards Committee should attract a special responsibility allowance. If it is decided this role should attract a special responsibility allowance, such allowance can be backdated to April 2012.

4.2 The Council has a legal obligation to adopt a code of conduct, and have the necessary arrangements in place to deal with allegations of breaches under the code of conduct by the 1st July 2012, under the Localism Act 2011.

5. Financial Implications

5.1 None arising from this report

6. Citizen Impact

6.1 The Localism Act 2011 places a statutory obligation on the Council to promote and maintain high standards of conduct by members and co-opted members. To do this Council is required to adopt a code of conduct dealing with the conduct that is expected of members and co-opted members when they are acting in that capacity. In adopting a code of conduct and establishing arrangements for the investigation of complaints about elected member behaviour the Council will ensure that citizens have confidence in the standards of behaviour that elected members are required to have in public life.

7. Environmental Impact

7.1 None arising from this report

8. Performance and risk management issues

8.1 None arising from this report

9. Equality implications:

9.1 An objective code of conduct and arrangements for dealing with complaints will ensure that complaint investigated impartially and fairly, which is to the benefit of both the complainant and elected member or co-opted member.

10. Consultation

10.1 Elected members have received training in respect of the changes proposed under the Localism Act 2011. In addition to this a working party of elected members was established in January 2012 to look at issues involving changes under the Localism Act, including proposed changes to the standards regime. However the Council is legally obliged to adopt a code of conduct and to have arrangements in place for dealing with complaints under that code.

11. Background papers

Localism Act 2011.

Signed

Signed

Rory Borealis

Tony Cox

Executive Director Resources

**Head of Legal and
Democratic Services**

1 - Members Code of Conduct

Walsall Metropolitan Borough Councils Code of Conduct for Elected Members

Walsall Council has adopted this Code of Conduct in accordance with s27(2) Localism Act 2011. This Code of Conduct is consistent with standards expected in public life, which elected members are required to adhere to when acting in their capacity as an elected member:

- Selflessness - to serve only the public interest and never improperly confer advantage or disadvantage on any person.
- Integrity - not to place themselves in situations where their integrity may be questioned, should not behave improperly and should avoid the appearance of such behaviour.
- Objectivity - Members should make decisions on merit, including when making appointments, awarding contracts or recommending individuals for rewards or benefits.
- Accountability - Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should cooperate fully and honestly with any scrutiny appropriate to their particular office.
- Openness - 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 - Members should not place themselves in situations where the 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 - Members should promote and support these principles by leadership, and by example, and should act in a way that she was or preserves public confidence.

Part One – Introduction and Interpretation

1. –

- (1) This code applies to you as a member or co-opted member of the authority, whenever you are acting in that capacity.
- (2) It is your personal responsibility to comply with the provisions of this Code.

- (3) 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 vote at meetings, or to take a decision where you have a disclosable pecuniary interest, without reasonable excuse. It is also a criminal offence to knowingly or recklessly provide false information in respect of disclosable pecuniary interests to the authority.
- (4) The Code applies where you act as a representative of your authority;
- (a) on another relevant authority, you must, when acting for that other authority, comply 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.
- (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 it has adopted for such purposes. If it is proven that you have failed to comply with the code, the authority has the right to have regard to this failure in deciding, whether to take action in relation to you and what action to take.

(6) In this Code -

"authority" means Walsall Metropolitan 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;
- (d) Informal meetings with other members and/or officers relating to the discharge of the authority's functions.

"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.

General Obligations

2.

(1) You must treat others with respect.

(2) You must not –

- (a) do anything which may cause your authority to breach any of its equality duties (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 the authority's code of conduct; or
 - (iv) do anything which compromises or is likely to compromise impartiality of those who work for, or on behalf of, your authority.
- (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.
- (e) 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 the 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 information to any other person; or

(iv) the disclosure is:-

(aa) reasonable and in the public interest; and

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

(f) prevent another person from gaining access to information to which that person is entitled.

(3) You:

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

(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

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

Part 2 Members Interests

Disclosable Pecuniary Interests

4.

(1) You have a disclosable pecuniary interest in any business of your authority if it is of a description set out in 4(2) below and it is either:-

(a) your interest as a Member; or

(b) an interest of your spouse;

(c) an interest of your civil partner;

(d) an interest of the person you're living with as a spouse or civil partner

and in the case of 4(1) (b) to (d) you are aware that that other person has such an interest.

(2) "Disclosable Pecuniary Interests" are defined under the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, as follows:-

- I. any employment, office, trade, profession or vocation carried on for profit or gain.
- II. Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by you in carrying out duties as a member, or towards the election expenses of you as a member.
- III. Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority –
 - (a) under which goods or services are to be provided all works are to be executed; and
 - (b) which has not been fully discharged
- IV. Any beneficial interest in land which is within the area of the relevant authority.
- V. Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
- VI. Any tenancy where (to your knowledge as a Member) –
 - (a) the landlord is the relevant authority; and
 - (b) the tenant is a body in which the relevant person has a beneficial interest.
- VII. Any beneficial interest in securities of a body where-
 - (a) that body (to your knowledge as an Member) has a place of business or land in the area of the relevant authority; and
 - (b) either-
 - (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of the body; or
 - (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

Non-Pecuniary Interests

5.-

(1) You have a non-pecuniary interest in any business of your authority where 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 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) the interest of any person from whom you have received a gift or hospitality with an estimated value of at least £50;

(2) 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 taxpayers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;

(3) in sub-paragraph (2), 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 the type described in subparagraph (1) (a) (i) or (ii).

Disclosure of Non-Pecuniary Interests (see also Part 3)

6. –

- (1) subject to sub-paragraphs (2) to (6), where you have a non-pecuniary 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 non-pecuniary interest at the commencement of that consideration, or when the non-pecuniary interest becomes apparent.
- (2) if the non-pecuniary 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 all ought reasonably to be aware of the existence of the non-pecuniary interest.
- (4) Where you have a non-pecuniary interest but, by virtue of paragraph 11, sensitive information relating to it means that it is not registered in your authority's register of members interests, you must indicate to the meeting that you have a non-pecuniary interest but you do not need to disclose the sensitive information to the meeting.
- (5) Where you have a non-pecuniary interest in any business of your authority and you have made an executive decision on any matter in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.
- (6) In this paragraph, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

Disclosable Pecuniary Interests generally

7. You do not have a disclosable pecuniary 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 4.
 - (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any personal body described in paragraph 4; 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 the 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 as amended.

Interests arising in relation to Overview and Scrutiny Committees

8.

You also have a non-pecuniary 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 disclosable pecuniary interests on participation

9. –

- (1) Subject to sub-paragraphs (2) and (3), where you have a disclosable pecuniary 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 the standards committee;

(b) you must not exercise executive functions in relation to that matter; and

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

(2) Where you have a non-pecuniary interest in any business of your authority which is not a disclosable pecuniary interest as described in paragraph 4(2), 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 an non-pecuniary interest which is not a disclosable pecuniary interest as described in paragraph 4 (2), arising solely from membership of any body described in 5.1(i) or 5.1(ii) 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

10. –

(1) Subject to paragraph 11, 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 disclosable pecuniary interests where they fall within the category mentioned in paragraph 4 (2), and
- (ii) your other interests where they fall within the category mentioned in paragraph 5 (1)

by providing written notification to your authority's Monitoring Officer.

- (2) Subject to paragraph 11, you must, within 28 days of becoming aware of any new disclosable pecuniary interest, or non-pecuniary interest under paragraph 5(1) or any change to any disclosable pecuniary interest or non-pecuniary interest under paragraph 5(1), register details of that new interest or change by providing written notification to your authority's Monitoring Officer.

Sensitive information

11. –

- (1) Where you consider that the information relating to any of your disclosable or non-disclosable pecuniary 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 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.

Arrangements for dealing with standards allegations under the Localism Act 2011

1 Context

Section 28(6) and (7) of the Localism Act 2011, provides that 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.

The “Arrangements” set out how you may make a complaint that an elected or co-opted member of this authority 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.

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 Civic Offices.

3 Making a complaint

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

“The Monitoring Officer”
Legal and Democratic Services
Walsall Metropolitan Borough Council
Town Hall
Darwall Street
Walsall
WS1 1TP

Or –

monitoringofficer@walsall.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 Civic Offices.

- You will need to 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.
- 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.
- The authority will not investigate anonymous complaints, unless there is a clear public interest in doing so.
- It is a requirement of the Act that any complaint or allegation that an elected member has failed to comply with the Council's code of conduct must be in writing.
- There is a presumption that a complainant will not be allowed to claim confidentiality unless exceptional circumstances exist. 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.

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 10 working days of receipt of your complaint. Where the Monitoring Officer has taken a decision, he/she 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/or 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 with you to understand the nature of your complaint. It will also allow you to explain your understanding of events and suggest what documents the Investigating Officer needs to see, and who the Investigating Officer needs to interview. However the conduct of the investigation is in the total discretion of the Investigating Officer.

The Investigating Officer will normally write to the elected member against whom you have complained and provide him/her with a copy of your complaint. He will ask the elected member to provide his/her explanation of events, and to identify what documents if any he needs to see, and who he needs to interview.

In exceptional cases, where it is appropriate to keep your identity confidential, or where 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 elected member, or delay notifying the elected member until the investigation has progressed sufficiently. The Monitoring Officer shall keep the issue of confidentiality under review throughout the complaints process.

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. This will allow you and the elected member an opportunity to identify any matter in the draft report which you disagree with, or which you consider requires more consideration.

Having received and taken into account any comments which are made 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 elected member concerned, notifying you that he is satisfied that no further action is required, providing you both with a copy of the Investigating Officer's final report. If the Monitoring Officer is not satisfied that the investigation has been conducted properly or is insufficient to determine the complaint, 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 a Hearings 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 Standards 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 will 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 will refer the Investigating Officer's report to the Hearings Panel who 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 Hearings 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 Hearings Panel. The member will then have an opportunity to give his/her evidence, to call witnesses and to make representations to the Hearings Panel as to why he/she considers that he/she did not fail to comply with the Code of Conduct.

If the Hearings 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 Hearings 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 Hearings Panel will then consider what action, if any, the Hearings Panel should take as a result of the member's failure to comply with the Code of Conduct. In doing this, the Hearings 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 Hearings Panel take where a member has failed to comply with the Code of Conduct?

The Council has delegated to the Hearings 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 Hearings Panel may –

- 8.1 Publish its findings in respect of the member's conduct;
- 8.2 Report its findings to Council for information;
- 8.3 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;
- 8.4 Recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities;
- 8.5 Instruct the Monitoring Officer to arrange training for the member;
- 8.6 Remove the member from all outside appointments to which he/she has been appointed or nominated by the authority;
- 8.7 Withdraw facilities provided to the member by the Council, such as a computer, website and/or email and Internet access; or
- 8.8 Exclude the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

The Hearings 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 Hearings Panel as to whether the member failed to comply with the Code of Conduct and as to any actions which the Hearings 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 Hearings 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 Hearings Panel?

The Hearings Panel is a Sub-Committee of the Council's Standards Committee. The Standards Committee has decided that it will comprise a maximum of five members of the Council, including not more than one member of the authority's Executive and comprising members drawn from at least 2 different political parties. Subject to those requirements, it is appointed on the nomination of party group leaders in proportion to the strengths of each party group on the Council.

The Independent Person is invited to attend all meetings of the Hearings Panel and his views are sought and taken into consideration before the Hearings 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.

A person cannot be “independent” if he/she –

- 11.1 Is, or has been within the past 5 years, a member, co-opted member or officer of the authority;
- 11.2 Is a relative, or close friend, of a person within paragraph 11.1 or 11.2 above. For this purpose, “relative” means –
 - 11.2.1 Spouse or civil partner;
 - 11.2.2 Living with the other person as husband and wife or as if they were civil partners;
 - 11.2.3 Grandparent of the other person;
 - 11.2.4 A lineal descendent of a grandparent of the other person;
 - 11.2.5 A parent, sibling or child of a person within paragraphs 11.3.1 or 11.3.2;
 - 11.2.6 A spouse or civil partner of a person within paragraphs 11.3.3, 11.3.4 or 11.3.5; or
 - 11.2.7 Living with a person within paragraphs 11.3.3, 11.3.4 or 11.3.5 as husband and wife or as if they were civil partners.

12 Revision of these arrangements

The Council may by resolution agree to amend these arrangements, and has delegated to the Chair of the Hearings 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 Hearings 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.

Appendix One	The Authority’s Code of Conduct
Appendix Two	Procedure for Investigations
Appendix Three	Procedure for Hearings

Walsall Metropolitan Borough Council **Procedure for conduct of Investigations**

The purpose of this procedure is to ensure that code of conduct investigations are carried out as quickly and thoroughly as possible whilst adhering to the principles of natural justice, and the right to a fair trial contained in Article 6 of the European Convention of Human Rights. Whilst there are many factors that can affect the time it takes to complete an investigation, it is important that there are realistic targets for the completion of an investigation. Most investigations should be carried out, and a report on the investigation completed, within six months of the original complaint being received by the Monitoring Officer. Furthermore, the timescale for holding a hearing to consider the outcome of an investigation should normally be no longer than three months from completion of that investigation. The monitoring officer will maintain the function of overseeing the investigation.

All decisions will be made in accordance with the following principles:

- (a) proportionality (i.e. the action must be proportionate to the desired outcome, including consideration as to cost);
- (b) due consultation and taking of professional advice;
- (c) a presumption in favour of openness;
- (d) clarity of aims and desired outcomes; and
- (e) taking account and explaining the options considered and the reasons for the decision taken;
- (f) due regard to the Members' Code of Conduct

Procedure for Code of Conduct Investigations

1. Written Complaint received by Monitoring Officer (MO)
2. Monitoring Officer acknowledges receipt of complaint within 5 working days, and notifies relevant Group Leader, and Member of receipt of complaint and detail of complaint.
3. MO decides whether or not further detail of complaint is required. If further information or detail is required the timescale for completion of initial assessment may be extended. Both parties to complaint will be notified of this in writing.
4. Monitoring Officer (MO) carries out initial assessment of complaint and consults with Independent Person (IP) within 10 working days.
5. Three outcomes of Initial Assessment
 - (a)
 - No case to answer, member and complainant notified of outcome of initial assessment in writing.

- No appeal against this decision.

(b)

- Informal Resolution of Complaint – The MO following consultation with the IP may seek to resolve the complaint informally.
- MO will contact Complainant and Elected Member and discuss proposal to resolve complaint informally.
- If both parties to the complaint accept informal resolution the MO will confirm this in writing to both parties, with the proposal for informal resolution.
- If the Complainant refuses a reasonable offer of informal resolution the MO will take this into account in deciding whether or not the complaint merits formal investigation. The MO may choose to dismiss the complaint.
- If the Member agrees to informal resolution, and subsequently fails to comply with any agreed action required to informally resolve the matter, the MO may refer the matter to a Hearing Panel of the Authority.
- The MO will write to both parties to confirm the outcome of the agreed informal resolution, thereby concluding the complaint.

(c)

- The MO determines following consultation with IP that the matter requires formal investigation.
- MO will write to both parties to confirm this decision. There is no right of appeal against this decision.
- The MO will appoint an Investigating Officer – who may be another senior officer of the Authority, a senior officer from another Authority, or an external investigator.
- The Investigator will write to the Complainant and the Elected Member providing them with contact details, confirming the scope of his investigation, including proposed timescales for conclusion of his investigation, which witnesses he will be interviewing, and what documents he requires. Whilst the investigator may consult with the Elected Member and Complainant about the investigation, the Investigator has sole discretion as to how he conducts his investigation, and concludes his investigation report.

- At the conclusion of his investigation the Investigation Officer will produce a draft report, which he will forward to the Complainant, Elected Member and MO.
- The Complainant and Elected Member will have an opportunity to comment on the draft report, and identify aspects of the report they disagree with. However the Investigator has sole discretion as to whether or not amends or alter his report as a result of any comments made. They will have 10 working days to provide comments to the Investigating Officer following receipt of the Investigating Officers report. The Investigating Officer will forward the MO a copy of the report with any amendments following his/her consideration of the parties' comments.
- The MO will review the Investigating Officer's report and will determine in his opinion whether or not the report is sufficient. The MO will have 10 working days to reach his decision on whether or not the report is sufficient following receipt of the same or 10 working days following receipt of an amended report, should the Investigating Officer choose to amend the report following comments of the parties. If the report is insufficient in the opinion of the MO he will ask the Investigating Officer to reconsider the same.
- If the report is sufficient the MO will send a final copy of the report to all the parties, with a covering letter indicating the course of action that he will take in relation to the complaint.
- The courses of action will be as follows:
 - a. The report discloses no breach of the "code of conduct". MO will write to the parties stating the matter is concluded.
 - b. The report discloses a potential breach of the "code of conduct" MO will write to the parties confirming the same and propose one of the two following options:
 - (i) Informal Resolution – following consultation with the Independent Person. In which case the procedure in paragraph 4(b) above will apply.
 - (ii) Local Hearing – the MO will refer the matter for Local Hearing.

General Guidance on Investigations

Conflicts of Interest

Standards Committees and Monitoring Officers are at the heart of the standards framework. They promote, educate and support members in

following the highest standards of conduct and ensuring that those standards are fully owned locally.

Under the Code of Conduct, members must have regard to the advice of the Monitoring Officer when it is given as part of the Monitoring Officer's statutory duties. Monitoring Officers will advise their Council and the standards committee on the adoption and promotion of high ethical standards including their authority's code.

Monitoring Officers have four main roles in relation to the Code of Conduct:

- They provide advice to the Standards Committee
- They advise subject members
- They deal with cases of alleged conduct referred to them.
- They advise members about conduct issues.

An investigation could create a potential conflict-of-interest between these roles. For example, it is likely that a conflict-of-interest would arise if the MO were asked to investigate allegations against a member and the MO had advised them on the same issue. In such situations, the MO should delegate the investigation to somebody else.

Advising standards committees

Monitoring officer should act as main advisers to Standards Committees. However, they should not do so if they have an interest in the matter that prevent them from forming the roll independently.

It is vital that standards committees have access to appropriate advice on cases that have been referred to them for hearing. Monitoring officers will need to ensure that there is someone able to advise the standards committee throughout the process of investigation and hearing.

The Monitoring Officer should not conduct an investigation and advise a Standards Committee hearing about the same case. The Monitoring Officer will therefore need to consider whether it is more important to investigate the matter and delegate the role advising standards committee, or to delegate investigative role.

Personal conflicts

The MO should avoid any personal conflict-of-interest. The MO must not participate if they have a direct or indirect interest in an investigation or hearing. For example the Monitoring Officer must not participate if they have a direct financial interest, or a family member or friend is involved. Instead, you

should notify the Standards Committee, the member concerned and complainant explaining:

- That you will not take part in the investigation
- The nature of your interest
- Who will conduct the investigation in your place

Disclosure of Information

The information that the MO or Investigating Officer obtains during the course of a local investigation is confidential until the investigation is completed. The MO and Investigating Officer must always be aware of their obligations in the Data Protection Act 1998, the Human Rights Act 1998 and other relevant legislation, when carrying out investigation.

All parties to the investigation will be requested to maintain confidentiality. Elected members will be reminded of their obligations under the Council's code of conduct in respect of disclosure of information that they receive in confidence.

Information obtained in investigation will not be enclosed unless:

- The Monitoring Officer, Investigating Officer, or party to the investigation, has permission to disclose the information from the person that information relates to.
- The information has already lawfully been made public
- The information is made for the purposes of criminal proceedings in the UK
- There is a requirement to do so by a court or similar body.

Evidence of new breaches

If in the course of the investigation evidence is covered of conduct by elected members that may breach of the code of conduct, extending beyond the scope of the investigation already referred to the Investigating Officer, the powers of the Investigating Officer relates only to the allegation that has already been referred to them. If this happens, the Investigating Officer should inform the person they obtain information from that they cannot investigate the possible breach as part of the existing investigation. The Investigating Officer should inform the Monitoring Officer and he should advise the person that they may wish to make a separate complaint in respect of this potential breach. The MO may choose to consolidate this new allegation of a potential breach with the existing investigation.

Deferring an investigation

An investigation should be deferred when any of the following conditions are met:

- There are ongoing criminal proceedings or a police investigation into the members conduct
- The investigation cannot proceed without investigating similar alleged conduct or needs to come to conclusions of fact about events which are also the subject of some other investigation for court proceedings.
- Your investigation might prejudice another investigation or court proceedings.

An investigation may also need to be deferred:

- Where there is an ongoing investigation by another regulatory body
- The course of the serious illness of a key party
- Due to the genuine unavailability of a key party

When it is clear that there is an ongoing police, or other investigation, or related court proceedings, the Monitoring Officer should make enquiries about the nature of the police, or other investigation, or the nature of any court proceedings.

If at any time during the investigation the Monitoring Officer or the Investigating Officer becomes aware of any circumstances that might require the investigation to be deferred, the Monitoring Officer will notify the subject member of this.

The decision to defer investigation will be taken by the Monitoring Officer after consulting with the investigating officer and the independent person. The reason for such a deferral should be set out in the investigation file with any supporting documentation attached.

In some cases, it will be possible to investigate some of the alleged conduct, where there is no overlap with another investigation or court proceedings. The investigating officer should highlight those areas where investigation may be possible in the investigation plan, after consultation with the Monitoring Officer.

In some cases, it will be possible to investigate the alleged conduct in parallel with another investigation, for example where the Local Government Ombudsman is investigating a Council's decisions and the investigating officer is investigating the conduct of an individual member involved in the making of the decision. The Monitoring Officer will work closely with the,

Investigating Officer and any other organisation, and agree the steps each party will take.

When a decision is taken to defer an investigation, the Monitoring Officer will inform:

- The subject member
- The complainant

The Monitoring Officer will ask the police, other relevant organisation or individual writing to keep them informed of the outcome of any police or other investigation, court proceedings or other relevant matter. The Monitoring Officer will note any important dates, for example of committal hearings, in the investigation file.

A deferred investigation should be kept under regular review, in the interests of natural justice.

Once the decision is taken to begin the investigation again the Monitoring officer will notify in writing:

- The subject member
- The complainant
- The Investigating Officer

Hearing Process

The pre-hearing process will be dealt with by the Monitoring Officer or other suitable officer where the Monitoring Officer is unable to act. The purpose of the pre-hearing process is to allow matters at the hearing to be dealt with more fairly and efficiently. The pre-hearing process should alert parties to possible areas of difficulty, and to provide an opportunity to resolve such areas prior to the hearing itself.

Other than in very straightforward cases, the authorities should use a pre-hearing process to:

- Identify whether the subject member disagrees with any of the findings of fact in the investigation reports, and agree where possible what evidence will be called, and what documents will be required at the hearing.
- Identify whether those disagreements are likely to be relevant to any matter the hearing needs to decide.
- Identify whether evidence about those disagreements will need to be heard during the hearing.
- Determine whether there are any parts of the hearing that are likely to be held in private.
- Decide whether any part of the investigation report of the document should be withheld from the public prior to the hearing, on the grounds that they contain "exempt" material.

Where possible the pre-hearing process will be carried out in writing. However where appropriate the Monitoring Officer or other suitable officer may hold a pre-hearing meeting between the relevant parties and their representatives.

The officer providing administrative support to the hearing process will write to the subject member proposing a date for hearing. They will outline the hearing procedure, the member's rights and they will ask for a written response from the subject member within a set time to establish whether the subject member:

- Wants to be represented at the hearing by solicitor, barrister or any other person.
- Disagrees with any of the findings of fact in the investigation report, including reasons for any of those disagreements.
- Wants to give evidence to the hearing committee, either verbally or in writing.

- Wants to call relevant witnesses to give evidence to the hearing committee.
- Wants any part of the hearing to be held in private.
- Wants any part of the investigation report or other relevant documents to be withheld from the public.
- Can attend the hearing.

A critical part of the pre-hearing process will be to focus the relevant parties' attention on isolating all relevant disputes of facts between them. This is because attention to the factual issues will save valuable time later on in the determination process.

The Monitoring Officer or other suitable officer will ask that the relevant parties provide outlines or statements of the evidence that they or their witnesses intend to give at the hearing. This will help identify issues at the hearing and give an indication of how long will be required to determine the matter.

The clerk to the hearing committee will consult with the committee's legal adviser and send a pre-hearing process summary to everyone involved in the complaint at least two weeks prior to hearing.

The pre-hearing process summary will:

- Set the date, time and place of the hearing
- Summarise the allegation
- Outline the main facts of the case that are agreed
- Outline the main facts which are not agreed
- Note whether the subject member or investigating officer will go to the hearing and if they will be represented at the hearing
- Lists those witnesses, if any, who will be asked to give evidence
- Outline the post procedure for the hearing

The Hearing

This is a formal meeting of the authority and is not a court of law. The hearing will not hear evidence under oath, but it does decide factual evidence on the balance of probabilities. The hearing committee will work at all times in a demonstrably fair, independent and politically impartial way. To ensure that members of the public, and members of the authority, have confidence in its procedures and findings.

The decision of the hearing committee should be seen as open, unprejudiced and unbiased. All concerned should treat the hearing process with respect with regard to the potential seriousness of the outcome, for the subject member, for the Council and the public.

Representatives

The subject member may choose to be represented by counsel, a solicitor, or by any other person they wish.

The committee may choose to withdraw permission to allow representative if that representative disrupts the hearing. However, an appropriate warning will usually be enough to prevent more disruptions and should normally be given before permission is withdrawn.

Evidence

The hearing committee controls the procedure and evidence presented at a hearing, including the number of witnesses and the way witnesses are questioned.

In many cases, the hearing committee may not need to consider any evidence other than the investigation report, and any other supporting documents. However, the hearing committee may need to hear from witnesses if more evidence is needed, or if people do not agree with certain findings of fact in the report.

The hearing committee can allow witnesses to be questioned and cross-examined by the subject member, the Monitoring Officer, or the investigating officer. Alternatively, the hearing committee can ask that those questions be directed through the chair. The hearing committee can also question the witnesses directly.

Witnesses

Generally, the subject member is entitled to present their case as they see fit, which includes calling witnesses they may want and which are relevant to the matters to be heard. The subject member must make their own arrangements to ensure that their witnesses (and witnesses they would like to question) will attend the hearing.

The hearing committee has the right to govern its own procedures as long as it acts fairly. For this reason, the hearing committee may limit the number of witnesses if the number is unreasonable.

The hearing committee will normally take a decision on whether to hear any particular evidence or witness only after having heard submissions from both parties on the issue.

Witnesses of facts that are disputed would normally attend the hearing and should be prepared to be cross-examined. Witnesses as to the character of the subject member, if required, regularly present their evidence in writing and may or may not actually attend the hearing.

Witnesses, especially members of the public, often play an important part in the process and should be treated with courtesy and respect.

Sanctions

If the hearing committee finds that subject member has failed to follow the code of conduct and they should be subsequently sanctioned, it may impose anyone or a combination of the following sanctions, after consulting with the independent person:

Considering the sanction

When deciding on a sanction, the hearing committee should ensure that it is reasonable and proportionate to the subject member's behaviour. Before deciding what sanction to issue, the hearing committee should consider the following questions, along with any other relevant circumstances:

- What was the subject member's intention? Did the subject member know that they were failing to follow the code of conduct?
- Did the subject member get advice from officers before the incident? Was that advice acted on or ignored in good faith?
- Has there been a breach of trust?
- Has there been financial impropriety, for example improper expense claims or procedural irregularities?
- What was the result of failing to follow the code of conduct?
- What were the potential results of the failure to follow the code of conduct?
- How serious was the incident?
- Does the subject member except they were at fault?
- Did the subject member apologise to the relevant people?
- Has the subject member previously been warned or reprimanded for similar misconduct?
- Has the subject member failed to follow the code of conduct before?

- Is the subject member likely to do the same thing again?
- How will the sanction be carried out? For example, who will provide training or mediation?
- Are there any resources or funding implications?

Sanctions involving restricting access to an authority's premises or equipment should not necessarily restrict the subject member's ability to carry their responsibilities as an elected representative or co-opted member.

The hearing committee may wish to take into account when assessing an appropriate sanction the following aggravating or mitigating factors:

Mitigating Factors (this is not an exhaustive list):

- An honestly held, although mistaken view that the action concerned did not constitute a failure to follow the provisions of the code of conduct, particularly where such a view has been formed after taking appropriate advice.
- A member's previous record of good service.
- Substantiated evidence of the members actions have been affected by ill-health.
- Recognition that there has been a failure to follow the code; cooperation in rectifying the effects of that failure; an apology to affected persons where that is appropriate, self reporting of the breach by the member.
- Compliance with the code since events giving rise to the determination.
- Some actions, which may have involved the breach of the code, may nevertheless have had some beneficial effects on the public.

Aggravating Factors (this is not an exhaustive list):

- Dishonesty.
- Continuing to deny the facts despite clear contrary evidence.
- Seeking unfairly to blame other people .
- Failing to heed appropriate advice or warnings or previous findings of a failure to follow the provisions of the code.
- Persisting with a pattern of behaviour which involves repeatedly failing to abide by the provisions of the code.

In deciding what action to take the hearing committee should bear in mind the aim of holding and improving the standard of conduct expected of members to which the codes of conduct apply as part of the process of fostering public confidence in local democracy.

Notice of the hearing committee's findings

The hearings committee should announce its decision at the end of the hearing, where possible. It is good practice to make a short written decision available on the day of the hearing, and have a full written decision in draft on that day, before people's memories fade. The officer providing administrative support to the hearing committee will normally also draft minutes of the meeting.

The hearing committee must give its full written decision to the relevant parties as soon as possible after the hearing. In most cases it should be within two weeks of the hearing.

The relevant parties are:

- The subject member
- The complainant

The hearing committee's decision will be made public in the same manner that the council make committee decisions public, by publishing them on the council's website. The hearing committee's report and minutes will be available for public inspection for six years following the hearing. However, sections of documents relating to parts of the hearing where an exemption was applied and the access to information regulations will not be made available for public inspection.

Model Hearing procedure for Committee

The procedure is aimed to provide a consistent approach to determining matters. Their aim is to ensure that the hearing committee has an efficient and effective hearing process. This will help the committee deal with all the issues that need to be resolved in a way that is fair to the member.

Interpretation

1. "Subject member" means a member of the authority who is the subject of the allegation being considered by the committee, unless stated otherwise. It also includes the member's nominated representative.
2. "Investigator" - means the Monitoring Officer including their nominated representative or appointed investigator.
3. "Legal adviser" means the officer responsible for providing legal advice to the committee. This may be the Monitoring Officer, or another legally

qualified officer of the authority, or someone appointed for this purpose from outside the authority.

Representation

The subject member may be represented or accompanied during the meeting by a solicitor, Counsel or, with the permission of the committee, another person.

Legal advice

The committee may take legal advice, in private if necessary, from its legal adviser at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the committee should be shared with the subject member and the investigator of the present.

Setting the scene

After all the members and everyone involved had been formally introduced, the chair should explain how the committee is going to run the hearing.

Preliminary procedural issues

The committee should then resolve any issues or disagreements about how the hearing should continue, which have not been resolved during the pre-hearing process.

Making findings of fact

After dealing with any preliminary issues, the committee should then move on to consider whether there are any significant disagreements about the facts contained in the investigators report.

If there is no disagreement about the facts, the committee can move onto the next stage of the hearing.

If there is a disagreement, the investigator, if present, should be invited to make any necessary representation to support the relevant findings of fact in the report. With the committee's permission, the investigator may call any necessary supporting witnesses to give evidence. The committee may give the subject member an opportunity to challenge any evidence put forward by any witness called by the investigator.

The subject member should then have the opportunity to make representations to support their version of the facts and, with the committee's permission, to call any necessary witnesses to give evidence.

At any time, the committee may question any of the people involved or any witnesses, and may allow the investigator to challenge any evidence put forward by witnesses called by the member.

If the subject member disagrees with most of the facts, it may make sense for the investigator to start by making representations on all the relevant facts, instead of discussing each fact individually.

If the subject member disagrees with any relevant fact in the investigators report, without having given prior notice of the disagreement, they must give good reasons for not mentioning it before the hearing. If the investigator is not present, the committee will consider whether it would be in the public interest to continue in their absence.

After considering the members explanation for not raising the issue at an early stage, the committee may then:

- Continue at the hearing, relying on the information in the investigators report.
- Allow the subject member to make representations about the issue, and invite the investigator to respond and call any witnesses, as necessary.
- Postpone the hearing to arrange for appropriate witnesses to be present, or for the investigator to be present if they are not already.

The committee will usually move to another room to consider the representations and evidence in private.

On their return, the chair will announce committees finding of fact.

Did the subject member fail to follow the Council's code of conduct?

The committee then needs to consider whether, based on the fact it is found, the subject member has failed to follow the code.

The subject member should be invited to give relevant reasons why the committee should decide that they have not failed to follow the code.

The committee should then consider any verbal or written representations from the investigator.

The Committee may, at any time, question anyone involved on any point they raise on their representations.

The subject member should invite to make any final relevant points.

The committee will then move to another room to consider the representations.

On their return, the chair will announce committee's decision as to whether the subject member has failed to follow the Council's code of conduct.

If the subject member has not failed to follow the Council's code of conduct

If the committee decides that the subject member has not failed to follow the code, the committee can move on to consider whether it should make any recommendations to the authority.

If the subject member has failed to follow the Council's Code of Conduct

If the committee decides that the subject member has failed to follow the code, it will consider any verbal or written representations from the investigator and the subject member as to:

- Whether the committee should apply a sanction
- What form any sanction should take

The committee may question the investigator and member, and take legal advice, to make sure they have the information they need in order to make an informed decision.

The committee will then deliberate in private to consider whether to impose a sanction on the subject member and, if so, what sanction it should be.

On their return, the chair will announce the committee's decision.

The committee may decide after considering any verbal or written representations from the investigator, whether or not it should make any recommendations to the authority, with a view to promoting high standards of conduct among members.

The written decision

The committee will announce its decision on the day and provide a short written decision on that day. It will also need to issue a full written decision shortly after the end of the hearing. It is good practice to pay the full written decision in draft on the day of the hearing, before people's memories fade.

8. STANDARDS COMMITTEE

Membership

7 Members of the authority as determined by the Council.

Substitutes

Substitute members may be nominated to the Committee in accordance with paragraph 4 of the Council procedure rules (Part 4).

Chairman and Vice-Chairman

The Chairman and Vice-Chairman will be appointed at the first meeting of the Committee in the municipal year. A member of the Executive may not chair the Committee.

Quorum

The quorum of the Committee shall be three members

Meetings

The Committee will meet quarterly, or thereabouts, and will usually be held at the Council House, Walsall at 6.00 p.m.

Access to information

The Committee will comply with the Access to Information Rules set out in Part 4 of the Constitution.

Remit

The Committee will discharge the following functions:-

- (1) Promoting and maintaining high standards of conduct by Councillors, and voting co-opted members (and church and parent governor representatives).
- (2) Advising the Council on the adoption or revision of the Members' Code of Conduct.
- (3) Assisting Councillors and voting co-opted members (and church and parent governor representatives) to observe the Members' Code of Conduct.
- (4) Monitoring the operation of the Members' Code of Conduct, in the light of best practice, changes in the law.
- (5) Advising, training or arranging to train Councillors, voting co-opted members (and Church and parent governor representatives) on matters relating to the Members' Code of Conduct.

(6) Granting dispensations to Councillors and voting co-opted members (and Church and parent governor representatives) from requirements relating to interests set out in the Members' Code of Conduct.

(7) Dealing with all other functions under the relevant provisions of, or Regulations made under, the Localism Act 2011.

(8) To appoint any sub-committee, as appropriate, to hear and determine complaints against Members and Co-opted Members under the provisions of the Members Code of Conduct, and in accordance with locally agreed procedures.

(9) To make recommendations to Council on the appointment of an Independent Person as required under the Localism Act and any relevant Regulations.

(10) Other functions relating to standards of conduct of Members assigned to Standards Committees under any Act .

(11) Dealing with Members misconduct falling outside breaches of the Code of Conduct, for example, breaches of protocols.

(12) To consider Ombudsman's reports and make payments or other benefits in cases of maladministration. (Section 92, Local Government Act, 2000).

(13) Whistleblowing Policy.

(14) Strategic overview of the Employees' Code of Conduct.