

AGENDA FOR

STANDARDS ASSESSMENT SUB COMMITTEE

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To: All Members of Standards Assessment Sub Committee

Councillors: P Cropper, T Cummings and M Hayes

Dear Member/Colleague

Standards Assessment Sub Committee

You are invited to attend a meeting of the Standards Assessment Sub Committee which will be held as follows:-

Date:	Thursday, 11 February 2021
Place:	Microsoft Teams
Time:	1.30 pm
Briefing Facilities:	If Opposition Members and Co-opted Members require briefing on any particular item on the Agenda, the appropriate Director/Senior Officer originating the related report should be contacted.
Notes:	

AGENDA

1 APPOINTMENT OF CHAIR

2 APOLOGIES FOR ABSENCE

3 DECLARATIONS OF INTEREST

**4 DETERMINATION OF ALLEGATION OF BREACH OF THE MEMBER
CODE OF CONDUCT PART A** *(Pages 3 - 60)*

A report from the Interim Monitoring Officer, Janet Witkowski is attached.

5 EXCLUSION OF PRESS AND PUBLIC

That Members may wish to consider that the press and public be excluded from the meeting under Section 100 (A)(4), Schedule 12(A) of the Local Government Act 1972, for the reason that the following business may involve the disclosure of exempt information.

**6 DETERMINATION OF ALLEGATION OF BREACH OF THE MEMBER
CODE OF CONDUCT PART B** *(Pages 61 - 80)*

A report from the Interim Monitoring Officer, Janet Witkowski is attached.



Classification	Item No.
Open	

Meeting:	Standards Sub-Committee (Hearings Panel)
Meeting date:	11 February 2021
Title of report:	Determination of Allegation of Breach of the Member Code of Conduct - Part A
Report by:	Janet Witkowski – Interim Council Solicitor and Monitoring Officer
Decision Type:	Council
Ward(s) to which report relates	N/a

Executive Summary:

The role of the Council's Standards Sub-Committee is to hear and determine complaints that a councillor has breached the Code of Conduct for Councillors and other Voting Representatives (the Code).

Having heard and determined the matter, the Sub-Committee may then either dismiss the complaint if no breach is found by the Sub-committee, or if a breach is upheld, hear any representations as to mitigation and consider any further action that should be taken, or sanction imposed, upon the Subject Member.

Recommendation(s)

The sub- committee is asked to:

1. Note the report and appendices.
2. Determine the facts of the case if they are not agreed.
3. Determine if the councillor concerned has breached the Code of Conduct and;

- a. Option 1 – if the sub-committee determines there has been no breach of the Code, to dismiss the matter Or;
- b. Option 2 - if the sub-committee determines there has been a breach of the Code, to determine how the councillor is dealt with, such actions to include;
 - i. Publish its findings in respect of the Subject Member’s conduct;
 - ii. Recommend to Council that the Member be censured;
 - iii. Recommend to the Subject Member's group leader (or in the case of ungrouped members recommend to Council) that he/she be removed from any or all committees or sub committees of the Council;
 - iv. Recommend to the Leader of the Council that the Subject Member be removed from the Executive, or removed from their portfolio responsibilities;
 - v. Instruct the Monitoring Officer to arrange training for the Member;
 - vi. Recommend to Council that the Subject Member be removed from all outside appointments to which they have been appointed or nominated by the Council;
 - vii. Withdraw facilities provided to the Subject Member by the Council such as a computer, website and/or e-mail and internet access;
or
 - viii. Place such restrictions on the Subject Member's access to staff, buildings or parts of buildings which may be reasonable in the circumstances.

Key considerations

Background

The role of the Council’s Standards Committee includes promoting and maintaining high standards of conduct by Councillors as well as monitoring the operation of the Code. The Committee can determine how to deal with complaints against councillors, investigation reports compiled on behalf of the Monitoring officer and establish hearing panels where necessary.

The Council adopted its Code of Conduct and its arrangements for dealing with complaints that Council members have breached the Code, in 2012 attached at appendix 1 and 3. The Council has also adopted a Protocol on Member and Officer Relations (the Protocol), attached at appendix 2, in which it is clearly stated that a breach of that protocol may result in a complaint if it appears there has been a breach of the Code. In addition a hearings procedure is in place for matters that cannot be resolved by local resolution which is attached at appendix 4.

Power is delegated to the Monitoring Officer, who has responsibility for the initial assessment of all complaints under the Members Code of Conduct. In consultation with the Independent Person, the Monitoring Officer is required to make an initial assessment of any complaint to decide if it should be accepted and if so to consider whether it should be dealt with informally or by way of investigation.

On 3 August 2020 the Monitoring Officer received a complaint concerning the conduct of a councillor.

This matter was considered by the Monitoring Officer and in accordance with the Council's arrangements for dealing with complaints, the Monitoring Officer consulted with the Council's independent person Mrs Valerie Bracken. It was agreed that there was a potential breach of the code and was sufficiently serious to merit further action and that an independent investigation should be undertaken.

Ms Maria Memoli of Local Governance Limited was appointed to investigate the matter and her report is attached to the report in Part B of the agenda.

In summary the Independent Investigator found that there were failures to comply with the both the Code and Protocol. It was recommended that the matter be resolved by way of a local resolution.

Attempts have been made by the Monitoring Officer to resolve the matters by local resolution but this has been unsuccessful and the matter is now before the sub-committee for local hearing.

Relevant legislation

Section 27 (2) of the Localism Act 2011 places a duty on relevant authorities to ensure their members and co-opted members maintain high standards of conduct and requires such authorities to adopt a code of conduct for their members.

Section 28 (2) requires a relevant authority to adopt a code whose contents must be consistent with the seven "Nolan" principles of standards in public life (Selflessness, integrity, objectivity, accountability, openness, honest and leadership).

The proposal

The sub-committee is asked to:

Consider the recommendations set out within the Executive Summary.

Determine the complaint that the councillor has breached the Code and resolve either that a breach is proven or not proven.

Should the Sub-committee determine that the councillor has breached the Code, they are recommended to determine any further action that should be taken, including any sanction to be imposed, as set out in the in the Executive Summary.

Other alternative options considered

To take no further action as per recommendation 3.a. option 1.

Community impact / Contribution to the Bury 2030 Strategy

Equality Impact and considerations:

24. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to –

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.*

25. *The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services.*

Assessment of Risk:

The following risks apply to the decision:

Risk / opportunity	Mitigation
The Council is required to have a Code of Conduct and maintain the ethical standards in public life. A failure to act on complaints would be contrary to that requirement.	A Code is in place along with arrangements for dealing with complaints.

Consultation: N/a

Legal Implications:

As set out in the report.

Financial Implications:

No financial implications arising from the report.

Report Author and Contact Details:

Janet Witkowski – Interim Council Solicitor and Monitoring Officer
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Background papers:

The Bury Council Constitution

Please include a glossary of terms, abbreviations and acronyms used in this report.

Term	Meaning

Appendix 1

The Code of Conduct for Councillors and Other Voting Representative

Appendix 2

The Protocol on Member and Officer Relations

Appendix 3

Council's Arrangements – Complaints Against Members

Appendix 4

Hearings Procedure



CODE OF CONDUCT FOR COUNCILLORS AND OTHER VOTING REPRESENTATIVES

**Approved by Council
2 April 2014**

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PRE-AMBLE TO CODE OF CONDUCT FOR MEMBERS

1. Introduction

The Council is determined to provide excellent local government for the people of the Borough. It promotes and maintains high standards of conduct by Members and Co-opted Members and has adopted a Code of Conduct for Members, in line with its obligations under section 27(2) of the Localism Act 2011.

2. General Principles of Conduct for Members and Co-opted Members

The Code and the Guidance are based on the following General Principles.

2.1 General Principles

Members and co-opted Members must behave according to the highest standards of personal conduct in everything they do as a Member. In particular they must observe the following principles of conduct, some of which are set out in law.

2.2 Selflessness

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

2.3 Honesty and Integrity

Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

2.4 Objectivity

Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

2.5 Accountability

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.

2.6 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.

2.7 Personal Judgement

Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

2.8 Respect for Others

Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.

2.9 Duty to Uphold the Law

Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

2.10 Stewardship

Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

2.11 Leadership

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

3. Training

- 3.1 Each Member must attend training on the Code of Conduct/ethical standards, in addition to any current requirements to receive training for specific Committees, for example Planning Control or Licensing Committees.

THE CODE OF CONDUCT

Part 1 General Provisions

1. Introduction and Interpretation

- 1.1 This Code applies to you as a member of the Council.
- 1.2 It is your responsibility to comply with this Code. Failure to do so may result in a sanction being applied by the Council. Failure to take appropriate action in respect of a Disclosable Pecuniary Interest may result in a criminal conviction and a fine of up to £5,000 and /or disqualification from office for a period of up to 5 years. In this Code - "meeting" means any meeting of:
- (a) the Council;
 - (b) any of the Council's committees or sub-committees, joint committees or joint sub-committees;
 - (c) the Cabinet or any committee of the Cabinet.
- 1.3 "Member" includes a co-opted member and an appointed member.

2. Scope

- 2.1 Subject to sub-paragraphs (2) and (3), you must comply with this Code whenever you are acting as a member or co-opted member of the Council or an appointed member of a joint committee, and, references to your official capacity are construed accordingly.
- 2.2 This Code does not have effect in relation to your conduct other than where it is in your official capacity.
- 2.3 Where you act as a representative of the Council:
- (a) on another relevant authority, including the Greater Manchester Combined Authority, the Greater Manchester Fire & Rescue Authority and the Greater Manchester Waste Disposal 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 this Code, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

3. General Obligations

- 3.1 You must not:

- (a) do anything which may knowingly cause the Council to breach the Equality Act 2010;
- (b) bully or be abusive to 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, the Council;
- (e) behave in a way that a reasonable person would regard as disrespectful.

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 Council; or

- (b) 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 the Council 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; and
 - (b) must, when using or authorising the use by others of the resources of your authority:
 - (i) act in accordance with the Council's reasonable requirements; and
 - (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) The Council's chief finance officer; or
 - (b) The Council's monitoring officer,
- where that officer is acting pursuant to his or her personal 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 - Disclosable Pecuniary Interests

8. Notification of Disclosable Pecuniary Interests

- 8.1 Within 28 days of becoming a member or co-opted member, you must notify the Monitoring Officer of any 'disclosable pecuniary interests'.
- 8.2 A 'disclosable pecuniary interest' is an interest of yourself, or of your partner if you are aware of your partner's interest, within the descriptions set out in the table below.
- 8.3 "Partner" means a spouse or civil partner, or a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners.

Subject	Description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain
Sponsorship	Any payment or provision of any other financial benefit (other than from the Council) made or provided within the 12 month period prior to notification of the interest in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation Act) 1992 (a).
Contracts	Any contract which is made between you or your partner (or a body in which you or your partner has a beneficial interest) and the Council - (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of Bury Metropolitan Borough Council.
Licences	Any licence (alone or jointly with others) to occupy land in the area of Bury Metropolitan Borough Council for a month or longer.

<p>Corporate Tenancies</p>	<p>Any tenancy where (to your knowledge) - (a) the landlord is the Council; and (b) the tenant is a body in which you or your partner has a beneficial interest.</p>
<p>Securities</p>	<p>Any beneficial interest in securities of a body where - (a) that body (to your knowledge) has a place of business or land in the area of Bury Metropolitan Borough Council; and (b) either - (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that 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 you or your partner has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p>

8.3 For the purposes of the above

- (a) "a body in which you or your partner has a beneficial interest" means a firm in which you or your partner is a partner or a body corporate of which you or your partner is a director, or in the securities of which you or your partner has a beneficial interest.
- (b) "director" includes a member of the committee of management of an industrial and provident society.
- (c) "land" excludes an easement, interest or right in or over land which does not carry with it a right for you or your partner (alone or jointly) to occupy the land or receive income, and
- (d) "securities" means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

9. Non Participation in Case of Disclosable Pecuniary Interest

9.1 If you are present at a meeting [of the authority, or any committee, sub-committee, joint committee or joint sub-committee of the authority, or the executive or committee of the executive] and you have a disclosable

pecuniary interest in any matter to be considered or being considered at the meeting,

- (a) You must not participate in any discussion of the matter at the meeting.
- (b) You must not participate in any vote taken on the matter at the meeting.
- (c) If the interest is not registered, you must disclose the interest to the meeting.
- (d) If the interest is not registered and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest within 28 days.

9.2 Where a Cabinet member may discharge a function alone and becomes aware of a disclosable pecuniary interest in a matter being dealt with or to be dealt with by her/him, the Cabinet member must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter.

10. Offences

10.1 It is a criminal offence to:

- Fail to notify the Monitoring Officer of any disclosable pecuniary interest within 28 days of election
- Fail to disclose a disclosable pecuniary interest at a meeting if it is not on the register
- Fail to notify the Monitoring Officer within 28 days of a disclosable pecuniary interest that is not on the register that you have disclosed to a meeting
- Participate in any discussion or vote on a matter in which you have a disclosable pecuniary interest
- As an Cabinet Member discharging a function acting alone, and having a disclosable pecuniary interest in such a matter, failing to notify the Monitoring Officer within 28 days of the interest
- As a Cabinet Member discharging a function acting alone, and having a disclosable pecuniary interest in a matter, taking any steps in relation to such a matter.
- Knowingly or recklessly providing information that is false or misleading in notifying the Monitoring Officer of a disclosable pecuniary interest or in disclosing such interest to a meeting

- 10.2 The criminal penalties available to a court are to impose a fine not exceeding level 5 on the standard scale and disqualification from being a councillor for up to 5 years.

Part 3 - Other Interests

11. Notification of Personal Interests

11.1 In addition to the disclosable pecuniary interests notifiable under the Localism Act 2011, you must, within 28 days of -

- (a) this Code being adopted by or applied to your authority; or
 - (b) your election or appointment to office (where that is later),
- notify the Monitoring Officer in writing of the details of your other personal interests, where they fall within the categories set out in paragraph 11(2) below for inclusion in the register of interests.

11.2 You have a personal interest in any business of your authority where it relates to or is likely to affect -

- (a) any body of which you are in a position of general control or management and to which you are appointed or nominated by your authority;
- (b) any body -
 - (i) exercising functions of a public nature;
 - (ii) directed to charitable purposes; or
 - (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),of which you are in a position of general control or management;
- (c) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least [£100]

12. Disclosure of Interests

12.1 Subject to paragraphs 12.4 to 12.7, where you have a personal interest described in paragraph 11.2 above or in paragraph 12.2 below in any business of your authority, and where you are aware or ought reasonably to be aware of the existence of the personal interest, and you attend a meeting of your authority at which 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.

12.2 You also have a personal interest in any business of your authority where 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 other council tax payers, ratepayers or inhabitants of the electoral ward, affected by the decision;

12.3 In paragraph 12.2, a *relevant person* is:

- (a) a member of your family or any person with whom you have a close association; 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 paragraph 11.2(a) or (b).
- 12.4 Where you have a personal interest in any business of the Council which relates to or is likely to affect a body described in paragraph 11.2(a) or 11.2(b)(i), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.
- 12.5 Where you have a personal interest in any business of the Council of the type mentioned in paragraph 11.2(c), (gifts and hospitality) you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.
- 12.6 Where you have a personal interest but, by virtue of paragraph 16, 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, but need not disclose the sensitive information to the meeting.
- 12.7 Where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.

13. Non Participation in Case of Prejudicial Interest

- 13.1 Where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where 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 and where that business:
- (a) affects your financial position or the financial position of a person or body described in paragraph 12.3 ;or
 - (b) relates to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 12.3.
- 13.2 Subject to paragraphs 13.3 and 13.4, where you have a prejudicial interest in any business of your authority:

- a) You must not participate in any discussion of the matter at the meeting.
- b) You must not participate in any vote taken on the matter at the meeting.
- c) If the interest is not registered, you must disclose the interest to the meeting.
- d) If the interest is not registered and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest within 28 days

13.3 Where you have a prejudicial interest in any business of the Council, you may attend a meeting 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 and you leave the room where the meeting is held immediately after making representations, answering questions or giving evidence.

13.4 Subject to you disclosing the interest at the meeting, you may attend a meeting and vote on a matter where you have a prejudicial interest that relates to the functions of your authority in respect of:

- (a) 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;
- (b) 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; and
- (c) any ceremonial honour given to members.
- (d) housing, where you are a tenant of the Council provided that those functions do not relate particularly to your tenancy or lease;
- (e) an allowance, payment or indemnity given to members;
- (f) setting council tax or a precept under the Local Government Finance Act 1992

13.5 Where, as a Cabinet Member, you may discharge a function alone, and you become aware of a prejudicial interest in a matter being dealt with, or to be dealt with by you, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter, or seek improperly to influence a decision about the matter.

14. Interests Arising in Relation to Overview and Scrutiny Committees

In any business before an overview and scrutiny committee of the Council (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 the Executive/Cabinet or another of the 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/Cabinet, 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,

You may attend the meeting of the overview and scrutiny committee for the purpose of explaining the reasons for the decision, or answering questions or giving evidence relating to the business, but you cannot participate otherwise in the discussion or in any vote on the matter.

Part 4 - General Matters Relating to Parts 2 and 3

15. Register of Interests

Subject to paragraph 16 any disclosable pecuniary interests or personal interests notified to the Monitoring Officer will be included in the register of interests. A copy of the register will be available for public inspection and will be published on the authority's website.

16. Sensitive interests

This paragraph applies where you consider that disclosure of the details of a disclosable pecuniary interest or a personal interest could lead to you, or a person connected with you, being subject to violence or intimidation, and the Monitoring Officer agrees. In these circumstances, if the interest is entered on the register, copies of the register that are made available for inspection and any published version of the register will exclude details of the interest, but may state that you have a disclosable pecuniary interest, the details of which are withheld under Section 32(2) of the Localism Act 2011.

17. Dispensations

The Council may grant you a dispensation, but only in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest or a prejudicial interest.

PROTOCOL FOR MEMBER AND OFFICER RELATIONS

“Every local authority should have its own written statement or protocol governing relations between members and officers.” (Third report of the Committee on Standards in Public Life - the Nolan Committee)

1.1 Preamble

- 1.1 Mutual trust and respect between members and officers is at the heart of a council’s good governance. They are essential if the partnership necessary for the effective running of a local authority is to succeed.
- 1.2. This may seem obvious. But what happens when relationships go awry? Where can members and officers turn for guidance? What mechanisms exist for addressing concerns? How can matters be improved?
- 1.3. Such questions point to the need for a written guide to the basic elements of the relationship between members and officers – a protocol:
 - to promote trust, openness, fairness and honesty by establishing some ground rules;
 - to define roles so as:
 - to clarify responsibilities (i.e. who does what),
 - to avoid conflict, and
 - to prevent duplication or omission
 - to secure compliance with the law, codes of conduct and a council’s own practices; and
 - to lay down procedures for dealing with concerns by members or officers.
- 1.4. This protocol should be recognised both as a central element of the Council’s corporate governance, and as a commitment to upholding standards of conduct in public life. It is one way of demonstrating to the public at large that local government is serious about protecting and enhancing its integrity and reputation.

2. Definitions

- 2.1. Unless the context indicates otherwise, references to the term Council include the *Leader*, the Executive, overview and scrutiny bodies, and other committees and sub-committees.
- 2.2. For the purposes of this protocol, the term Executive refers to the Leader and Cabinet.
- 2.3 Unless the context indicates otherwise, the terms member and members include non-elected (i.e. co-opted) members as well as elected councillors.

- 2.4. Officers and staff mean all persons employed by the Council.
- 2.5. Designated Finance Officer means the officer exercising the duties prescribed by law for the financial administration of the Council.

3. Principles

- 3.1 Members and officers must at all times observe this protocol.
- 3.2 The protocol has been approved by the Council's Standards Committee who will monitor its operation.
- 3.3 The protocol seeks to maintain and enhance the integrity (real and perceived) of local government which demands the highest standards of personal conduct.
- 3.4 Members and officers must always respect the roles and duties of each other. They must show respect in all their dealings by observing reasonable standards of courtesy, and by not seeking to take unfair advantage by virtue of their position.
- 3.5 Whilst members and officers are indispensable to one another, their responsibilities are distinct. Members are accountable to the electorate and serve only as long as their term of office lasts. Officers are accountable to the Council as a whole. Their job is to give advice to members (individually and collectively) and to carry out the Council's work under the direction of the Council.
- 3.6 The Council has adopted codes of conduct for both members and officers. Both represent best practice. The members' code follows the national code which in turn is based on the general principles governing members' conduct enshrined in law:
 - Selflessness – serving only the public interest.
 - Honesty and integrity – not allowing these to be questioned; not behaving improperly.
 - Objectivity – taking decisions on merit.
 - Accountability – to the public; being open to scrutiny.
 - Openness – giving reasons for decisions.
 - Personal judgement – reaching one's own conclusions and acting accordingly.
 - Respect for others – promoting equality; avoiding discrimination; respecting others (member/member, as well as member/officer).
 - Duty to uphold the law – not acting unlawfully.
 - Stewardship – ensuring the prudent use of a council's resources.
 - Leadership – acting in a way which has public confidence.
- 3.7 These principles underpin this protocol. They will also be reflected in a new national code of conduct for employees due in the near future.

- 3.8. Until such time as a new national code appears, officers are bound by the Council's own code of conduct for staff and, in some cases, by the codes of their professional associations.
- 3.9. Breaches of this protocol by a member may result in a complaint to the Standards Board for England if it appears the Members' code has also been breached. Breaches by an officer may lead to disciplinary action.
- 4.1. Members have a number of roles and need to be alert to the potential for conflicts of interest which may arise between the roles. Where such conflicts are likely, members may wish to seek the advice of senior colleagues, the relevant chief officer(s), and/or the Monitoring Officer.
- 4.2. Collectively, members are the ultimate policy-makers determining the core values of the Council and approving the authority's policy framework, strategic plans and budget.
- 4.3. Members represent the community, act as community leaders and promote the social, economic and environmental well-being of the community often in partnership with other agencies.
- 4.4. Every elected-member represents the interests of, and is an advocate for, his/her ward and individual constituents. He/she represents the Council in the ward, responds to the concerns of constituents, meets with partner agencies, and often serves on local bodies.
- 4.5. Some members have roles relating to their position as members of the Executive, Overview and Scrutiny Committees of the Council.
- 4.6. Members serving on Overview and Scrutiny Committees monitor the effectiveness of the Council's policies and services, develop policy proposals and examine community issues. They also monitor local health service provision.
- 4.7. Members who serve on other committees and sub-committees collectively have delegated responsibilities, e.g. deciding quasi-judicial matters which by law are excluded from the remit of the Executive.
- 4.8. Some members may be appointed to represent the Council on local, regional or national bodies.
- 4.9. As politicians, members may express the values and aspirations of the party political groups to which they belong, recognising that in their role as members they have a duty always to act in the public interest.
- 4.10. Members are not authorised to instruct officers other than:
 - through the formal decision-making process;
 - to request the provision of consumable resources provided by the Council for members' use;
 - where staff have been specifically allocated to give support to a member or group of members; and
 - in the case of political assistants.

- 4.11. Members are not authorised to initiate or certify financial transactions, or to enter into a contract on behalf of the Council.
- 4.12. Members must avoid taking actions which are unlawful, financially improper or likely to amount to maladministration. Members have an obligation under their code of conduct to have regard, when reaching decisions, to any advice provided by the Monitoring Officer or the designated Finance Officer.
- 4.13. Members must respect the impartiality of officers and do nothing to compromise it, e.g. by insisting that an officer change his/her professional advice.
- 4.14. Members have a duty under their code of conduct:
- to promote equality by not discriminating unlawfully against any person, and
 - to treat others with respect.
- 4.15. Under the code, a member must not when acting as a member or in any other capacity:
- bring the Council or his/her position as a member into disrepute, or
 - use his/her position as a member improperly to gain an advantage or disadvantage for his/herself or any other person.

5. The Role of Officers

- 5.1. Officers are responsible for giving advice to members to enable them to fulfil their roles. In doing so, officers will take into account all available relevant factors.
- 5.2. Under the direction and control of the Council (including, as appropriate, the Executive, committees and sub-committees), officers manage and provide the Council's services within the framework of responsibilities delegated to them. This includes the effective management of employees and operational issues.
- 5.3. Officers have a duty to implement decisions of the Council, the Executive, committees and sub-committees which are lawful, and which have been properly approved in accordance with the requirements of the law and the Council's constitution, and duly minuted.
- 5.4. Officers have a contractual and legal duty to be impartial. They must not allow their professional judgement and advice to be influenced by their own personal views.
- 5.4. Officers must assist and advise all parts of the Council. They must always act to the best of their abilities in the best interests of the authority as expressed in the Council's formal decisions.

- 5.5. Officers must be alert to issues which are, or are likely to be, contentious or politically sensitive, and be aware of the implications for members, the media or other sections of the public.
- 5.6. Officers have the right not to support members in any role other than that of member, and not to engage in actions incompatible with this protocol. In particular, there is a statutory limitation on officers' involvement in political activities.

6. The Relationship between Members and Officers: General

- 6.1. The conduct of members and officers should be such as to instil mutual confidence and trust.
- 6.2. The key elements are a recognition of and a respect for each other's roles and responsibilities. These should be reflected in the behaviour and attitude of each to the other, both publicly and privately.
- 6.3. Informal and collaborative two-way contact between members and officers is encouraged. But personal familiarity can damage the relationship, as might a family or business connection.
- 6.4. Members and officers should inform the Monitoring Officer of any relationship which might be seen as unduly influencing their work in their respective roles.
- 6.5. It is not enough to avoid actual impropriety. Members and officers should always be open about their relationships to avoid any reason for suspicion and any appearance of improper conduct. Where a personal relationship has been disclosed, those concerned should avoid a situation where conflict could be perceived. Specifically, a member should not sit on a body or participate in any decision which directly affects the officer on a personal basis.
- 6.6. Officers serve the Council as a whole. They have a duty to implement the properly authorised decisions of the Council.
- 6.7. With the exception of political assistants, officers work to the instructions of their Chief Officers, not individual members. It follows that, whilst such officers will always seek to assist a member, they must not be asked to exceed the bounds of authority they have been given by their managers. Except when the purpose of an enquiry is purely to seek factual information, members should normally direct their requests and concerns to a senior officer, at least in the first instance.
- 6.8. Officers will do their best to give timely responses to members' enquiries. However, officers should not have unreasonable requests placed on them. Their work priorities are set and managed by senior managers. Members should avoid disrupting officers' work by imposing their own priorities.

- 6.9. Members will endeavour to give timely responses to enquiries from officers.
- 6.10. An officer shall not discuss with a member personal matters concerning him/herself or another individual employee. This does not prevent an officer raising on a personal basis, and in his/her own time, a matter with his/her ward member.
- 1.11. Members and officers should respect each other's free (i.e. non-Council) time.

7. The Council as Employer

- 7.1. Officers are employed by the Council as a whole.
- 7.2. Members' roles are limited to:
- the appointment of specified senior posts,
 - determining human resources policies and conditions of employment,
 - the appointment of political assistants, and
 - hearing and determining appeals.
- 7.3. Members shall not act outside these roles.
- 7.4. If participating in the appointment of officers, members should:
- remember that the sole criterion is merit (other than in the case of political assistants where political consideration may apply),
 - never canvass support for a particular candidate,
 - not take part where one of the candidates is a close friend or relative,
 - not be influenced by personal preferences, and
 - not favour a candidate by giving him/her information not available to the other candidates.
- 7.5. A member should not sit on an appeal hearing if the appellant is a friend, a relative, or an officer with whom the member has had a working relationship.

8. Mayor and Officers

- 8.1. Officers will respect the position of Mayor and provide appropriate support.

9. Cabinet Members and Officers

- 9.1. Cabinet members will take decisions in accordance with the constitution and will not otherwise direct staff. Chief Officers will be responsible for instructing staff to implement the Cabinet Members decisions.
- 9.2. In addition to individual members of the Cabinet, Chief Officers (including the Monitoring Officer and the designated Finance Officer) have the right

to submit papers to the Executive as a whole or to individual Cabinet members for consideration.

- 9.3. Chief Officers and Cabinet members shall agree mutually convenient methods of regular contact. Before taking any formal decisions, the Executive will seek appropriate professional advice including, without exception, the Monitoring Officer and designated Finance Officer, and will not direct officers in the framing of recommendations.
- 9.4. Before any formal decisions with a financial implication are taken by the Leader, the Finance Officer and the Chief Officer(s) for the service(s) concerned must be consulted. This is to ensure that those officers who are budget holders:
 - are aware of the proposed decision,
 - have the opportunity to offer advice, and
 - are subsequently able properly to authorise the financial transactions needed to implement decisions.
- 9.5. An individual Cabinet member who is minded to write or commission a report on a matter within his/her portfolio must ensure that those other members and officers who need to know of the matter are so informed. There is a particular requirement to involve other Cabinet members on cross-cutting issues.
- 9.6. Cabinet members when making decisions must state the reasons for those decisions. The written record of the decisions must include the reasons.
- 9.7. Officers taking decisions under their delegated powers must consider the advisability of informing the relevant Cabinet Member(s) of their intentions in advance when the matter to which the decisions relates is likely to be sensitive or contentious, or has wider policy implications.

10. Overview and Scrutiny Members and Officers

- 10.1. Chairs and other leading overview and scrutiny members shall maintain regular contact with the officer(s) providing the principal support to the overview and scrutiny function. In consultation with chairs, it shall be the responsibility of the latter to ensure that those who need to know of matters being considered or for possible future consideration are so informed.
- 10.2. An Overview and Scrutiny Committee or its Chair acting on its behalf may require officers to attend overview and scrutiny meetings. Members should not normally expect junior officers to give evidence. All requests should be made to Chief Officers in the first instance.
- 10.3. When making requests for officer attendance, overview and scrutiny members all have regard to the workload of officers.
- 10.4. It is recognised that officers required to appear before an Overview and Scrutiny Committee may often be those who have advised the Executive

or another part of the Council on the matter under investigation. In these circumstances, an officer may have a conflict of interest. Both members and officers need to consider the severity of the conflict. If deemed appropriate, research and advice may be sought elsewhere.

- 10.5. Subject to 10.4 above, officers should be prepared to justify advice given to the Council, the Executive, or other committees and sub-committees even when the advice was not accepted.
- 10.6. Officers must also be prepared to justify decisions they have taken under delegated powers.
- 10.7. In giving evidence, officers must not be asked to give political views.
- 10.8. Officers should respect members in the way they respond to members' questions.
- 10.9. Members should not question officers in a way which could be interpreted as harassment. Neither should they ask about matters of a disciplinary nature.
- 10.10 Overview and scrutiny proceedings must not be used to question the capability or competence of officers. Chairs and members need to make a distinction between reviewing the policies and performance of the Council and its services, and appraising the personal performance of staff. The latter is not an overview and scrutiny function.
- 10.11. In exercising the right to call-in a decision of the Leader/Cabinet, overview and scrutiny members must seek officer advice if they consider the decision is contrary to the Council's approved plans, policies or frameworks, or is unlawful.

11. Members of Other Committees or Sub-Committees and Officers

- 11.1. The appropriate Chief Officers will offer to arrange regular informal meetings with chairs, vice-chairs, and spokespersons of committees and sub-committees.
- 11.2. Senior officers (including the Monitoring Officer and the designated Finance Officer) have the right to present reports and give advice to committees and sub-committees.
- 11.3. Members of a committee or sub-committee shall take decisions within the remit of that committee or sub-committee, and will not otherwise instruct officers to act.
- 11.4. At some committee or sub-committee meetings, a resolution may be passed which authorises a named officer to take action between meetings in consultation with the chair. In these circumstances it is the officer, not the chair, who takes the action and is responsible for it. A chair has no legal power to take decisions on behalf of a committee or sub-committee, neither should he/she apply inappropriate pressure on the officer.

12. Party Groups and Officers (excluding Political Assistants)

- 12.1. Chief Officers may properly be asked to contribute to deliberations of matters concerning Council business by party groups.
- 12.2. Officers have the right to refuse such requests, and will normally not attend a meeting of a party group where some of those attending are not members of the Council.
- 12.3. Officer support will not extend beyond providing factual information or professional advice in relation to matters of Council business. Officers must not be involved in advising on matters of party business, and therefore should not be expected to be present at meetings or parts of meetings when such matters are to be discussed.
- 12.4. Party group meetings are not empowered to make decisions on behalf of the Council, and conclusions reached at such meetings do not rank as formal decisions. The presence of an officer confers no formal status on such meetings in terms of Council business and must not be interpreted as doing so.
- 12.5. Where officers provide factual information and advice to a party group in relation to a matter of Council business, this is not a substitute for providing all the necessary information and advice when the matter in question is formally considered by the relevant part of the Council.
- 12.6. It must not be assumed that an officer is supportive of a particular policy or view considered at a party group meeting simply because he/she has attended or provided information to the meeting.
- 12.7. Officers will respect the confidentiality of any party group discussions at which they are present and, unless requested to do so by that party group, will not relay the content of such discussions to another party group or to any other members. This shall not prevent an officer providing feedback to other senior officers on a need-to-know basis.
- 12.8. In their dealings with party groups, officers must treat each group in a fair and even-handed manner.
- 12.9. Members must not do anything which compromises or is likely to compromise officers' impartiality.
- 12.10 .The duration of an officer's attendance at a party group meeting will be at the discretion of the group, but an officer may leave at any time if he/she feels it is no longer appropriate to be there.

- 12.11 An officer accepting an invitation to the meeting of one party group shall not decline an invitation to advise another group about the same matter. He/she must give substantially the same advice to each.
- 12.12. An officer who is not a Chief Officer shall not be invited to attend a party group meeting, but a senior officer may nominate another officer to attend on his/her behalf.
- 12.13. An officer should be given the opportunity of verifying comments and advice attributed to him/her in any written record of a party group meeting.
- 12.14. No member will refer in public or at meetings of the Council to advice or information given by officers to a party group meeting.
- 12.15. At party group meetings where some of those present are not members of the Council, care must be taken not to divulge confidential information relating to Council business. Persons who are not members are not bound by the Members' Code of Conduct. They do not have the same rights to Council information as members.
- 12.16. Any particular cases of difficulty or uncertainty in relation to this part of the protocol should be raised with the Chief Executive [or similar] and the relevant party group leader.

13. Local Members and Officers

- 13.1. To enable them to carry out their ward role effectively, members need to be fully informed about matters affecting their ward. Chief Officers must ensure that all relevant staff are aware of the requirement to keep local members informed, thus allowing members to contribute to the decision-making process and develop their representative role.
- 13.2. This requirement is particularly important:
- during the formative stages of policy development, where practicable,
 - in relation to significant or sensitive operational matters,
 - whenever any form of public consultation exercise is undertaken, and
 - during an overview and scrutiny investigation.
- 13.3. Issues may affect a single ward. Where they have a wider impact, a number of local members will need to be kept informed.
- 13.4. Whenever a public meeting is organised by the Council to consider a local issue, all the members representing the wards affected should be invited to attend the meeting as a matter of course.
- 13.5. If a local member intends to arrange a public meeting on a matter concerning some aspect of the Council's work, he/she should inform the

relevant officer. Provided the meeting has not been arranged on a party political basis:

- an officer may attend but is not obliged to do so, and
 - the meeting may be held in Council-owned premises.
- 13.6. No such meetings should be arranged or held in the immediate run-up to Council elections.
- 13.7. Whilst support for members' ward work is legitimate, care should be taken if staff are asked to accompany members to ward surgeries. In such circumstances:
- the surgeries must be open to the general public, and
 - officers should not be requested to accompany members to surgeries held in the offices or premises of political parties.
- 13.8. Officers must never be asked to attend ward or constituency political party meetings.
- 13.9. It is acknowledged that some Council staff (e.g. those providing dedicated support to Executive members) may receive and handle messages for members on topics unrelated to the Council. Whilst these will often concern diary management, care should be taken to avoid Council resources being used for private or party political purposes.
- 13.10. In seeking to deal with constituents' queries or concerns, members should not seek to jump the queue but should respect the Council's procedures. Officers have many pressures on their time. They may not be able to carry out the work required by members in the requested timescale, and may need to seek instructions from their managers.

14. Members' access to documents and information

- 14.1. This part of the protocol should be read in conjunction with the Access to Information Rules in the Council's Constitution (Page 119).
- 14.2. Members may request Chief Officers to provide them with such information, explanation and advice as they may reasonably need to assist them to discharge their roles as members. This may range from general information about some aspect of the Council's services to specific information on behalf of a constituent. Where information is requested on behalf of a third party, it will only be provided if:
- it is in the public domain, and
 - it is not barred by the Data Protection Act from being given.
- 14.3. Every member of the Executive, an Overview and Scrutiny *Committee* and/or any other committee or sub-committee has a right to inspect documents about the business of that Overview and Scrutiny *Committee*, other committee or sub-committee or the Executive.

- 14.4. A member who is not a member of a specific Overview and Scrutiny *Committee*, other committee or sub-committee, or the Executive may have access to any document of that specific part of the Council provided:
- he/she can demonstrate a reasonable need to see the documents in order to carry out his/her roles as a member (the "need to know" principle), and
 - the documents do not contain "confidential" or "exempt" information as defined by the law.
- 14.5. Disputes as to the validity of a member's request to see a document on a need to know basis will be determined by the Monitoring Officer. Officers should seek his/her advice if in any doubt about the reasonableness of a member's request.
- 14.6. A member should obtain advice from the Monitoring Officer in circumstances where he/she wishes to have access to documents or information:
- where to do so is likely to be in breach of the Data Protection Act, or
 - where the subject matter is one in which he/she has a personal or prejudicial interest as defined in the Members' Code of Conduct.
- 14.7. Information given to a member must only be used for the purpose for which it was requested.
- 14.8. It is an accepted convention that a member of one party group will not have a need to know and therefore a right to inspect a document which forms part of the internal workings of another party group.
- 14.9. Members and officers must not disclose information given to them in confidence without the consent of a person authorised to give it, or unless required by law to do so.
- 14.10. When requested to do so, officers will keep confidential from other members advice requested by a member.
- 14.11. Members and officers must not prevent another person from gaining access to information to which that person is entitled by law.

15. Media relations

- 15.1. All formal relations with the media must be conducted in accordance with the Council's agreed procedures and the law on local authority publicity.
- 15.2. Press releases or statements made by officers must promote or give information on Council policy or services. They will be factual and consistent with Council policy. They cannot be used to promote a party group.

- 15.3. Officers will keep relevant members informed of media interest in the Council's activities, especially regarding strategic or contentious matters.
- 15.4. Before responding to enquiries from the media, officers shall ensure they are authorised to do so.
- 15.5. Likewise, officers will inform the Council's press office of issues likely to be of media interest, since that office is often the media's first point of contact.
- 15.6. If a member is contacted by, or contacts, the media on an issue, he/she should:
 - indicate in what capacity he/she is speaking (e.g. as ward member, in a personal capacity, as a Cabinet member, on behalf of the Council, or on behalf of a party group);
 - be sure of what he/she wants to say or not to say;
 - if necessary, and always when he/she would like a press release to be issued, seek assistance from the Council's press office and/or relevant Chief Officer, except in relation to a statement which is party political in nature;
 - consider the likely consequences for the Council of his/her statement (e.g. commitment to a particular course of action, image, allegations of jumping to conclusions);
 - never give a commitment in relation to matters which may be subject to claims from third parties and/or are likely to be an insurance matter;
 - consider whether to consult other relevant members; and
 - take particular care in what he/she says in the run-up to local or national elections to avoid giving the impression of electioneering, unless he/she has been contacted as an election candidate or political party activist.

16. Correspondence

- 16.1. Correspondence between an individual member and an officer should not be copied to another member unless the author expressly intends and states that this is the case or consents. Where correspondence is copied, this should always be made explicit, i.e. there should be no "blind" copies.
- 16.2. Official letters written on behalf of the Council should normally be in the name of the relevant officer. It may be appropriate in some circumstances (e.g. representations to a Government Minister) for letters to appear in the name of an Executive member or the chair of an Overview and Scrutiny Commission.
- 16.3. The Mayor may initiate correspondence in his/her own name.
- 16.4. Letters which create legally enforceable obligations or which give instructions on behalf of the Council should never be sent in the name of a member.

16.5. When writing in an individual capacity as a ward member, a member must make clear that fact.

17. Access to premises

17.1. Officers have the right to enter Council land and premises to carry out their work. Some officers have the legal power to enter property in the ownership of others.

17.2. Members have a right of access to Council land and premises to fulfil their duties.

17.3. When making visits as individual members, members should:

- whenever practicable, notify and make advance arrangements with the appropriate manager or officer in charge;
- comply with health and safety, security and other workplace rules;
- not interfere with the services or activities being provided at the time of the visit;
- if outside his/her own ward, notify the ward member(s) beforehand; and
- take special care at schools and establishments serving vulnerable sections of society to avoid giving any impression of improper or inappropriate behaviour.

18. Use of Council Resources

18.1. The Council provides all members with services such as typing, printing and photocopying, and goods such as stationery and computer equipment, to assist them in discharging their roles as members of the Council. These goods and services are paid for from the public purse. They should not be used for private purposes or in connection with party political or campaigning activities.

18.2. Members should ensure they understand and comply with the Council's own rules about the use of such resources, particularly:

- where facilities are provided in members' homes at the Council's expense;
- in relation to any locally-agreed arrangements e.g. payment for private photocopying; and
- regarding ICT security.

18.3. Members should not put pressure on staff to provide resources or support which officers are not permitted to give. Examples are:

- business which is solely to do with a political party;
- work in connection with a ward or constituency party political meeting;
- electioneering;

- work associated with an event attended by a member in a capacity other than as a member of the Council;
- private personal correspondence;
- work in connection with another body or organisation where a member's involvement is other than as a member of the Council; and
- support to a member in his/her capacity as a councillor of another local authority.

19. Interpretation, Complaints and Allegations of Breaches

- 19.1. This part of the protocol should be read in conjunction with any "whistle-blowing" policy the Council may have.
- 19.2. Members or officers with questions about the implementation or interpretation of any part of this protocol should seek the guidance of the Monitoring Officer.
- 19.3. A member who is unhappy about the actions taken by, or conduct of, an officer should:
- avoid personal attacks on, or abuse of, the officer at all times,
 - ensure that any criticism is well founded and constructive,
 - never make a criticism in public, and
 - take up the concern with the officer privately.
- 19.4. If direct discussion with the officer is inappropriate (e.g. because of the seriousness of the concern) or fails to resolve the matter, the member should raise the issue with the officer's manager or the relevant senior officer.
- 19.5. A serious breach of this protocol by an officer may lead to an investigation under the Council's disciplinary procedure.
- 19.6. An officer who believes a member may have acted other than in accordance with this protocol should raise his/her concern with the Monitoring Officer. He/she will consider how the complaint or allegation should be dealt with. At a minor level, this may be no more than informally referring the matter to the leader of the relevant party group. More serious complaints may involve alleged breaches of the members' code of conduct, and may be referred to the Standards Board for England.

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COMPLAINTS AGAINST MEMBERS

Arrangements for dealing with complaints that Council Members have failed to comply with the Council's Code of Conduct for Members

1. Introduction

- 1.1 This procedure applies when a complaint is received that a Member or Co-opted Member of the Council has or may have failed to comply with the Code of Conduct for Members.
- 1.2 The person making the complaint will be referred to as "the Complainant" and the person against whom the complaint is made will be referred to as the "Subject Member".
- 1.3 No Member or Officer of the Council will participate in any stage of the arrangements if he or she has, or may have, any conflict of interest in the matter.

2. Making a Complaint

- 2.1 A complaint must be made in writing either by post or e-mail to; The Monitoring Officer, Department for Resources and Regulation, Town Hall, Knowsley Street, Bury or j.m.hammond@bury.gov.uk.
- 2.2 The Monitoring Officer will acknowledge receipt of the complaint within ten working days of receiving it and, at the same time, write to the Subject Member with details of the allegations (subject to any representations from the Complainant on confidentiality, which are accepted as valid by the Monitoring Officer). The degree of detail will be at the discretion of the Monitoring Officer. The Subject Member may, within five working days of receipt, make written representations to the Monitoring Officer which must be taken into account when deciding how the complaint should be dealt with. Representations received after this time may be taken into account, at the discretion of the Monitoring Officer, but will in any event not be considered after the Monitoring Officer has issued the initial assessment of the complaint.

3. Initial Assessment of Complaint

- 3.1 The Monitoring Officer will review the complaint and, following consultation with the Independent Person take a decision (initial assessment) as to whether it merits investigation, or another course of action. This decision will normally be taken within 20 working days of receipt of a complaint.

The complaint will be rejected if;

- The complaint is not against one or more named Members or co-opted Members of the Council;
- The Subject Member was not in office at the time of the alleged conduct.

- The complaint, if proven, would not be a breach of the Code of Conduct under which the Subject Member was operating at the time of the alleged misconduct.
- The complaint relates to a matter which took place more than six months ago, except in exceptional circumstances.

3.2 If the complaint has not been rejected on the grounds in 3.1 the Monitoring Officer will then go on to apply the following criteria in deciding whether a complaint should be accepted for investigation, dealt with informally, or rejected;

- Whether a substantially similar allegation has previously been made by the Complainant to Standards for England, or the Standards Committee, or the complaint has been the subject of an investigation by another regulatory authority;
- Whether the complaint is about something that happened so long ago that those involved are unlikely to remember it clearly enough to provide credible evidence, or where the lapse of time means there would be little benefit or point in taking action now;
- Whether the allegation is anonymous;
- Whether the allegation discloses a potential breach of the Code of Conduct, but the complaint is not serious enough to merit any action and
 - i. The resources needed to investigate and determine the complaint are wholly disproportionate to the allegations and
 - ii. Whether in all the circumstances there is no overriding public benefit in carrying out an investigation.
- Whether the complaint appears to be malicious, vexatious, politically motivated or tit for tat;
- Whether the complaint suggests that there is a wider problem throughout the Authority;
- Whether it is apparent that the Subject Member is relatively inexperienced as a Member or has admitted making an error and the matter would not warrant a more serious sanction;
- Whether training or conciliation would be the appropriate response.

The Monitoring Officer will consult with the Independent Person and then give his decision on how the complaint will be dealt with. The Monitoring Officer may in exceptional circumstances refer the question of how to proceed to [a Sub-Committee] of the Standards Committee.

4. Additional Information

- 4.1 The Monitoring Officer may require additional information to come to a decision and may request information from the Subject Member. In appropriate cases, the Monitoring Officer may seek to resolve the complaint informally, without the need for an investigation.
- 4.2 Such informal resolution may involve the Subject Member accepting that his/her conduct was unacceptable and offering an apology, or taking other steps. Where the Subject Member or the Council (in appropriate cases) makes a reasonable offer of local resolution, but it is rejected by the Complainant, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation.
- 4.3 If the complaint identifies criminal conduct or breach of other regulations by any person, the Monitoring Officer is authorised to report this to the Police or other prosecuting or regulatory authority, in addition to any action taken pursuant to the Code of Conduct.

5. Confidentiality

- 5.1 If a Complainant has asked for their identity to be withheld, this request will be considered by the Monitoring Officer at the initial assessment stage.
- 5.2 As a matter of fairness and natural justice the Subject Member should usually be told who has complained about them and receive details of the complaint. However, in exceptional circumstances, the Monitoring Officer may withhold the Complainant's identity if on request from the Complainant, or otherwise, they are satisfied that the Complainant has reasonable grounds for believing that they or any witness relevant to the complaint may be at risk of physical harm, or his or her employment may be jeopardised if their identity is disclosed, or where there are medical risks (supported by medical evidence) associated with the Complainant's identity being disclosed.
- 5.3 If the Monitoring Officer decides to refuse a request by a Complainant for confidentiality, they will offer the Complainant the option to withdraw the complaint, rather than proceed with his or her identity being disclosed. The Monitoring Officer will balance whether the public interest in taking action on a complaint will outweigh the Complainant's wish to have his or her identity withheld from the subject Member.

6. Investigation

- 6.1 The Monitoring Officer will appoint an Investigating Officer where a complaint merits formal investigation. The Investigating Officer may be a Council officer, an officer from another Council, or an external investigator.
- 6.2 The Investigating Officer will follow guidance issued by the Monitoring Officer on the investigation of complaints. The guidance will follow the principles of proportionality and the cost effective use of Council resources and shall be interpreted in line with these principles.

- 6.3 The Investigating Officer will ensure that the Subject Member receives a copy of the complaint – subject to the Monitoring Officer decision on confidentiality.
- 6.4 At the end of their investigation, the Investigating Officer will produce a report and will send a copy of that report to the Monitoring Officer. [*The Investigating Officer may before that produce a draft report and send copies to the Complainant and Subject Member for comments on matters of fact. The Investigating Officer will take such comments into account before issuing their report to the Monitoring Officer*]

7. Investigating Officer finding of no failure to comply with the Code of Conduct

- 7.1 Where the Investigating Officer's report finds that the Subject Member has not failed to comply with the Code of Conduct, the Monitoring Officer, in consultation with the Independent Person, will review the Investigating Officer's report and if satisfied, will confirm the finding of no failure to comply with the Code of Conduct.
- 7.2 The Monitoring Officer will write to the Complainant and the Subject Member with a copy of the decision and the Investigating Officer's report.
- 7.3 If the Monitoring Officer is not satisfied that the investigation has been conducted thoroughly, the Investigating Officer may be asked to reconsider the report and the conclusions.

8 Investigating Officer finding of sufficient evidence of failure to comply with the Code of Conduct.

Where the Investigating Officer's report finds that the Subject Member has failed to comply with the Code of Conduct, the Monitoring Officer will review the Investigating Officer's report and will then having consulted the Independent Person either send the matter for local hearing before the hearing panel or seek local resolution.

8.1 Local Resolution

If the Monitoring Officer considers that the matter can reasonably be resolved without the need for a hearing, they will consult with the Independent Person and the Complainant and seek to agree a fair resolution. Such resolution may include the Subject Member accepting that their conduct was unacceptable and offering an apology, and/or other remedial action. If the Subject Member accepts the suggested resolution, the Monitoring Officer will report the outcome to the Standards Committee (if appropriate) for information, but will take no further action. If the Complainant or the Subject Member refuses local resolution in principle or to engage with the agreed outcome, the Monitoring Officer will refer the matter for a local hearing without further reference to the Complainant or the Subject Member.

8.2 Local Hearing

Where, in the opinion of the Monitoring Officer, local resolution is not appropriate or the Complainant and/or Subject Member refuses to accept local resolution, then the Monitoring Officer will report the Investigating Officer's findings to the Hearing Panel which will conduct a local hearing before deciding whether the Member has failed to comply with a Code of Conduct and, if so, what action (if any) to take in respect of the Member.

9. Constitution of the Hearing Panel

The Hearing Panel is a sub-committee of the Council's Standards Committee. It will comprise of at least one of the independent Members co-opted to the Standards Committee and three elected Members of the Standards Committee of whom one should be a Member of the minority party.

The Independent Person is invited to attend all meetings of the Hearing Panel and their views must be sought and taken into consideration before the Hearing Panel takes any decision on whether the Subject 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.

10. The Independent Person

10.1 The Independent Person must be a person who has applied for the post following advertisement of a vacancy for the post, and appointed by a positive vote from a majority of all the Members of the Council at a meeting of the full Council.

10.2 A person is not eligible for appointment if they:

- are, a Member, co-opted Member or officer of the Council;
- subject to Paragraph 10.3 below, have within the past five years been a Member, co-opted Member or officer of Bury Council,
- are a relative or close friend of a person within the bullet points above.

10.3 A person may be appointed as an Independent Person if they are not a Member of the Standards Committee on 1 July 2012, but have held such a post at any time during the 5 years ending on 30 June 2012, provided that this only applies to appointments made before 1 July 2013.

10.4 For the purpose of paragraph 10.2, "relative" means:

- Spouse or civil partner;
- Living with the other person as husband and wife or as if they were Civil partners;
- Grandparents of the other person;
- A lineal descendant of a grandparent of the other person;
- A parent, sibling or child of the person within the above bullet points;
- A spouse or civil partner of a person within the above bullet points; or

- Living with a person within the above bullet points as husband and wife or as if they were civil partners.

11. Action

Where a Hearing Panel finds that a Subject Member has failed to comply with the Code of Conduct, the Council has delegated to the Standards Committee (and the Standards Committee has sub-delegated to the Hearing Panel), such of its powers to take action in respect of Subject Members as may be necessary to promote and maintain high standards of conduct. Accordingly, the Hearing Panel may:

- Publish its findings in respect of the Subject Member's conduct;
- Recommend to Council that the Member be censured;
- Recommend to the Subject Member's group leader (or in the case of ungrouped members recommend to Council) 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 Subject Member be removed from the Executive, or removed from their portfolio responsibilities;
- Instruct the Monitoring Officer to arrange training for the Member;
- Recommend to Council that the Subject Member be removed from all outside appointments to which they have been appointed or nominated by the Council
- Withdraw facilities provided to the Subject Member by the Council such as a computer, website and/or e-mail and internet access; or
- Place such restrictions on the Subject Member's access to staff, buildings or parts of buildings which may be reasonable in the circumstances

12. Withdrawal of a Complaint

In the event that a Complainant withdraws a complaint at any time prior to a decision having been made by a Hearing Panel, the Monitoring Officer may, following consultation with the Independent Person, decide that no further steps be taken in respect of that complaint but shall, in taking such a decision take into account any issues which may arise under Paragraph 3.1(c) of the Code of Conduct.

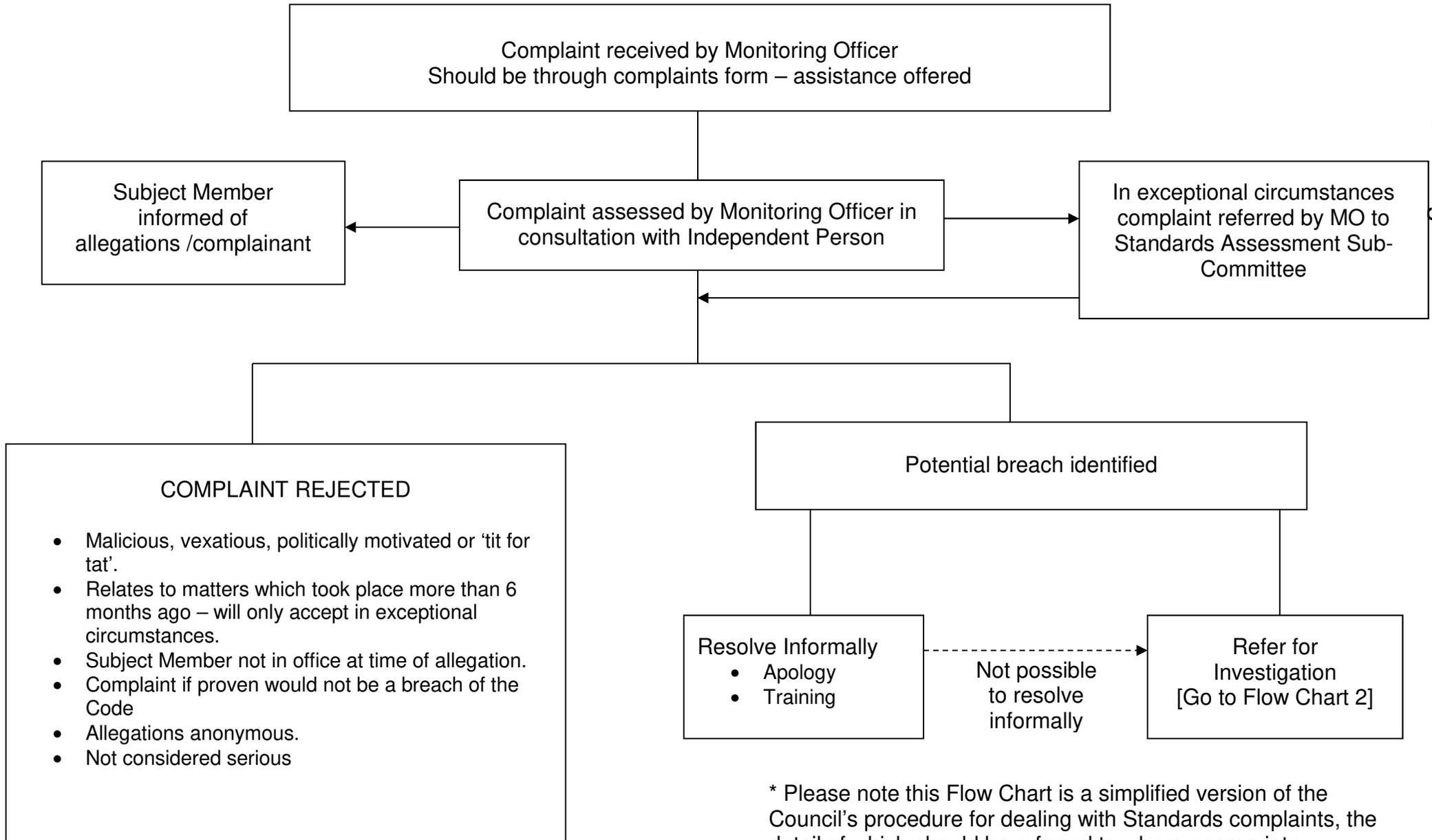
13. Revision of these Arrangements

The Council may by resolution or delegation to the Monitoring Officer agree to amend these arrangements and has delegated to the Chair of the Hearings Panel the right to depart from these arrangements where they consider that it is expedient to do so in order to secure fair consideration of any matters.

14. Appeals

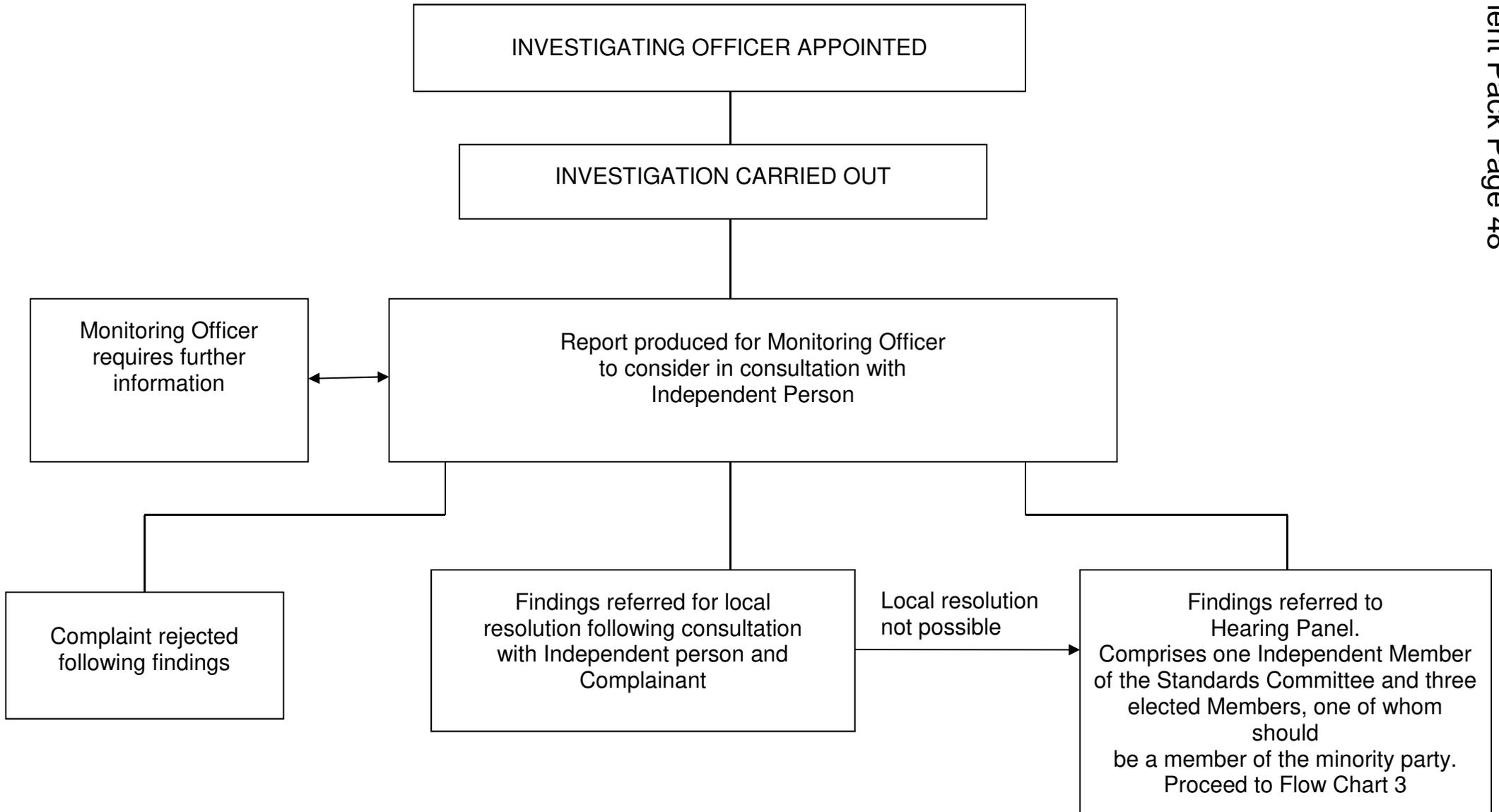
Subject to judicial review or a decision of a local ombudsman, there is no right of appeal against the decision of a Monitoring Officer or of the Hearing Panel.

FLOW CHART FOR STANDARDS COMPLAINTS – 1.ASSESSMENT*

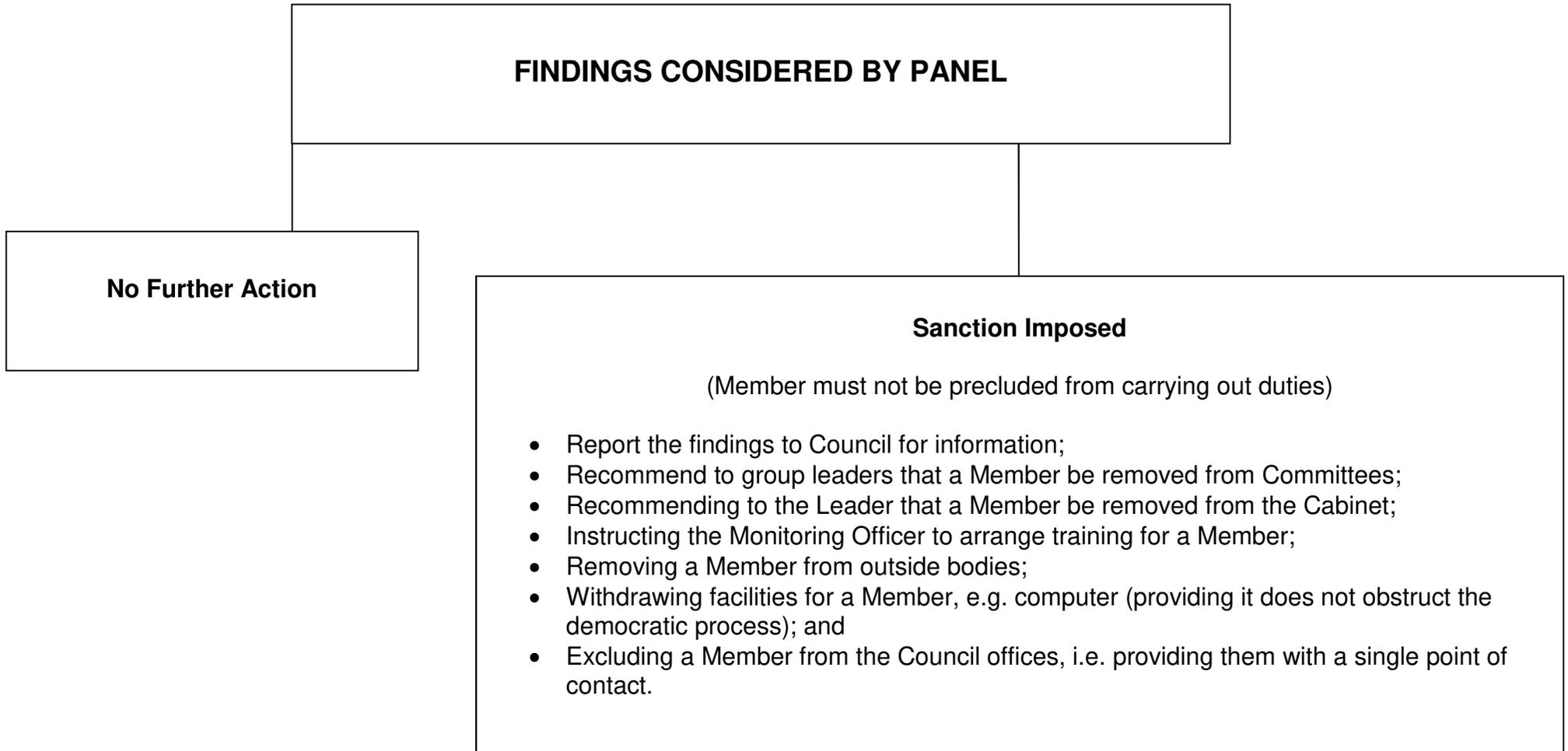


* Please note this Flow Chart is a simplified version of the Council’s procedure for dealing with Standards complaints, the detail of which should be referred to where appropriate

FLOW CHART FOR STANDARDS COMPLAINTS – 2.INVESTIGATION



FLOW CHART FOR STANDARDS COMPLAINTS – 3.HEARING



DELEGATIONS TO STANDARDS COMMITTEE

Council is asked to delegate to Standards Committee the following powers:-

1. To promote and maintain high standards of conduct by councillors, co-opted members and church and parent governor representatives;
2. To assist councillors, co-opted members and church and parent governor representatives to observe the Council's Code of Conduct for Members;
3. To advise the Council on the adoption, revision or replacement of the Council's Code of Conduct for Members and the Council's Arrangements for dealing with Complaints that Council Members have failed to comply with the Council's Code of Conduct for Members ("the Council's Arrangements");
4. To monitor the operation of the Council's Code of Conduct for Members and the Council's Arrangements;
5. To advise, train, or arrange to train councillors and co-opted members and church and parent governor representatives to observe the Council's Code of Conduct for Members;
6. To determine in accordance with the Council's Arrangements whether a Council member has failed to comply with the Council's Code of Conduct for Members and, if so, to determine what action (if any) to take in respect of the Council member.
7. To delegate such of the Council's powers as can be delegated to take decisions in respect of decisions in respect of a Council member who is found on a hearing in accordance with the Council's Arrangements to have failed to comply with the Council's Code of Conduct for Members, such actions to include:
 - Publication of the findings of the Standards (Hearing) Sub-Committee in respect of the Subject Member's conduct;
 - Recommendation to Council that the Subject Member should be censured;
 - Recommendation to the Subject Member's group leader (or in the case of ungrouped members to Council) that the Subject Member should be removed from any or all committees or sub-committees of the Council;
 - Recommendation to the Leader of the Council that the Subject Member should be removed from the Cabinet, or removed from their portfolio responsibilities.
 - Instructing the Monitoring Officer to arrange training for the Subject Member;
 - Recommendation to Council that the Subject Member should be removed from all appointments to which the Subject Member has been appointed or nominated by the Council.
 - Withdrawal of facilities provided to the Subject member by the Council, such as a computer, website and/or e-mail and Internet access; or
 - Placing such restrictions on the Subject Member's access to Council staff, buildings or parts of buildings as may be reasonable in the circumstances.

8. Dispensations

- 8.1 To grant dispensations from Section 31(4) of the Localism Act 2011 (after consultation with the Independent Person) if, having had regard to all relevant circumstances, the Standards Committee
 - (i) considers that granting the dispensation is in the interests of persons living in the Council's area, or
 - (ii) considers that it is otherwise appropriate to grant a dispensation.
- 8.2 To determine appeals against the Monitoring Officer's decision on the grant of dispensations.

DELEGATIONS TO COUNCIL'S MONITORING OFFICER

Council is asked to delegate to the Council's Monitoring Officer the following powers:

1. To act as the Council's Proper Officer to receive complaints that Council members have failed to comply with the Council's Code of Conduct for Members;
2. To determine, after consultation with the Independent Person and in accordance with the Council's Arrangements for dealing with Complaints that Council Members have failed to comply with the Council's Code of Conduct for Members ("the Council's Arrangements") whether to reject, informally resolve or investigate a complaint.
3. To seek informal resolution of complaints that Council members have failed to comply with the Council's Code of Conduct for Members wherever practicable.
4. To refer decisions dealing with a complaint against a Council Member to the Standards Committee in exceptional circumstances.
5. To arrange for the appointment of an Investigating Officer to investigate a complaint where the Monitoring Officer (in consultation with the Independent Person) determines that a complaint merits formal investigation.
6. To issue guidance to be followed by an Investigating Officer on the investigation of complaints.
7. To determine, after consultation with the Independent Person and in accordance with the Council's Arrangements, to confirm an Investigating Officer's finding of no failure to comply with the Council's Code of Conduct for Members.
8. Where an Investigating Officer's report finds that the Subject Member has failed to comply with Council's Code of Conduct for Members, to determine, after consultation with the Independent Person and in accordance with the Council's Arrangements, either to seek a local resolution or to send a matter for local hearing.
9. Independent Persons
 - 9.1 To make arrangements, to advertise a vacancy for the appointment of (i) Independent Persons and (ii) Co-Opted Independent Members.
 - 9.2 To make arrangements, in consultation with the Chair of the Council's Standards Committee for short-listing and interviewing candidates for appointment as Independent Persons and to make recommendations to Council for appointment.

10. Council's Register of Member's Interests

10.1 To prepare and maintain a new Council Register of Member's Interests to comply with the requirements of the Localism Act 2011 and the Council's Code of Conduct for Members, and ensure that it is available for inspection and published on the Council's website as required by the Act.

11. Dispensations

To grant dispensations from Section 31(4) of the Localism Act 2011 if, having had regard to all relevant circumstances, the Monitoring Officer:

- (i) considers that without the dispensation the number of persons prohibited by section 31(4) of the Localism Act 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; or
- (ii) considers that without the dispensation each member of the Council's Executive would be prohibited by section 31(4) of the Localism Act from participating in any particular business to be transacted by the Council's Executive.
- (iii) 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.

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BURY METROPOLITAN BOROUGH COUNCIL

STANDARDS HEARINGS PANELS

HEARING PROCEDURES

Introduction

This procedure is intended to provide the Standards Hearings Panel with an efficient and effective hearing process for the determination of any matter referred to it. This will help the Panel to deal with all the issues that need to be resolved in a way that is fair to the Member and to any person who may be involved.

Interpretation

1. "Investigator" means (subject to paragraph 3 below) the Monitoring Officer or other investigating officer, and his or her nominated representative.
2. 'Legal Advisor' means the officer responsible for providing legal advice to the Standards Committee. This may be the Monitoring Officer, another legally qualified officer of the Authority, or someone appointed for this purpose from outside the Authority.
3. 'Member' means the member of the Authority who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise. It also includes the Member's nominated representative.
4. 'Model Code' means the Code of Conduct for Councillors and Voting Co-opted Members adopted by the Authority.

Representation

5. The Member may be represented or accompanied during the meeting by a solicitor, barrister or, with the permission of the Committee, another person.

Legal Advice

6. The Committee may take legal advice from its Legal Advisor at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Committee may be shared with the Member and the Investigator if they are present.

Setting the Scene

7. After all the members and everyone involved have been formally introduced, the Chair should explain how the Hearing Panel is going to run the hearing.

Preliminary Procedural Issues

8. The Panel 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

9. After dealing with any preliminary issues, the Panel should then move on to consider whether or not there are any significant disagreements about the facts contained in the Investigator's report.
10. If there is no disagreement about the facts, the Panel can move on to the next stage of the hearing.
11. If there is a disagreement, the Investigator, if present, should be invited to make any necessary representations to support the relevant findings of fact in the report. With the Panel's permission, the Investigator may call any necessary supporting witnesses to give evidence. The Panel may give the Member an opportunity to challenge any evidence put forward by any witness called by the Investigator.
12. The Member should then have the opportunity to make representations to support his or her version of the facts and, with the Panel's permission, to call any necessary witnesses to give evidence.
13. At any time, the Panel may question any of the people involved or any of the witnesses, and may allow the Investigator to challenge any evidence put forward by witnesses called by the Member.
14. If the 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.
15. If the Member disagrees with any relevant fact in the Investigator's report, without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the hearing. If the Investigator is not present, the Panel will consider whether or not it would be in the public interest to continue in his or her absence. After considering the Member's explanation for not raising the issue at an earlier stage, the Panel may then –
 - (a) continue with the hearing, relying on the information in the Investigator's report,
 - (b) allow the Member to make representations about the issue, and invite the Investigator to respond and call any witnesses, as necessary, or
 - (c) postpone the hearing to arrange for appropriate witnesses to be present, or for the Investigator to be present if he or she is not already.

16. The Panel will usually move to another room to consider the representations and evidence in private.
17. On their return, the Chair will announce the Panel's findings of fact.

Did the Member fail to follow the Code?

18. The Panel then needs to consider whether or not, based on the facts it has found, the Member has failed to follow the Code of Conduct.
19. The Member should be invited to give relevant reasons why the Panel should not decide that he or she has failed to follow the Code.
20. The Panel should then consider any verbal or written representations from the Investigator.
21. The Panel may, at any time, question anyone involved on any point they raise in their representations.
22. The Member should be invited to make any final relevant points.
23. The Panel will then move to another room to consider the representations.
24. On their return, the Chair will announce the Panel's decision as to whether or not the Member has failed to follow the Code of Conduct.

If the Member has not failed to follow the Code of Conduct

25. If the Panel decides that the Member has not failed to follow the Code of Conduct, the Panel can move on to consider whether it should make any recommendations to the Authority.

If the Member has failed to follow the Code

26. If the Panel decides that the Member has failed to follow the Code of Conduct, it will consider any verbal or written representations from the Investigator and the Member as to –
 - (a) whether or not the Committee should set a penalty, and
 - (b) what form any penalty should take.
27. 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.
28. The Committee will then move to another room to consider whether or not to impose a penalty on the Member and, if so, what the penalty should be.

29. On their return, the Chair will announce the Committee's decision.

Adjournment

31. The Committee may at any stage prior to the conclusion of the hearing, adjourn the hearing and require the Monitoring Officer to seek further information or undertake further investigation on any point specified by the Committee. The Committee shall not adjourn a hearing more than once for this purpose

32. The Committee may, at any stage prior to the conclusion of the hearing, adjourn the hearing and make a written request, to the Ethical Standards Officer concerned, that the matter be referred back to the Ethical Standards Officer for investigation, indicating the Committee's reason(s) for making such request.

Recommendations to the Authority

33. After considering any verbal or written representations from the Investigator, the Committee will consider 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

34. 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 within two weeks after the end of the hearing. It is good practice to prepare the full written decision in draft on the day of the hearing, before people's memories fade.

Admission of and disclosure of information to the media and public

35. The hearing will normally be conducted in public (except when the Committee retires to consider any matter as prescribed in this procedure) unless the Committee is satisfied in accordance with the relevant provisions that it is appropriate for the Committee to exclude the press and public from any part of the proceedings, and resolves accordingly.

36. Any documents submitted to the Committee during or for the purposes of the hearing will normally be available for public inspection, along with the agenda for and minutes of the Committee meeting which constitutes the hearing, unless the Committee is satisfied in accordance with the relevant provisions that any such document (in whole or in part) should not be so disclosed, and resolves accordingly.

Re-issued by Janet Witkowski Interim Council Solicitor and Monitoring Officer and approved by Standards Committee 13 January 2021

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