

## Standards Ad Hoc Sub Committee

The meeting may be filmed and may capture your image

**Time and date of Meeting:** 1.00 pm, Friday 28 September 2018

**Venue:** Council Chamber - Town Hall, Library Street, Wigan, WN1 1YN

### Agenda

- 1 Apologies for absence:**  
Members are requested to advise the Democratic Services Officer of any apologies for this meeting.
- 2 Urgent Business (if any):**  
To be accepted at the discretion of the Chairman.
- 3 Exclusion of the public:**  
The Committee is asked to consider whether by resolution to exclude the public from the meeting during consideration of the items of business marked with an 'E' reference because of the possibility of the disclosure of exempt information.  
**(Pages 3 - 4)**
- 4 Declaration of interest:**  
To receive declarations of interest in any item for discussion at the meeting. A blank form for declaring interests had been circulated with the agenda, please ensure that this is returned to the Committee and Member Services Officer at the end of the meeting. **(Pages 5 - 10)**
- 5 Arrangements for dealing with Code of Conduct complaints (Pages 11 - 40)**

#### Closed Items

- E1 Consideration of Investigation Reference CL77/68**  
Report of Assistant Director – Legal (Monitoring Officer) attached. **(Pages 41 - 222)**





D R A F T

**EXCLUSION OF THE PUBLIC – SECTION 100A LOCAL GOVERNMENT ACT 1972:**

Resolved: The public is excluded from the meeting when the Committee discusses the following items for the reasons set out below:

<b>Agenda Item No.</b>	<b>Title of Report</b>	<b>Minute No. (to be added)</b>	<b>Description of Exempt Information by reference to Paragraph Number in Schedule 12A of the Local Government Act 1972</b>
E1	Consideration of Investigation Reference CL77/68		1 (Information about any named person)

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**Wigan Council  
Declaration of Interest Statement**



To: Diane Adshead  
Resources Directorate

From Councillor \_\_\_\_\_  
(Block Capitals Please)

I intend to declare the interest(s) indicated below at the meeting of the Standards Ad Hoc Sub-Committee to be held on .....

Agenda Item Number	Type of Interest - PERSONAL AND NON PREJUDICIAL Reason for declaration of interest	Type of Interest – PREJUDICIAL Reason for declaration of interest	Type of Interest – DISCLOSABLE PECUNIARY INTEREST Reason for declaration of interest

Signed.....

Date.....

## Advice from the Head of Service, Legal and Risk in relation to declaration of interests

### Disclosable Pecuniary Interests (“DPIs”)

Under the Localism Act, DPIs are broadly similar to what are referred to as “Prejudicial Interests” in the Current Code. A principal difference between DPIs and Prejudicial Interests however, is that if a Member fails to take appropriate action in relation to a DPI, then Section 34 of the Localism Act provides that such failure may constitute a criminal offence, which on conviction may lead to a fine of up to £5,000 and/or disqualification from office for a period of up to 5 years.

### Definition of Disclosable Pecuniary Interests

Section 30(3) of the Localism Act defines DPIs as being an interest of a description specified by the DPI Regulations which is either:

- (a) an interest of a Council member (“the Member”), or
- (b) an interest of:
  - (i) the Member’s spouse or civil partner,
  - (ii) a person with whom the Member is living as husband and wife, or
  - (iii) a person with whom the Member is living as if they were civil partners, where the Member is aware that the other person has the interest.

The attached table from the Code describes those interests of Members and their partners which constitute DPIs (e.g. “any employment, office, trade, profession or vocation carried on for profit or gain”). The Code advises Members of their statutory obligation under the Localism Act to notify the Council’s Monitoring Officer of any DPIs within 28 days of becoming a Member. The Code also advises Members of their statutory obligation under the Localism Act in relation to non-participation where a Member is present at a meeting where they have a DPI in any matter that is being considered and that a failure to comply with the requirements of the Code in relation to DPIs may constitute a criminal offence.

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	<p>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 -</p> <p>(a) under which goods or services are to be provided or works are to be executed: and</p> <p>(b) which has not been fully discharged.</p>
Land	<p>Any beneficial interest in land which is within the area of Wigan Borough Council.</p>
Licences	<p>Any licence (alone or jointly with others) to occupy land in the area of Wigan Borough Council for a month or longer.</p>
Corporate Tenancies	<p>Any tenancy where (to your knowledge) -</p> <p>(a) the landlord is the Council: and</p> <p>(b) the tenant is a body in which you or your partner has a beneficial interest.</p>
Securities	<p>Any beneficial interest in securities of a body where -</p> <p>(a) that body (to your knowledge) has a place of business or land in the area of Wigan Borough Council; and</p> <p>(b) either -</p> <p>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(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>

## Personal Interests other than DPIs

The Localism Act provides that the Council's Code must include such provisions as the Council "considers appropriate" in respect of the registration in the Council's Register of Member's Interests of: -

- (a) pecuniary interests, and
- (b) interests other than pecuniary interests.

The Localism Act also provides that, subject to the specific provisions of the Localism Act in relation to the requirement for the Register of Member's Interests to record DPIs, it is for the Council to determine what is to be entered in its Register of Member's Interests.

## Notification of Personal Interests

The Code requires Members (in addition to notifying the Monitoring Officer of any DPIs in accordance with the requirements of the Localism Act and the Code), to notify the Monitoring Officer of any "Personal Interests" as defined at Part 3 of the Code.

However, it should be noted that the Code only requires a Member to register in the Register of Member's Interests if he/she is in "a position of general control or management" of any body:

- (a) exercising functions of a public nature;
- (b) directed to charitable purposes; or
- (c) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union).

## Disclosure of Personal Interests

The Code provides that where a Member has a Personal Interest (as defined by Part 3, paragraph 11.2 of the Code or Part 3, paragraph 12.2 of the Code) in any Council business, and he/she attends a Council meeting at which the business is considered, the Member concerned must disclose to that meeting the existence and nature of his/her Personal Interest as soon as the Personal Interest becomes apparent. As in the Current Code a Member must disclose a "Personal Interest" in any Council business where:

"a decision in relation to that business might reasonably be regarded affecting your well-being or financial position or the 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"

The definition of "*relevant person*" is wider than "partner" and includes the Member's wider family and close friends whose interests are not DPIs. Therefore, where a Member of the Council's Planning Committee becomes aware that a decision in relation to a planning application involves a "*relevant person*" (such as a child or close friend of the Member), the Code will require the Member to disclose this as a "Personal Interest" to the meeting, even though it does not constitute a DPI that must be disclosed under the Localism Act.



## Non-participation in the case of Prejudicial Interests

As in the Current Code, where a Member has a “Personal Interest” in any Council business, then the Member will 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 *relevant person*; or
- (b) relates to the determining of any approval, consent, licence, permission or registration in relation to you or any *relevant person*.”

Where a Member has a Prejudicial Interest, then the Code provides that (subject to a number of specific exceptions), the Member must:-

- (a) Not participate in any discussion of the matter at the meeting;
- (b) Not participate in any vote taken on the matter at the meeting;
- (c) Disclose the Prejudicial Interest to the meeting (if it is not registered in the Register of Member’s Interests); and
- (d) Notify the Council’s Monitoring Officer of the Prejudicial Interest within 28 days (if it not if it is not registered in the Register of Member’s Interests and is not the subject of a pending notification).

**As always, if any Member requires advice prior to the meeting regarding whether there is a need to declare an interest then please contact Diane Adshead, Deputy Democratic Services Manager on 01942 827121.**

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## WIGAN COUNCIL

### Arrangements for dealing with complaints about the Code of Conduct for Members as at August 2015

#### 1. Introduction

- 1.1 This procedure applies when a complaint is received that a Member, Co-opted Member or Parish Council Member 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 will participate in any stage of the arrangements if he or she has, or may have, any personal conflict of interest in the matter.
- 1.4 Arrangements for dealing with complaints against Members should be as proportionate and cost effective as possible, Emphasis is placed on securing resolution of any complaint against a Member without the need for the matter to be escalated up to a more formal level such as investigation or referred to a formal hearing.

#### 2. Making a complaint

- 2.1 A complaint must be made in writing on the Code of Conduct complaint form either by post or e-mail to; The Monitoring Officer, Legal ,Town Hall, Library Street, Wigan WN1 1YN or [B.Whitworth@wigan.gov.uk](mailto:B.Whitworth@wigan.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 (and in the case of a complaint about a Parish Councillor to the Clerk of the Parish Council also) with details of the allegations (subject to any representations from the complainant on confidentiality, which are accepted as valid by the Monitoring Officer).
- 2.3 The Subject Member may, within five working days of receipt (unless the Monitoring Officer agrees to an extension in extenuating circumstances), 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 Consideration of Complaint

- 3.1 In appropriate cases, including those which could amount to a potential breach of the Code of Conduct, the Monitoring Officer may seek to resolve the complaint informally, without the need to take the complaint to the assessment stage. This will usually be appropriate in for example the following circumstances:
  - The subject Member accepts the allegations and or that his/her conduct was unacceptable and agrees to seek an early resolution
  - Where the Monitoring Officer is able to agree a resolution with the complainant without any further action.
- 3.2 Where the subject Member or the Authority (in appropriate cases) makes a reasonable offer of informal resolution, but it is rejected by the complainant, the Monitoring Officer will take account of this in deciding whether the complaint merits further progress through the code of conduct for members process.

3.3 The Monitoring Officer may require additional information to come to a decision and may request information from the subject Member. Where the complaint relates to a Parish Councillor, the Monitoring Officer may also inform the Clerk of the Parish Council of the complaint and seek the views of the Clerk of the Parish Council before deciding the appropriate action. The Monitoring Officer may also consult with the Independent Person if felt appropriate.

3.4 The Monitoring Officer will still move Complaints of a serious nature to the formal process even if the subject Member accepted that the allegations made against them were true.

#### **4. Formal Assessment of Complaint**

4.1 If the Monitoring Officer considers the complaint should proceed beyond the initial consideration stage s/he will review the complaint and, following consultation with the Independent Person take a decision (formal assessment) as to whether it merits local resolution, investigation, another course of action or no action. This decision will normally be taken within 20 working days of receipt of all information relating to a complaint.

4.2 By use of a checklist attached at appendix 1 the Monitoring Officer will apply the following criteria in deciding whether a complaint should be accepted for investigation, dealt with informally, or rejected. Whether;

- the complaint is not against one or more named Members or co-opted Members of the Council or a Parish Council within its district;
- the subject Member was not in office at the time of the alleged conduct and a Code of Conduct was in force at the time.
- 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.
- 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;
- 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;
- the allegation is anonymous;
- 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.
- the complaint appears to be malicious, vexatious, politically motivated or tit for tat;
- the complaint suggests that there is a wider problem throughout the Authority;
- it is apparent that the subject of the allegation is relatively inexperienced as a Member or has admitted making an error and the matter would not warrant a more serious sanction;

- training or conciliation would be the appropriate response.

- 4.3 The Monitoring Officer will consult with the Independent Person and then give her decision on how the complaint will be dealt with.
- 4.4 In exceptional circumstances where the Monitoring Officer considers that it is not appropriate that the decision is made by the Monitoring Officer they may refer the matter to the Standards Assessment Sub-Committee for decision.
- 4.5 The Monitoring Officer may require additional information to come to a decision and may request information from the subject Member. Where the complaint relates to a Parish Councillor, the Monitoring Officer may also inform the Clerk of the Parish Council of the complaint and seek the views of the Clerk of the Parish Council before deciding whether the complaint merits formal investigation, other action or no action.
- 4.6 The Monitoring Officer will consider the following in determining it is appropriate to refer the complaint for informal resolution:
- Does taking further action provide an opportunity to resolve the issue and to prevent any similar issues arising in the future and promote good governance?
  - Does the complaint present a potentially less serious breach of the Code than would require the matter to be referred for investigation and is any benefit to be gained from referring the matter for investigation?
  - Is there a widespread breakdown in internal relationships and trust between the council and the subject member where a course of action other than an investigation of a complaint may be more appropriate and beneficial
  - Any suggested resolution options proposed by the complainant and or subject member
- 4.7.1 On completion of the formal assessment a written summary of the assessment will be published in the form of a decision notice. Publication of Decision Notices will be as follows:
- at the assessment stage if the outcome is not a breach it will then be the subject Members choice to publish or not;
  - if it is to go to investigation then it will not be published;
  - all hearing Decision Notices will be published as a minimum on the Council web site
- The Councils protocol for dealing with media enquiries about complaints about the Code of Conduct for members is attached at appendix 2.
- 4.8 All relevant regulations including for example Data Protection requirements will be complied with which may prevent the public disclosure of information relating to complaints.

## **5. Criminal Conduct**

If the complaint identifies potential 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.

## **6. Confidentiality**

- 6.1 The Monitoring Officer will decide whether a request by a complainant that their identity be withheld should be agreed. This decision will be reviewed by the Monitoring Officer at the initial assessment stage.
- 6.2 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.

- 6.3 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.

## **7. Investigation**

- 7.1 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.
- 7.2 The investigating officer will follow guidance issued by the Monitoring Officer on the investigation of complaints (as set out in appendix 3). 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.
- 7.3 The investigating officer will ensure that the Monitoring Officer, subject Member and complainant receives a copy of the draft report for review and comment before issuing the final report to the Monitoring Officer. The investigating officer will take such comments into account before issuing their final report to the Monitoring Officer.

## **8. Investigating Officer finding of no failure to comply with the Code of Conduct**

- 8.1 The Monitoring Officer will review the investigating officer's report and if satisfied, will confirm the finding of no failure to comply with the Code of Conduct.
- 8.2 The Monitoring Officer will write to the complainant and the subject Member (and to the Clerk of the Parish Council, where the complaint relates to a Parish Councillor), with a copy of the decision and the investigating officer's report.
- 8.3 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.

## **9 Investigating Officer finding of failure to comply with the Code of Conduct.**

The Monitoring Officer will review the investigating officer's report and will then either send the matter for local hearing before the hearings panel or, after consulting the independent person, seek local resolution.

### **9.1. 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 Member accepting that their conduct was unacceptable and offering an apology, and/or other remedial action. If the Member accepts the suggested resolution, the Monitoring Officer will report the outcome to the Standards Committee and the Clerk to the Parish Council (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.

## **9.2. Local Hearing**

Where, in the opinion of the Monitoring Officer, local resolution is not appropriate or the complainant and/or subject Member refuses to co-operate, then the Monitoring Officer will report the Investigating Officer's findings to the hearings panel which will conduct a local hearing before deciding whether the Member has failed to comply with a Code of Conduct and, if so, whether to take any action in respect of the Member. The hearing procedures are attached at appendix 4.

## **10. Constitution of the Hearings Panel**

- 10.1 The Hearing's Panel is a sub-committee of the Council's Standards Committee. The Council have decided that it will comprise of three members of the Council drawn from at least two different political parties (if available). Where the complaint is about a Parish Council Member, the hearings panel will include at least one of the Parish Council Members co-opted to the Standards Committee.
- 10.2 The Independent Person is invited to attend all meetings of the hearings panel and their views must be sought and taken into consideration before the hearings 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.

## **11. The Independent Person**

- 11.1 The Independent Person must be a person who has applied for the post following advertisements 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. The Independent Person Protocol is attached at appendix 5.
- 11.2 A person is not eligible for appointment if they:
- are, or have been within the past five years a Member, co-opted Member or officer of the Council;
  - are, or have been within the past five years a Member, co-opted Member or officer of a Parish Council within the Borough; or
  - are a relative or close friend of a person within bullet points 1 or 2 above.

For this purpose, "relative" means that:

- 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 or as husband and wife or as if they were civil partners.

## **12. Action**

- 12.1 Where a hearings panel find that a Member has failed to comply with the code of conduct, the Council has delegated to the hearings panel such of its powers to take action in respect of individual Members as may be necessary to promote and maintain high standards of conduct. Accordingly, the sanctions available to a hearings panel include, but are not restricted to, one or a combination of the following:

- Publish its findings in respect of the Member's conduct;
- Report its finding to Council (or to the Parish Council) for information;
- Recommend to Council that the Member be censured;
- Recommend to the 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 Member be removed from the Executive, or removed from their portfolio responsibilities;
- Instruct the Monitoring Officer to (or recommend that the Parish Council) arrange training/coaching for the Member;
- Recommend to Council (or recommend to the Parish Council) that the Member be removed from all outside bodies, appointments to which they have been appointed or nominated by the Council (or by the Parish Council);
- Withdraw or recommend to the Parish Council that it withdraws resources/facilities provided to the Member by the Council such as a computer, website and/or e-mail and internet access etc.;
- Place such restrictions on Members access to staff which may be reasonable in the circumstances provided that such restrictions do not prevent the member from carrying out their duties as a Councillor; or
- Recommend the subject Member apologise to the relevant person(s) affected. This could also include a recommendation that this is done in conjunction with the Monitoring Officer to ensure that it meets the Committees expectations
- Recommend that all sanctions will be monitored and that the Sub-Committee be re-convened so that further sanctions may be considered should the Member fail to comply with the above requirements

12.2 Consideration will also need to be given to the time period of the action and how it will be monitored.

### **13. 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 Hearings 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.

### **14. 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 the effective and fair consideration of any matters.

### **15. 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 Hearings Panel.



## **Pre-amble to Code of Conduct for Members**

### **1. Introduction**

The Council is determined to provide excellent local government for the people of the Wigan 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.

- 1.2 The principles of public life apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the civil service, local government, the police, courts and probation services, NDPBs, and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The principles also have application to all those in other sectors delivering public services.

### **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 act solely in terms of the public interest.

Members should act consistently and fairly by applying these principles to all their actions, transactions, communications, behaviours and decision making and raise concerns if they see harmful behaviour or misconduct by others.

#### **2.3 Integrity**

Members must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

#### **2.4 Objectivity**

Members must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

#### **2.5 Accountability**

Members are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Members should whenever possible make clear whether or not they are acting in their official capacity, including when conducting the business of Wigan Council or acting, claiming to act,

or giving the impression they are acting, in their official capacity as a member or as a representative of the authority.

## 2.6 **Openness**

Members should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

## 2.7 **Honesty**

Members should be truthful

Members should when communicating to the public and in particular when dealing with the media or using social media, ensure that information concerning adopted policies, procedures and decisions of the Council are conveyed accurately and that confidential information is not released or commented upon.

## 2.8 **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.

Members should whilst acknowledging the right of political expression uphold high standards of courtesy and show consideration for others opinions in Council debates and meetings.

## 2.9 **Respect for Others**

Members should promote equality by not discriminating unlawfully against any person or through material that promotes discrimination, 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.

Members should avoid personal attacks and disrespectful, rude or offensive comments against officers and public in all aspects of their role as Councillor.

## 2.10 **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.

## 2.11 **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.

## 2.12 **Leadership**

Members should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Members should make demonstrable efforts to reflect strong ethical principles across the whole organisation in particular support and adhere to all Council guidelines and codes (e.g. Protocol of Member/Officer Relations, ICT Acceptable Use Policy, Dignity at Work etc.).

# 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 Executive or any committee of the Executive.
- 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.

**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; and
- (d) must, comply with the Councils Protocol on Member/Officer Relations

**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 Wigan Borough Council.
Licences	Any licence (alone or jointly with others) to occupy land in the area of Wigan Borough Council for a month or longer.

## Corporate Tenancies

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.

## Securities

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 Wigan 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.

### 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" includes 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

1. You must not participate in any discussion of the matter at the meeting.
2. You must not participate in any vote taken on the matter at the meeting.
3. If the interest is not registered, you must disclose the interest to the meeting.

4. 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

*[Note: In addition, the Council's Procedure Rules require you to leave the room where the meeting is held while any discussion or voting takes place, and in the case of a registered (as well as unregistered interest) to disclose it to the meeting].*

- 9.2 Where an executive 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 executive 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 executive 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 an executive 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.

Or in the case of an interest arising under 11.2 within 28 days of the receipt of any such gift or hospitality.

- 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 £25, or

## 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.

*[Note: In addition the Council's Procedure Rules require you to leave the room where the meeting is held while any discussion or voting takes place].*

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.

unless that interest constitutes a Disclosable Pecuniary Interest under paragraph 8

- 13.5 Where, as an executive 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 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, 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.

## **WIGAN COUNCIL PROTOCOL FOR DEALING WITH PRESS ENQUIRIES ABOUT COMPLAINTS TO THE STANDARDS COMMITTEE**

1. The Council adopted a Code of Conduct and arrangements for dealing with complaints at its meeting on 18 July 2012 in accordance with the Localism Act 2011.
2. The following “Protocol on Publicity for Code of Conduct for Members Complaints” recommends that Members should not make any public or press comment about any complaint which they have made, are aware of, or are the subject of, until the complaint has been resolved. The Protocol acknowledges, however, that it cannot bind members of the public, and that there may be situations where a complaint becomes known to the public through the press or some other medium. In these circumstances, the Protocol does not preclude the Member who is the subject of the complaint from making a press comment, although the Member should carefully consider the appropriateness of so doing and it is recommend that they seek advice from the PR team before making any comment .
3. In line with the Code of Conduct for Members, Members must not disclose information given to them in confidence by anyone, or information acquired that they believe, or ought reasonably to be aware, is of a confidential nature.
4. The assessment process will determine whether the complaint is to be referred for informal resolution, investigation, another course of action or whether no action is to be taken. If the press become aware of a complaint at this assessment stage, and make enquiries of the Council, before the Monitoring Officer has completed the assessment, the response will be given that it is not the Council’s policy to comment on whether or not a complaint has been made, but that all complaints are considered in accordance with the arrangements approved by the Standards Committee. Accordingly, no confirmation will be given, prior to assessment, as to whether a complaint has been received or not.
5. Where no action is to be taken on a complaint and the press become aware of the identity of the member complained of, the Monitoring Officer will liaise with the PR Team as to what response should be given and inform the Member complained of accordingly.
6. Where a complaint is referred for investigation, and the press become aware of the identity of the Member complained of the Monitoring Officer will liaise with the PR Team as to what response should be given and inform the Member complained of accordingly.
7. If the investigator’s finding is that there has been a breach of the Code of Conduct, the Monitoring Officer will either seek local resolution or send the matter for local hearing before Hearing Sub Committee. The hearing is likely to be held in public, although the press and public may be excluded if any exempt or confidential information would be disclosed. The press and public may also be excluded during the Sub-Committee’s deliberations. Where a complaint is resolved after investigation, the Monitoring Officer may also seek the Committee’s view as to whether a press statement or other appropriate communication should be made by the Committee.
8. Subject Members should not make any confidential investigation report public at any stage draft or final as they may breach data protection regulations and potentially prejudice the outcome of the case. Any requests from the media once a complaint case has been concluded for access to the investigation report will need to be considered on a case by case basis.
9. The Standards Committee will at its scheduled meetings receive a report on the complaints received and the action taken on them. This report will be exempt from publication under paragraph 1 of Schedule 12A of the Local Government Act 1972, and information will not be provided to the press.

10. The foregoing is a general summary of how the Council will deal with press enquiries relating to complaints received by the Standards Committee. Any information that may be provided to the press may depend on the particular circumstances of a complaint. The Council will seek to balance the public interest in openness and transparency with the need to uphold natural justice and human rights, to protect confidential information and safeguard the integrity of any investigation.
- N.B. All relevant regulations for example data protection requirements will be complied with and may prevent the public disclosure of information relating to complaints.

## Wigan Council

### Guidance on Investigation of Complaints

#### 1. Proportionality

- 1.1 Complaint investigations will be dealt with in a manner that is proportionate and cost effective. This guidance provides a general steer for the investigating officer, who may vary it in any particular case if s/he considers this desirable in the interests of justice or fairness or the effective conduct of the investigation.

#### 2. Appointment of Investigator

- 2.1 Once it has been agreed that the complaint merits formal investigation the Monitoring Officer (MO) will nominate an employee of the Council to carry out this function, unless the MO considers it to be more appropriate for an officer of another local authority, or an external investigator to be appointed.
- 2.2 The Investigator may appoint persons to assist them in the conduct of their functions and may obtain such professional advice as may be necessary for the conduct of the investigation.
- 2.3 The investigator will endeavour to complete the investigation *in a reasonable time* of being assigned to the investigation. Should the investigator consider more time is required s/he will consult with the MO to agree an extension and notify the complainant and subject Member accordingly.

#### 3. Notification of Investigation to Complainant & Subject Member

- 3.1 In notifying the Complainant and subject Member of the investigation, the MO shall request them to respond to the Investigator in writing as follows:
- i) listing any additional documents over and above what they have already provided for the assessment stage, which they would wish the Investigator to take into account in any investigation of the allegation, where possible providing copies of these documents, and informing the Investigator of where the original documents may be inspected,
  - ii) providing the Investigator with the name, address and telephone number (or other appropriate contact details) of any person or organisation whom they would wish the Investigator to interview in the course of any investigation of the allegation, and
  - iii) providing the Investigator with any information, which they would wish the Investigator to seek from any person or organisation.
- 3.2 The MO will also inform them of the procedure which will be followed in respect of the complaint and of the identity of the Investigator. All parties will be kept updated on progress as appropriate.

#### **4. Conduct of Investigation**

##### **4.1 Purpose of the Investigation**

The purpose of the investigation is to enable the Investigator to prepare and submit to the Monitoring Officer in the first instance a report which provides sufficient information to determine whether the Member has acted in breach of their Council's Code of Conduct.

##### **5. Planning**

- 5.1 It is important to establish what happened in a fair and objective manner and that the investigation is completed promptly and proportionately. It is important to weigh all relevant circumstances for each individual case before deciding how the person should be allowed to respond to the allegations. In most cases it is enough to give the person opportunity to put their case in writing, in others; however, you may need to interview them.

##### **6. Interviews**

- 6.1 An interview will only be carried out as a further means to establishing the facts and conducted as a means of obtaining evidence that is not otherwise available. If the investigator feels the case warrants interviews with those involved s/he will:

- Prepare, collate and disclose to the interviewee the relevant documents as s/he sees fit
- Decide the appropriate approach via telephone or face to face – the investigator will need to consider what is proportionate and reasonable
- identify an initial list and contact details of persons to be interviewed; and if relevant

- 6.2 At the start of an interview the Investigator should:

- Explain what the interview is for and that the interviewee understands what it is for
- Explain that their role is to gather evidence
- Explain any ground rules including the process for note-taking, arrangements for checking accuracy, and the evidence which may appear in the report, confidentiality of the process and information discussed
- At the end of the interview ask if the interviewee has anything to add and provide contact details.

- 6.3 In the course of the investigation the Investigator may request, or where possible require, any person to an interview or otherwise provide any information, document or explanation for the purpose of carrying out the investigation.

- 6.4 In doing so they should ask all persons contacted to respect the confidentiality of the investigation.

- 6.5 Any person who is to be interviewed by the Investigator may arrange to be accompanied at their own expense by a solicitor, trade union representative, colleague or friend. However the person who accompanies them should not be a member of the standards committee or potential witness. Advanced notification should be sought to confirm if they are to be accompanied and by whom.

- 6.6 Following the interview the Investigator shall produce a written note/statement of the material points of the interview. The investigating officer should confirm with the interviewee a correct record of the interview, with such corrections or amendments as they may feel necessary for that purpose either at the rise of the interview, via e-mail or in writing.

- 6.11 Notes/written statement of an interview should always be taken. If the investigator believes it is necessary to ensure an accurate record, then after gaining consent from the interviewee, the interview may be recorded. A copy of the record of the interview will be provided to the interviewee if requested.

## **7. Discontinuation or deferral of Investigation**

- 7.1 (i) If the person who is the subject of the allegation has died the investigation will be discontinued:

(ii) An investigation may be deferred in any of the following circumstances:

- (a) If the person who is the subject of the allegation is seriously ill;
- (b) there are ongoing criminal proceedings or a police investigation into the member's conduct;
- (c) the investigation cannot proceed without either an investigation of similar alleged conduct or the need to come to conclusions of fact about events which are also the subject of some other investigation or court proceeding; or
- (d) the investigation might prejudice another investigation or court proceeding.
- (e) there is an ongoing investigation by another regulatory body;
- (f) a key witness is seriously ill; or
- (g) a key party is genuinely unavailable.

- 7.2 In any of these circumstances the MO will inquire into the nature of the other investigation or proceedings or other relevant circumstances. The MO will inform all relevant parties of any deferral.

- 7.3 Where an investigation is deferred because there exists parallel investigations, the MO will seek regular updates on the progress of that investigation and will in any event keep the deferral under regular review.

- 7.4 Once it is decided to begin the investigation again the MO will notify all relevant parties.

## **8. Reference back to the Monitoring Officer**

- 8.1 At any point in the course of the investigation, if the Investigator is of the opinion that:

a. the seriousness of the matter which they are investigating is materially more or less serious than may have been apparent to the MO and Independent Person when they made their decision and would have made a different decision had it been aware of the new information or evidence; or

b. Where, in the course of their investigation, the Investigator becomes aware of any other substantial matter which appears to them to indicate a breach of the Code of Conduct by the subject Member other than the breach which they are currently investigating, the Investigator shall report the matter to the MO who will consider the additional information.

## **9. The Draft Report**

- 9.1 When the Investigator is satisfied that they have sufficient information to meet the requirement set out in Paragraph 4.1 or has obtained as much information as is likely to be reasonably capable of being proportionally obtained, they shall prepare a draft report setting out:

- a. 'Confidential and Draft' marking
- b. the date
- c. the details of the allegation;

- d. the relevant provisions of the Code of Conduct
- e the Member's initial response to notification of the allegation (if any);
- f. the relevant information, advice and explanations which they have obtained in the course of the investigation;
- g. a list of any documents relevant to the matter;
- h. a list of those persons whom they have interviewed and those organisations from whom they have sought information;
- i. a note of any person or organisation who has failed to co-operate with the investigation and the manner in which they have failed to co-operate;
- j. a statement of their draft findings of fact; and
- k their conclusion as to whether the subject Member has or has not failed to comply with the Code of Conduct,

9.2 The Investigating Officer should send a copy of the draft report in confidence to the Monitoring Officer, the complainant and to the subject Member, for comments setting an appropriate time to respond by. The investigator will take such comments into account before issuing their final report to the Monitoring Officer. Set out at appendix 3 are 'Draft Investigation Report Request for Comments' template.

## **10. The Final Report**

- 10.1 A copy of the final report should be sent to the MO. The final report should state that the report represents the Investigator's final findings and should have appended to it copies of any documents which the Investigator has relied on in reaching their conclusions, such as background documents of telephone conversations, letters, and notes of interviews with witnesses.
- 10.2 If the MO is not satisfied that the investigation has been conducted thoroughly, the investigator may be asked to reconsider the report and the conclusions.

## **11. Complaints**

- 11.1 The Investigator will explain to the person making the complaint, the subject Member and any witnesses that should there be any complaint received about the conduct of an investigation or a "service complaint" that the complaint will be dealt with under the Council's Corporate Complaints Procedure and send /sign post them to the relevant information.



## **Model hearing procedures for the Standards Committee**

The Standards Committee needs to have an efficient and effective hearing process. This will help the committee to deal with all the issues that need to be resolved in a way that is fair to the member and to the complainant. It will also reduce the prospects of any successful appeal.

Any standards committee set up in order to discharge functions under the Localism Act is an 'ordinary committee' of the authority. That means the same rules apply to it as apply to all other committees of the authority which do not have specific statutory rules applying to them.

### **Interpretation**

1. 'Subject 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.
2. 'Investigator' means Monitoring Officer or other investigating officer, and his or her nominated representative.
3. 'Committee' also refers to 'Hearings Sub-Committee of the Standards Committee'.
4. '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.

### **Issues to be addressed before the Hearing**

5. To help the proceedings the Subject Member and the investigating officer will be contacted in advance of the hearing to establish if they:
  - want to be represented at the hearing by a solicitor, barrister or any other person. It will be for the Sub Committee to allow 'any other person' permission to represent the subject Member;
  - disagree with any of the findings of fact in the investigation report, including reasons for any of these disagreements;
  - want to give evidence to the standards committee, either verbally or in writing;
  - want to call relevant witnesses to give evidence to the Hearings Sub-Committee; Details of the evidence expected to be provided by their proposed witnesses shall be provided.
  - want any part of the hearing to be held in private and why;
  - want any part of the investigation report or other relevant documents to be withheld from the public and why;
  - have any dates that are inconvenient to them or their proposed witnesses
  - can attend the hearing.
6. The Chairman of the Standards Hearing Sub-Committee, or in his/her absence, the Chairman of the Standards Committee shall determine the matters referred to in paragraph 5 above in advance of the hearing, following consideration of advice from the MO. His/her decision shall be notified to the parties.
7. It shall be the responsibility of the Subject Member and the investigating officer to ask whether their respective proposed witnesses are willing to attend the hearing to give evidence, to check their availability to attend and to give notice to them of the date, time and place of the hearing. No witness can be compelled to attend.

## **Representation**

8. The Subject Member may be represented or accompanied during the hearing by a solicitor or counsel at his/her cost. The Chairman of the Standards Hearing Sub-Committee, or in his/her absence, the Chairman of the Standards committee may agree in advance of the hearing for the subject member to be represented by another person.

## **Legal advice**

9. 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 should be shared with the Member and the investigator if they are present.

## **Setting the scene**

10. After all the Members and everyone involved have been formally introduced, the Chair should explain how the committee is going to run the hearing.

## **Preliminary procedural issues**

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

## **Making findings of fact**

12. After dealing with any preliminary issues, the committee should then move on to consider whether or not there are any significant disagreements about the facts contained in the investigator's report.
13. If there is no disagreement about the facts, the committee can move on to the next stage of the hearing.
14. 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. Subject to the consent required at paragraph 6 above, the investigator may call any necessary supporting witnesses to give evidence. All witnesses to have been agreed in advance of the hearing. The committee may give the Subject Member an opportunity to challenge any evidence put forward by the investigator or any of his/her witnesses. The committee may then question the investigator and/or his/her witnesses.
15. The Subject Member should then have the opportunity to make representations to support his or her version of the facts and, subject to the consent required at paragraph 6 above, may call any necessary witnesses to give evidence. All witnesses to have been agreed in advance of the hearing. The committee may give the investigator an opportunity to challenge any evidence put forward the subject member or any of his/her witnesses. The committee may then question the subject member and/or his/her witnesses.
16. If the Subject Member disagrees with most of the facts, it may make sense for the investigator to start by making representations on all the relevant facts, instead of discussing each fact individually.
17. If the Subject Member disagrees with any relevant fact in the investigating officer'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 investigating officer is not present, the committee will consider whether or not it would be in the public interest to continue in his or her absence. After considering the Subject Member's explanation for not raising the issue at an earlier stage, the committee may then:

- continue with the hearing, relying on the information in the investigator's report;
- allow the Subject Member to make representations about the issue, and invite the investigator to respond and call any witnesses, as necessary; or
- 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.

18. The Independent Person will be invited to attend all meetings of the hearings panel and their views must be sought and taken into consideration before the hearings 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.

19. The committee will usually invite those present to move to another room while it considers the representations and evidence in private.

20. On their return, the Chair will announce the committee's findings of fact.

### **Guidance For Questioning Of Witnesses**

21. Questions of witnesses should focus on the relevant issues. The Protocol on Member/Officer Relations stresses that for the effective conduct of business there must be mutual respect in all meetings and contact between Members and officers. In particular

- Members and officers should apply the rules of common courtesy to each other
- Members should be aware that officers are constrained in the response they may give to public comments by Members
- Members should not abuse officers and should not seek to undermine an officer's position by abuse, rudeness or ridicule.

This in no way reduces the Members' proper right and duty to criticise reports, actions and work of any department or section of the Council with the belief that such criticism is merited.

This approach also applies to any members of public or colleagues from other public, private or voluntary organisations who may be witnesses .

22. The Hearings Protocol confirms

- Questions must be courteous and relevant
- If an interviewee does not possess knowledge or information to answer a question then he or she must not be pressed
- At the conclusion of each interview the interviewee should be asked if there is anything he or she wishes to add/clarify and should be allowed to do so

23. The following points should be borne in mind by Members in order that the debate and questioning can be focused and effective

- The purpose of the interview is to ask questions of interviewees and not to make statements. Interviewees are under no obligation to respond to statements not properly phrased as questions
- Little is gained by Members asking questions which are clearly already answered in either a report or statement already given

Members are encouraged not to repeat questions

- The questions must be relevant to the concerns raised and should be aimed at gaining information which will assist enabling the Hearing Panel to make the appropriate decision
- The simpler and more direct that the question is then the more likely it is that an interviewee will answer directly
- If all relevant information has been obtained from a witness following questioning by other Members then Members can feel free to refrain from asking further questions as there is no obligation to ask questions.
- Purely rhetorical questions should be avoided
- If information has been obtained from one witness, there may be little point in asking the same questions of another witness

### **Did the Subject Member fail to follow the Code?**

24. The committee then needs to consider whether or not, based on the facts it has found, the Subject Member has failed to follow the Code of Conduct.
25. The Subject Member should be invited to give relevant reasons why the committee should not decide that he or she has failed to follow the Code.
26. The committee should then consider any verbal or written representations from the investigator.
27. The committee may, at any time, question anyone involved on any point they raise in their representations.
28. The Subject Member should be invited to make any final relevant points.
29. The committee will usually invite those present to move to another room while it considers the representations and evidence in private
30. On their return, the Chair will announce the committee's decision as to whether or not the Subject Member has failed to follow the Code of Conduct.

### **If the Subject Member has not failed to follow the Code of Conduct**

31. If the committee decides that the Subject Member has not failed to follow the Code of Conduct, the committee can move on to consider whether it should make any recommendations to the authority.

### **If the Subject Member has failed to follow the Code**

32. If the committee decides that the Subject Member has failed to follow the Code of Conduct, it will consider any verbal or written representations from the investigator, Independent Person and the Subject Member as to any action(s) they recommend.
33. The committee may question the investigator and Subject Member, and take legal advice, to make sure they have the information they need in order to make an informed decision.
34. The committee will usually invite those present to move to another room while it considers what action(s) as may be necessary to promote and maintain high standards. Accordingly, the hearings panel may opt for but not be restricted to one or a combination of the following:
  - Publish its findings in respect of the Member's conduct;
  - Report its finding to Council (or to the Parish Council) for information;
  - Recommend to Council that the Member be censured;

- Recommend to the 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 Member be removed from the Executive, or removed from their portfolio responsibilities;
- Instruct the Monitoring Officer to (or recommend that the Parish Council) arrange training/coaching for the Member;
- Recommend to Council (or recommend to the Parish Council) that the Member be removed from all outside bodies, appointments to which they have been appointed or nominated by the Council (or by the Parish Council);
- Withdraw or recommend to the Parish Council that it withdraws resources/facilities provided to the Member by the Council such as a computer, website and/or e-mail and internet access etc.;
- Place such restrictions on Members access to staff which may be reasonable in the circumstances provided that such restrictions do not prevent the member from carrying out their duties as a Councillor; or
- Recommend the subject Member apologise to the relevant person(s) affected. This could also include a recommendation that this is done in conjunction with the Monitoring Officer to ensure that it meets the Committees expectations
- Recommend that all sanctions will be monitored and that the Sub-Committee be re-convened so that further sanctions may be considered should the Member fail to comply with the above requirements

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

### **Recommendations to the authority**

36. 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**

37. The committee will announce its decision on the day and issue a full written decision shortly after the end of the hearing.

## **Protocol relating to Wigan Council's Independent Person**

The statutory role of an Independent Person appointed under Section 28(7) of the Localism Act 2011 is to help the Authority discharge its duty to promote and maintain high standards of conduct amongst Members and Co-opted Members.

This protocol has been established to clarify how the Independent Person (IP) will fulfil this role:

### **Considering allegations**

1. Following notification of a complaint against them a Member of the Council may seek the views of the IP. A Member wishing to contact the IP should do so via the Monitoring Officer (MO) who will arrange for the IP to contact them. The IP will then either arrange a telephone conversation to take place or a meeting, if required.
2. The MO will provide the IP with all relevant information concerning the complaint in advance of them meeting the subject Member.
3. Where the IP has given views to the subject Member, those views shall be put in writing and made available to both the subject Member and MO.
4. The IP will need to agree in advance with the subject Member rules of confidentiality but it will be up to the IP to decide whether matters should remain confidential and, even where there is confidential information disclosed to the IP, there should be a public statement that confidential matters were discussed.
5. The IP with the agreement of the subject Member may record the meeting for his/her personal use when summarising his/her findings.

### **Assessment**

6. Once both the complainant and the subject Member have responded an assessment pack containing all relevant details will be pulled together for the MO and IP. The MO will then seek the views of the IP before reaching a decision as to whether the complaint merits investigation or another course of action
7. When issuing the decision letter, the MO will record that the IP has been consulted and that their views have been taken into account.
8. The MO may consult the IP at any stage during the process, particularly on matters which relate to the procedures for handling complaints.
9. Where a matter has been referred to the Hearings Sub-Committee of the Standards Committee for determination, the committee should seek the views of the IP before reaching its conclusions. The IP's views should be recorded in any decision notice and, where those views do not reflect the final outcome, reasons must be given for any differences. However, it must be clear that it is the Hearings Sub-Committee and not the IP who is the decision-maker.
10. The IP may be requested by the MO or the Standards Committee to assist in mediation or conciliation in order to resolve complaints where that is considered the most appropriate course of action.

11. The IP may be requested by the MO or the Standards Committee to assist in any training on conduct issues as appropriate.

### **Relationship with the Standards Committee**

12. The IP is not a member of the Standards Committee and therefore is not part of the formal business of the meeting and cannot vote on any matters put to the meeting. They may be invited to observe confidential matters with the agreement of the Chair.

13. The IP shall be entitled to request for items to be added to the agenda with the agreement of the Chair.

### **Other Matters**

14. The IP has the right to raise any concerns about standards issues or implementation of the process with the Council's MO.

15. The Authority, through its Standards Committee and MO, is responsible for ensuring that the Authority meets its duty to promote and maintain high standards. However, the IP has the right to be consulted on any proposed changes to the Code of Conduct or procedures for handling allegations.

16. The IP has the right of access to any confidential information required to carry out their role. Access to such information and its storage shall be agreed with the MO.

17. The MO will meet with the IP to review relevant matters, as required.

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