

Friday 14 September 2012

# Standards Committee

Will meet on  
Monday 24 September 2012  
at  
10.00 am  
in  
Allerdale House, Lonsdale Room

Membership:

(Chairman)

Councillor Duncan Fairbairn  
Councillor George Scott  
Councillor Sam Standage  
Councillor Joan Wright

Councillor Tony North  
Councillor Christine Smith  
Councillor Janice Wood

*Members of the public are welcome to attend the meeting. If you have any questions or queries contact Claire Tyson on 01900 702558.*

## Agenda

**1. Appointment of a Chair**

To appoint a Chair for the Standards Committee.

**2. Apologies for Absence**



Allerdale - a great  
place to live,  
work and visit

Allerdale Borough Council  
Allerdale House  
Workington  
Cumbria CA14 3YJ  
Tel: 01900 702702  
Fax: 01900 702507

**3. Declaration of interests**

Councillors/Staff to give notice of any disclosable pecuniary interest, other registrable interest or any other interest and the nature of that interest relating to any item on the agenda, in accordance with the adopted Code of Conduct.

**4. Questions**

To answer questions from members of the public – 2 days notice of which must have been given in writing or by electronic mail.

**5. Procedures and Guidance (Pages 1 - 48)**

To note the Code of Conduct, Guidance and Arrangements for dealing with Standards allegations.

**6. Update on Training**

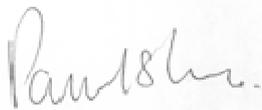
To receive a verbal update from the Monitoring Officer.

**7. Update on Hearing**

To receive a verbal update from the Monitoring Officer.

**8. Work Plan**

To discuss options for a Work Plan for the committee.



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**Corporate Director and  
Deputy Chief Executive**

## Code of Conduct

### For Members and Co-opted Members of the Authority

1. Allerdale Borough Council (“The Authority”) has adopted the following code dealing with the conduct that is expected of members and co-opted members of the Authority (“Members”) when they are acting in that capacity as required by section 27 of the Localism Act 2011 (“the Act”).
2. The Council has a statutory duty under the Act to promote and maintain high standards of conduct by Members and the Code sets out the standards that the Council expects Members to observe.
3. The Code is not intended to be an exhaustive list of all the obligations that are placed on Members. It is the responsibility of individual Members to comply with the provisions of the Code as well as such other legal obligations as may apply to them from time to time. Failure to do so may result in a sanction being applied by the Authority. 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.
4. The code is intended to be consistent with the seven principles as attached to this code and applies whenever a person is acting in his/her capacity as a Member of the Authority or co-opted member in the conduct of the Authority’s business or acting as a representative of the Authority.
5. When acting in your capacity as a Member
  - 1) You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend, a close associate, an employer or a business carried on by you.
  - 2) You must not place yourself under a financial or other obligation to outside individuals or organisations that may influence you in the performance of your official duties.
  - 3) You must not disclose any information given to you as a Member in breach of any confidence.
  - 4) You must not bring your office or your Authority into disrepute.
  - 5) You must treat others with respect and promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their sex, race, age, religion, gender, sexual orientation or disability. You should respect the impartiality and integrity of the authority’s statutory officers and its other employees.
  - 6) When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits on merit.

- 7) You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office.
- 8) You must be as open as possible about your decisions and actions and the decisions and actions of your authority and should be prepared to give reasons for those decisions and actions.
- 9) You must declare any private interests, both disclosable pecuniary interests and any other registrable interests, that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interests in a manner which conforms with the procedures set out below.
- 10) You must, when using or authorising the use by others of the resources of your authority, ensure that such resources are not used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
- 11) You must promote and support high standards of conduct when serving in your office.

#### **Registering and declaring disclosable pecuniary and other registrable interests**

- (1) You must, within 28 days of taking office as a member or co-opted member, notify your authority's Monitoring Officer of any disclosable pecuniary interest as defined by regulations made by the Secretary of State, where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners. These interests and those at (2) below are shown attached to this code.
- (2) In addition, you must, within 28 days of taking office as a member or co-opted member, notify your authority's Monitoring Officer of any disclosable pecuniary or non-pecuniary interest which your authority has decided should be included in the register.
- (3) If an interest has not been entered onto the authority's register, then the member must disclose the interest to any meeting of the authority at which they are present, where they have a disclosable interest in any matter being considered and where the matter is not a 'sensitive interest' as described by the Localism Act 2011.
- (4) Following any disclosure of an interest not on the authority's register or the subject of pending notification, you must notify the monitoring officer of the interest within 28 days beginning with the date of disclosure.
- (5) Unless dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a pecuniary interest as defined by regulations made by the Secretary of State. Additionally, you must observe the restrictions your authority places on your involvement in matters where you have a pecuniary or non-pecuniary interest as defined by your authority.

## **Seven General Principles of Conduct**

### **Selflessness**

1. Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

### **Integrity**

2. Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

### **Objectivity**

3. In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards or benefits, holders of public office should make choices on merit.

### **Accountability**

4. Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

### **Openness**

5. Holders of public office should be as open as possible about the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands

### **Honesty**

6. Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest

### **Leadership**

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

## **Pecuniary and Other Registrable Interests**

### **Disclosable Pecuniary Interests (as defined by regulations)**

1. Details of any employment, office, trade, profession or vocation carried on for profit or gain.
2. Details of any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. (This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
3. Details of any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority –
  - a) under which goods or services are to be provided or works are to be executed; and
  - b) which has not been fully discharged.
4. Details of any beneficial interest in land which is within the area of the relevant authority.
5. Details of any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
6. Details of any tenancy where (to M's knowledge) –
  - a) The landlord is the relevant authority; and
  - b) The tenant is a body in which the relevant person has a beneficial interest.
7. Details of any beneficial interest in securities of a body where
  - a) That body (to M's knowledge) has a place of business or land in the area of the relevant authority; and
  - b) Either –
    - i. The total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
    - ii. If that share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

### **Other Registrable Interests**

These interests are what the Council has determined should be entered into the authority's register of interests.

8. Details of any body of which you are a member, or in a position of general control or management, and to which you are appointed or nominated to by the Borough Council.
9. Details of any body of which you are a member, or in a position of general control or management, and which –
  - a) Exercises functions of a public nature;
  - b) Is directed towards charitable purposes; or
  - c) Is a body which includes as one of its principle purposes influencing public opinion or policy (this includes political parties or trade unions).
10. Details of any persons from whom you have received a gift or hospitality with an estimated value of at least £50. (You must register any gifts or hospitality worth £50 or over that you receive personally in connection with your official duties).

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## GUIDANCE ON CODE OF CONDUCT

This document has been produced by the Cumbria Monitoring Officers to offer guidance on the revised Code of Conduct for Members as adopted by the principal authorities with effect from 1 July 2012. The code applies to all members and co-opted members of the principal authorities within Cumbria.

The code does not apply to the actions of authorities as a whole, or to the conduct of its officers and employees.

Ultimately, it is the members' responsibility to take specific advice from the Monitoring Officer where appropriate and to make a decision as to the most suitable course of action.

### **Code of Conduct**

The Code of Conduct ("the Code") is not intended to be an exhaustive list of all the obligations that are placed on Members, but it is the responsibility of individual members to comply with the provisions of the Code as well as such other legal obligations as may apply to them from time to time.

The Code is intended to be consistent with the seven principles as attached to the code which define the standards that members should uphold. A failure to act in accordance with these general principles may amount to a breach of the Code of Conduct. For example, by placing yourself in situations where your honesty and integrity may be questioned, your conduct may be conduct which could "bring your office or your Authority into disrepute".

### **When does the Code apply to you?**

The Code applies to you whenever you act in your official capacity as a Member or co-opted member of the Authority. A co-opted member is a person who is not a member of the Council but who is either a member of any committee or sub-committee of the Council, or a member of, and represents the Council on any joint committee or joint sub-committee of the Council and who is entitled to vote on any question that falls to be decided at that meeting of that committee or sub-committee.

For the purposes of the Code, a "meeting" is a meeting of the Council, any of its committees, sub-committees, joint committees or joint sub-committees.

### **General Obligations under the Code**

**You must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for yourself, your family, a friend, a close associate, an employer or business carried on by you.**

For example, your behaviour would be improper if you sought to further your private interests through your position as a member.

**You must not place yourself under a financial or other obligation to outside individuals or organisations that may influence you in the performance of your official duties.**

It would not be appropriate to accept favours, gifts or hospitality from someone that may, at a later date, require something from the Council that you are in a position to influence. For example, you may be offered a discount by a business in the area which subsequently applies for planning permission and/or a licence. You may be on the relevant committee dealing with the application and, therefore, be in a difficult position.

**You must not disclose any information given to you as a Member in breach of any confidence**

There may be circumstances where you are required to do so by law but you should seek the advice of the Monitoring Officer if there is any doubt about this.

You must not disclose confidential information, or information which you believe to be of a confidential nature, except in any of the following circumstances:

- You have the consent of the person authorised to give it.
- You are required by law to do so.
- The disclosure is made to a third party for the purposes of obtaining professional advice (for example, your lawyer or other professional adviser) provided that person agrees not to disclose the information to any other person.
- The disclosure is in the public interest. This is only justified in limited circumstances, when all of the following four requirements are met:
  1. the disclosure must be reasonable
  2. the disclosure must be in the public interest
  3. the disclosure must be made in good faith
  4. the disclosure must be made in compliance with any reasonable requirements of your authority

In relation to the disclosure of confidential information in the public interest, the four requirements to be met are outlined in more detail below.

1. The first requirement, that the disclosure must be reasonable, requires you to consider matters such as:

- Whether you believe that the information disclosed, and any allegation contained in it, is substantially true. If you do not believe this, the disclosure is unlikely to be reasonable.
- Whether you make the disclosure for personal gain. If you are paid to disclose the information, the disclosure is unlikely to be reasonable.
- The identity of the person to whom the disclosure is made. It may be reasonable to disclose information to the police or to an appropriate regulator. It is less likely to be reasonable for you to disclose the information to the world at large through the media.
- The extent of the information disclosed. The inclusion of unnecessary detail, and in particular, private matters such as addresses or telephone numbers, is likely to render the disclosure unreasonable.
- The seriousness of the matter. The more serious the matter disclosed, the more likely it is that the disclosure will be reasonable.
- The timing of the disclosure. If the matter to which the disclosure relates has already occurred, and is unlikely to occur again, the disclosure may be less likely to be reasonable than if the matter is continuing, or is likely to reoccur.

- Whether the disclosure involves your authority failing in a duty of confidence owed to another person.

2. The second requirement, that the disclosure must be in the public interest, needs to involve one or more of the following matters or something of comparable seriousness, that has either happened in the past, is currently happening, or is likely to happen in the future:

- (a) A criminal offence is committed.
- (b) Your authority or some other person fails to comply with any legal obligation to which they are subject.
- (c) A miscarriage of justice occurs.
- (d) The health or safety of any individual is in danger.
- (e) The environment is likely to be damaged.
- (f) That information tending to show any matter falling within (a) to (e) is deliberately concealed.

3. The third requirement, that the disclosure is made in good faith, will not be met if you act with an ulterior motive, for example, to achieve a party political advantage or to settle a score with a political opponent.

4. The fourth requirement, that you comply with the reasonable requirements of your authority, means that before making the disclosure you must comply with your authority's policies or protocols on matters such as whistle-blowing and confidential information. You must first raise your concerns through the appropriate channels set out in such policies or protocols.

In summary, to decide whether the disclosure is reasonable and in the public interest, you may need to conduct a balancing exercise weighing up the public interest in maintaining confidentiality against any countervailing public interest favouring disclosure. This will require a careful focus on how confidential the information is, on any potentially harmful consequences of its disclosure, and on any factors which may justify its disclosure despite these potential consequences.

In some situations, it is extremely unlikely that a disclosure can be justified in the public interest. These will include where the disclosure amounts to a criminal offence, or where the information disclosed is protected by legal professional privilege.

### **You must not bring your office or your Authority into disrepute**

You must not bring your office or authority into disrepute whilst acting in your official capacity.

As a member, your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on your office or your authority. Dishonest and deceitful behaviour in your role as a member may bring your authority into disrepute, as may conduct in your private life which results in a criminal conviction, such as dishonest, threatening or violent behaviour.

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

## **Respect**

You must treat others with respect. In politics, rival groupings are common, either in formal political parties or more informal alliances. It is expected that each will campaign for their ideas, and they may also seek to discredit the politics and actions of their opponents. Criticism of ideas and opinion is part of democratic debate, and does not in itself amount to failing to treat someone with respect.

Ideas and policies may be robustly criticised, but individuals should not be subject to unreasonable or excessive personal attacks. This particularly applies to dealing with the public and officers. Chairs of meetings are expected to apply the rules of debate and procedure rules or standing orders to prevent abusive or disorderly conduct.

Whilst there may be unreasonable demands on members, members should, as far as possible, treat people courteously and with consideration. Rude and offensive behaviour lowers the public's expectations and confidence in its elected representatives.

## **Equality**

You must not do anything which may cause your authority to breach any equality laws. You must be careful not to act in a way which may amount to any of the prohibited forms of discrimination, or do anything which hinders your authority's fulfilment of its positive duties under equality laws. Such conduct may cause your authority to breach the law, and you may find yourself subject to a complaint that you have breached this paragraph of the code of conduct.

## **Impartiality and integrity of officers of the authority**

You should respect the impartiality and integrity of the Authority's statutory officers and its other employees.

You should not approach or pressure anyone who works for, or on behalf of the authority to carry out their duties in a biased or partisan way. They must be neutral and should not be coerced or persuaded to act in a way that would undermine their neutrality. For example, you should not get officers to help you prepare party political material, or to help you with matters relating to your private business.

Although you can robustly question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

## **When carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits on merit.**

As an elected Member of the Council you are responsible for administering resources on behalf of the public of the area that you serve. You should administer these resources fairly and in accordance with the law. It is inappropriate for the Council's resources or powers to be used in such a way that the authority and its Members be left open to accusations that inappropriate influence played a part, for example, "it's not what you know, it's who you know!"

**You are accountable for your decisions to the public and you must co-operate fully with whatever scrutiny is appropriate to your office.**

This requirement is linked to carrying out all duties in a fair and transparent manner. Members are able to be held to account for their actions and, this being the case, you must be open to and cooperate with any legitimate scrutiny that is to be applied.

**You must be as open as possible about your decisions and actions and the decisions and actions of your authority and should be prepared to give reasons for those decisions and actions.**

The law requires that Members give reasons for their decisions. This is so that the public we serve are able to understand why we have taken a course of action and, if necessary, exercise any right of challenge that is open to them.

**You must declare any private interests, both disclosable pecuniary interests and any other registrable interests, that relate to your public duties and must take steps to resolve any conflicts arising in a way that protects the public interest, including registering and declaring interest in a matter which conforms to the procedures within the code.**

The Code of Conduct contains a scheme for the registration of interests. It exists to support openness and transparency; the public are able to see where you may have an interest. Secondly, the scheme of registration exists to protect individual Members against accusations of a conflict of interest etc. Lastly, the registration of disclosable pecuniary interests is required by law.

**You must ensure, when using or authorising the use by others of the resources of your authority, that such resources are not used improperly for political purposes (including party political purposes) and you must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.**

Where your authority provides you with resources (for example telephone, computer and other IT facilities, transport or support from council employees), you must only use these resources or employees for carrying out your local authority business and any other activity which your authority has authorised you to use them for.

You must be familiar with the rules applying to the use of these resources made by your authority. Failure to comply with the authority's rules is likely to amount to a breach of the code.

If you authorise someone (for example a member of your family) to use your authority's resources, you must take care to ensure that this is allowed by the authority's rules.

You should never use council resources for purely political purposes, including designing and distributing party political material produced for publicity purposes.

**You must promote and support high standards of conduct when serving in your office.**

You have a duty to promote and support high standards of conduct and be consistent with the seven general principles attached to the Code.

## **INTERESTS**

### **Register of interests**

Any 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.

You have two types of registrable interests

- a) A Disclosable Pecuniary Interest and
- b) Interests other than pecuniary interests that the Council has decided should be registered

### **Disclosable Pecuniary Interests**

1. These are interests which must be notified to the Council's Monitoring Officer within 28 days beginning with the day on which you become a member or co-opted member of the authority in accordance with the statutory requirements of the Localism Act 2011. These are enforced by criminal sanction, and failure to declare is a criminal offence.
2. You need to register your interests so that the public, authority staff and fellow members know which of your interests might give rise to a conflict of interest. The register is a document that can be consulted when (or before) an issue arises, and so allows others to know what interests you have, and whether they might give rise to a potential conflict of interest.
3. The register also protects you. You are responsible for deciding whether or not you should declare an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be declared by you or other members, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local government is maintained.
4. A 'disclosable pecuniary interest' is an interest of yourself or your partner (which means spouse or civil partner, 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) of the following descriptions:
  - (a) Details of any employment, office, trade, profession or vocation carried on for profit or gain
  - (b) Details of any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by you in carrying out duties as a member, or towards 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.
  - (c) Details of any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority under which goods or services are to be provided or works are to be executed; and which has not been fully discharged.

- (d) Details of any beneficial interest in land which is within the area of the relevant authority.
- (e) Details of any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
- (f) Details of any tenancy where (to your knowledge) the landlord is the relevant authority; and the tenant is a body in which the relevant person has a beneficial interest.
- (g) Details of any beneficial interest in securities of a body where that body (to your knowledge) has a place of business or land in the area of the relevant authority; and either the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or if that share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

For the purposes of the foregoing “relevant authority” means the District Council, and “relevant period” means the period of 12 months ending with the day on which you notify the Monitoring Officer of your disclosable pecuniary interest.

#### **Notification of Other Interests**

5. In addition to the disclosable pecuniary interests, you must, within 28 days of the Code being adopted by or applied to your authority; or your election or appointment to office (where that is later), notify the Monitoring Officer in writing of the details of your interests within the following categories, which the Council has decided must be included in the register of interests:

- (a) Details of any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by the District Council;
- (b) Details of any body of which you are a member or in a position of general control or management and which –
  - (i) exercises functions of a public nature,
  - (ii) is directed to charitable purposes or
  - (iii) is a body which includes as one of its principal purposes influencing public opinion or policy (this includes political parties or trade union;
- (c) Details of any persons from who you have a received a gift or hospitality with an estimated value of at least £50. (You must register any gifts and hospitality worth £50 or over that you receive personally in connection with your official duties.

#### **What is a “body exercising functions of a public nature”?**

6. Although it is not possible to produce a definitive list of such bodies, here are some criteria to consider when deciding whether or not a body meets that definition:

- Does that body carry out a public service?
- Is the body taking the place of local or central government in carrying out the function/
- Is the body (including one outsourced in the private sector) exercising a function delegated to it by a public authority?
- Is the function exercised under legislation or according to some statutory power?
- Can the body be judicially reviewed?

Unless you answer “yes” to one of the above questions, it is unlikely that the body in your case is exercising functions of a public nature.

Examples of bodies included in this definition: government agencies, other councils, public health bodies, council-owned companies exercising public functions, arms-length management organisations carrying out housing functions on behalf of your authority, school governing bodies.

If you need further information or specific advice, please contact your monitoring officer.

### What do things mean?

Here are some definitions from the legislation that may help you. Ask for advice if necessary:

|  |   |
|--|---|
| <b>“the Act”</b>   | <b>means the <a href="#">Localism Act 2011</a>;</b>   |
| <b>“body in which the relevant person has a beneficial interest”</b> | <b>means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;</b>      |
| <b>“director”</b>  | <b>includes a member of the committee of management of an industrial and provident society;</b>   |
| <b>“land”</b>  | <b>excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;</b> |
| <b>“M”</b>   | <b>means a member of a relevant authority;</b>  |

|                      |  |
|----------------------|--|
| "member"             | includes a co-opted member;  |
| "relevant authority" | means the authority of which M is a member;  |
| "relevant period"    | means the period of 12 months ending with the day on which M gives a notification for the purposes of <a href="#">section 30(1)</a> or <a href="#">section 31(7)</a> , as the case may be, of the Act;   |
| "relevant person"    | <p>means</p> <ul style="list-style-type: none"> <li>(i) M</li> <li>(ii) M's spouse or civil partner,</li> <li>(iii) a person with whom M is living as husband and wife, or</li> <li>(iv) a person with whom M is living as if they were civil partners,</li> </ul>                   |
| "securities"         | means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the <a href="#">Financial Services and Markets Act 2000</a> and other securities of any description, other than money deposited with a building society. |

### **Gifts and Hospitality**

7. You must register the gift or hospitality and its source within 28 days of receiving it.
8. You should ask yourself would I have been given this if I was not on the Council? If you are in doubt as to the motive behind a gift or hospitality, we recommend that you register it or speak to the Monitoring Officer or your parish clerk where appropriate.
9. You do not need to register gifts and hospitality which are not related to your role as a member, such as Christmas gifts from your friends and family, or gifts which you do not accept. However, you should always register a gift or hospitality if it could be perceived as something given to you because of your position or if your authority requires you to.

### **What if I do not know the value of a gift or hospitality?**

10. The general rule is, if in doubt as to the value of a gift or hospitality, you should register it, as a matter of good practice and in accordance with the principles of openness and accountability in public life.
11. You may have to estimate how much a gift or hospitality is worth. Also, an accumulation of small gifts you received from the same source over a short period that add up to £50 or more should be registered.

### **Changes to Interests**

12. You must, within 28 days of becoming aware of any new interest or change to any interest registered notify the Monitoring Officer of the details of that new interest or change.

### **Disclosure of Interests**

13. Where you have a registrable interest in any business of your authority, and where you are aware or ought reasonably to be aware of the existence of that 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.

### **Sensitive interests**

14. Where you consider that disclosure of the details of an interest could lead to you, or a person connected with you, being subject to violence or intimidation, and the Monitoring Officer agrees, 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 an interest, the details of which are withheld.

### **What is sensitive information?**

15. It may include your sensitive employment (such as certain scientific research or the Special Forces) or other interests that are likely to create serious risk of violence or intimidation against you or someone who lives with you.
16. You should provide this information to your monitoring officer and explain your concerns regarding the disclosure of the sensitive information; including why it is likely to create a serious risk that you or a person who lives with you will be subjected to violence or intimidation. You do not need to include this information in your register of interests, if your monitoring officer agrees but you need to disclose at meetings the fact that you have a disclosable pecuniary interest in the matter concerns.

### **Non participation in case of disclosable pecuniary interest**

17. If you are present at a meeting of the Council, Executive or any committee, sub-committee, joint committee or joint sub-committee of the authority, and you have a disclosable pecuniary interest in any matter to be considered or being considered at the meeting:
  - You may not participate in any discussion of the matter at the meeting.
  - You may not participate in any vote taken on the matter at the meeting.
  - If the interest is not registered, you must disclose the interest to the meeting.
  - 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.

**In addition, the Council Procedure Rules require you to leave the room where the meeting is held while any discussion or voting takes place.**

18. 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.

## **Dispensations**

19. The Monitoring Officer or Standards Committee 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. These circumstances are where:
1. It is considered that without the dispensation the number of persons prohibited 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.
  2. 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.
  3. That, without a dispensation, no member of the Executive would be able to participate on this matter.
  4. That the authority considers that the dispensation is in the interests of persons living in the authority's area
  5. That the authority considers that it is otherwise appropriate to grant a dispensation.

## **Offences**

20. 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.
  - 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

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.

## **Bias/Predetermination**

Although not part of the code, members need to be clear that they are not biased going into the decision making process.

If you have a personal interest in a matter as a result of the matter affecting the well-being or financial position of yourself, member of your family or close association more than it would affect the majority of other people in the ward or electoral divisions affected by the decision, or in the authority's areas or constituency then there may be potential for bias/predetermination.

The rules against bias say that there are three distinct elements. The first seeks accuracy in public decision-making and the second seeks the absence of prejudice or partiality on the part of you as the decision-maker. An accurate decision is more likely to be achieved by a decision-maker who is in fact impartial or disinterested in the outcome of the decision and who puts aside any personal prejudices.

The third requirement is for public confidence in the decision-making process. Even though the decision-maker may in fact be scrupulously impartial, the appearance of bias can itself call into question the legitimacy of the decision-making process. In general, the rule against bias looks to the appearance or risk of bias rather than bias in fact, in order to ensure that 'justice should not only be done, but should manifestly and undoubtedly be seen to be done.

To varying degrees, these "requirements" might be seen to provide the rationales behind what are generally taken to be three separate rules against bias: "automatic" (or "presumed") bias, "actual" bias and "appearance" bias.

The rationale behind "automatic" or "presumed" bias appears to be that in certain situations (such as if you have a pecuniary or proprietary interest in the outcome of the proceedings then it must be presumed that you are incapable of impartiality. Since a motive for bias is thought to be so obvious in such cases, the decisions are not allowed to stand even though no investigation is made into whether the decision-maker was biased *in fact*. **In these circumstances you should not participate in a decision.**

The Localism Act 2011 has enshrined the rules relating to pre-disposition and predetermination into statute. In essence you are not taken to have had, or appeared to have had, a closed mind when making a decision just because you have previously done anything that directly or in-directly indicated what view you may take in relation to a matter and that matter was relevant to the decision.

So, you are entitled to have a pre-disposition one way or another as long as you have not pre-determined the outcome. You are able to express an opinion providing that you come to the relevant meeting with an open mind, able to take account of all of the evidence and make your decision on the day.

### **What does "affecting well-being or "financial position" mean?**

The term "well-being" can be described as a condition of contentment and happiness. Anything that could affect your quality of life, either positively or negatively, is likely to affect your well-being.

A personal interest can affect you, your family or close personal associates positively and negatively. So if you or they have the potential to gain or lose from a matter under consideration, a personal interest would need to be declared in both situations.

### **Who is a member of your family or close association?**

A member of your family should be given wide meaning. It includes a partner (someone you are married to, your civil partner, or someone you live with in a similar capacity), a parent, parent-in-law, a son or daughter, a stepson, or stepdaughter, the child of a partner, a brother or sister of yourself or your partner, a grandparent, a grandchild, an uncle or aunt, a nephew or niece and the partners of any of these people.

A person with whom you have a close association is someone that you are in either regular or irregular contact with over a period of time who is more than an acquaintance. It is someone a reasonable member of the public might think you would be prepared to favour or disadvantage when discussing a matter that affects them. It may be a friend, a colleague, a business associate or someone whom you know through general social contacts.

### **What if I belong to an authority without wards?**

If you are a member of an authority that does not have wards, you will need to declare a personal interest whenever you consider a matter in a meeting of your authority if it affects the well-being or financial position of you, your family or people with whom you have a close association, more than it would affect other people in your authority's areas/

### **What if I am not aware of my personal interest?**

Clearly you cannot be expected to declare something of which you are unaware. However you should not ignore the existence of interests which, from the point of view of a reasonable and objective observer, you should have been aware.

### **When must I leave the room where the meeting is held?**

You must leave immediately before any debate starts.

### **Non participation in case of pecuniary interest**

#### ***Disclosable Pecuniary Interests***

Subject to the following paragraph, below if you have a disclosable pecuniary interest in any matter to be considered, or being considered, at the meeting, then you should declare that interest to the meeting and should leave the room whilst any discussion or vote takes place.

If a dispensation has been granted to you in relation to a disclosable pecuniary interest then, subject to the terms of the dispensation, you may be relieved from the above restrictions but will still be required to declare the interest to the meeting. Where you have a disclosable pecuniary 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. Once any such representations etc have been made, the Member should leave the room whilst any discussion or vote takes place.

This would mean that as under current arrangements, Members will leave the room during an item in which they have a DPI.

In the interests of transparency it is good practice for you to make the nature of a disclosable interest known when such a matter arises at a meeting. You should identify the nature of the interest which you have in any matter so that is known and understood by all and is a matter of public record. If a declaration is not made, other than through the register, it would not necessarily be apparent to anyone who is present at the meeting why a particular Member is not participating or voting in any matter.

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## **ALLERDALE BOROUGH COUNCIL**

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

#### **1 Context**

These “Arrangements” set out how you may make a complaint that an elected or co-opted member of this authority [or of a parish council within its area] has failed to comply with the authority’s Code of Conduct, and sets out how the authority will deal with allegations of a failure to comply with the authority’s Code of Conduct.

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

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

#### **2 The Code of Conduct**

The Council has adopted a Code of Conduct for members, which is attached as Appendix One to these arrangements and available for inspection on the authority’s website and on request from Allerdale House, Workington.

Each parish council is also required to adopt a Code of Conduct. If you wish to inspect a Parish Council’s Code of Conduct, you should inspect any website operated by the parish council and request the parish clerk to allow you to inspect the parish council’s Code of Conduct.

#### **3 Making a complaint**

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

Governance & Audit Manager (Monitoring Officer)  
Allerdale Borough Council  
Allerdale House  
Workington  
Cumbria CA14 3YJ

Or –

sharon.sewell@allderdale.gov.uk

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

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

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

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

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

The Monitoring Officer will review every complaint received and, after consultation with the Independent Person and Chair of the Council's Standards Committee, take a decision as to whether it merits formal investigation. This decision will normally be taken within 10 working days of receipt of your complaint. Where the Monitoring Officer has taken a decision, he/she will inform you of his/her decision and the reasons for that decision.

In certain cases the Monitoring Officer may refer particular complaints to the Standards Committee where he/she feels that it would be inappropriate for him/her to take a decision on it, for example where he/she has previously advised the member on the matter or the complaint is particularly sensitive.

Where he/she requires additional information in order to come to a decision, he/she may come back to you for such information, and may request information from the member against whom your complaint is directed. Where your complaint relates to a Parish Councillor, the Monitoring Officer may also inform the Parish Council of your complaint and seek the views of the Parish Clerk before deciding whether the complaint merits formal investigation.

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

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

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

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

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

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

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

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

The Monitoring Officer will review the Investigating Officer's report and (following consultation with the Independent Person and Chair of the Standards Committee), if he is satisfied that it is sufficient, the Monitoring Officer will write to you and to the member concerned and to the Parish Council, where your complaint relates to a Parish Councillor, notifying you that he/she is satisfied that no further action is required, and give you both a copy of the Investigating Officer's final report. The matter will be reported to the Standards Committee. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he/she may ask the Investigating Officer to reconsider his/her report.

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

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

**7.1 Local Resolution**

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

**Local Hearing**

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

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

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

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

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

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

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

- 8.1 Publish its findings in respect of the member’s conduct;
- 8.2 Send a formal letter to the Member;
- 8.3 Report its findings to Council or to the Parish Council for information;

- 8.4 Recommend to the member's Group Leader (or in the case of ungrouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council;
- 8.5 Recommend to the Leader of the Council that the member be removed from the Executive, or removed from particular responsibilities;
- 8.6 Instruct the Monitoring Officer to or recommend that the Parish Council arrange training for the member;
- 8.7 Remove or recommend to the Parish Council that the member be removed from all outside appointments to which he/she has been appointed or nominated by the authority or by the Parish Council;
- 8.8 Withdraw or recommend to the Parish Council that it withdraws certain facilities provided to the member by the Council; or
- 8.9 Exclude or recommend that the Parish Council exclude the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

Portfolio

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

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

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

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

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

The Hearings Panel is a Sub-Committee of the Council's Standards Committee. The Standards Committee has decided that it will comprise three members of the Council, appointed on a political balance basis.

The Independent Person is invited to attend all meetings of the Hearings Panel and his/her views are sought and taken into consideration before the Hearings Panel takes any decision on whether the member's conduct constitutes a failure to comply with the Code of

conduct and as to any action to be taken following a finding of failure to comply with the Code of Conduct.

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

The Independent Person is a person who has applied for the post following advertisement of a vacancy for the post, and is the appointed by a positive vote from a majority of all the members of Council.

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

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

## **12 Revision of these arrangements**

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

## **13 Appeals**

There is no right of appeal for you as complainant or for the member against a decision of the Monitoring Officer or of the Hearings Panel. If you feel that the authority has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.

Appendix One The authority's Code of Conduct

Appendix Two Procedure for Investigations

Appendix Three Procedure for Hearings

Appendix 1

The Authority's Code of Conduct (please see appendix 1 of the main report).

# **ALLERDALE BOROUGH COUNCIL**

## **Procedure for Local Investigation of Referred Complaints**

### **Introduction and Summary**

This note sets out the procedure which will be followed in the local investigation of allegations of misconduct by Councillors or Co-opted Members (for ease of reference, hereinafter jointly referred to as "Councillors"). No departure will be made from this procedure unless and until the Monitoring Officer has first notified the Councillor against whom the allegation has been made of the proposed variation to the procedure and the reasons for that variation.

This procedure applies to breaches of the authority's Code of Conduct for Members.

When the Monitoring Officer receives an allegation of a failure by a Councillor to comply with the Code of Conduct, and, following consultation with the Independent Person and Chair of the Standards Committee, he is of the opinion that the allegation merits investigation, he shall arrange for an Investigating Officer to investigate the allegation and to report to the Monitoring Officer.

Where the Investigating Officer has found, after investigation, that the Councillor has not acted in breach of the authority's Code of Conduct for Members or a local protocol, the Monitoring Officer will review the Investigating Officer's report and, following consultation with the Independent Person and the Chair of the Standards Committee, if he/she is of the view that the report is sufficient he/she will write to you, enclosing a copy of the report and advise you that no further action will be taken.

Where the Investigating Officer has found that there has been a failure to comply with the Code of Conduct for Members or a local protocol and a Local Resolution has not been possible then the Monitoring Officer, following consultation with the Independent Person and the Chair of the, may decide to hold a full hearing to determine whether a breach of the authority's Code of Conduct has occurred and whether any action should be taken in consequence.

In this process, the function of the Investigating Officer is to ensure, as far as possible, that all the information which is relevant to the allegation is identified and presented to the Monitoring Officer, to enable him/her, in consultation informed decision as to whether the Councillor has failed to comply with the Authority's Code of Conduct for Members, and upon any consequential action. At any Hearing, the Standards Committee acts in an inquisitorial manner,

rather than an adversarial manner, seeking the truth in relation to the conduct of the Councillor on the balance of the information available to it, and may commission further investigation or information if it needs to do so in order to come to a decision. In the event of the Investigating Officer requiring information from, or the attendance of, any Officer or elected Member in connection with the conduct of an investigation, such Officer or Member will be expected to co-operate fully with the Investigating Officer in accordance with their responsibilities under their contracts of employment and Code of Conduct respectively.

## **1. Interpretation**

‘Councillor’ means the member or co-opted member of the authority who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise. It also includes the Councillor’s representative.

‘Investigating Officer’ means the person appointed by the Monitoring Officer to undertake that investigation (which may include the Monitoring Officer, and his or her representative).

‘The Matter’ is the subject matter of the Investigating Officer’s report.

‘The Standards Committee’ refers to the Standards Committee or to any Standards Sub-Committee to which it has delegated the conduct of the hearing, unless the context indicates that it refers only to the Standards Committee itself.

## **2. Notification of Reference of Allegation to the Monitoring Officer**

### **(a) Appointment of Investigating Officer**

If it is determined that an investigation is appropriate, the Monitoring Officer will appoint an Investigating Officer in respect of the allegation and instruct him/her to conduct an investigation of the allegation and to report thereon to the Monitoring Officer. The Investigating Officer may be an officer of the authority, an officer of another local authority, or an external Investigating Officer.

The Investigating Officer may appoint persons to assist him/her in the conduct of his/her functions and may obtain such professional advice as may be necessary for the conduct of the investigation.

### **(b) Notification to the Councillor**

The Monitoring Officer will then notify in writing the Councillor against whom the allegation is made:

- (i) that the allegation has been referred to him for local investigation and determination;
- (ii) the identity of the person making the allegation (unless identification of the complainant might prejudice the investigation or put the complainant at risk);
- (iii) of the conduct which is the subject of the allegation;
- (iv) of the section(s) of the Code of Conduct or local protocol which appear to him to be relevant to the allegation;
- (v) of the procedure which will be followed in respect of the allegation, and
- (vi) of the identity of the Investigating Officer.

(c) *Notification to the Parish or Town Council Clerk*

*Where the allegation relates to the conduct of a member of a Parish or Town Council in his her capacity as such, at the same time as notifying the Councillor, the Monitoring Officer will notify the Clerk of the Parish or Town Council concerned in writing of the matters set out in paragraphs 2(b)(i) - (iv) and (vi) above.*

(d) Notification to the Person who made the Allegation

At the same time as notifying the Councillor, the Monitoring Officer will notify the person who made the allegation in writing of the matters set out in paragraphs 2(b)(i) - (iv) and (vi) above.

(e) Initial response of the Councillor

In notifying the Councillor of receipt of the allegation, the Monitoring Officer shall request the Councillor to respond to the Investigating Officer in writing within 14 days of notification as follows:

- (i) advising the Investigating Officer whether the Councillor admits or denies the breach of the Code of Conduct or local protocol which is the subject of the allegation;
- (ii) listing any documents which the Councillor would wish the Investigating Officer to take into account in any investigation of the allegation, where possible providing copies of these documents, and informing the Investigating Officer of where the original documents may be inspected,

- (iii) providing the Investigating Officer with the name, address and telephone number (or other appropriate contact details) of any person or organisation whom the Councillor would wish the Investigating Officer to interview in the course of any investigation of the allegation (providing that, in the reasonable opinion of the Investigating Officer, the number of such is not excessive or disproportionate), and
  - (iv) providing the Investigating Officer with any information which the Councillor would wish the Investigating Officer to seek from any person or organisation.
- (f) Supporting information from the person who made the allegation  
In notifying the person who made the allegation as above, the Monitoring Officer will request the person to respond to the Investigating Officer within 14 days
- (i) listing any documents which the person would wish the Investigating Officer to take into account in any investigation of the allegation, where possible providing copies of these documents, and informing the Investigating Officer of where the original documents may be inspected,
  - (ii) providing the Investigating Officer with the name, address and telephone number (or other appropriate contact details) of any person or organisation whom the person would wish the Investigating Officer to interview in the course of any investigation of the allegation, and
  - (iii) providing the Investigating Officer with any information which the person would wish the Investigating Officer to seek from any person or organisation.

### **3. Conduct of Investigation**

#### **(a) Purpose of the Investigation**

The purpose of the Investigating Officer's investigation is to enable him/her to prepare and present to the Monitoring Officer a report which, if subsequently referred to the Standards Committee, would provide it with sufficient information to determine whether the Councillor has acted in breach of the Code of Conduct or local protocol and, where there has been a breach of the Code of Conduct or local protocol, whether any action should be taken in respect of the Councillor or in consequence of the breach, and what any such action should be.

(b) Termination of the Investigation

The Investigating Officer may terminate his/her investigation at any point, where he/she is satisfied that he/she has sufficient information to enable him/her to report to the Standards Committee and to enable the Standards Committee to come to a considered decision on the allegation.

(c) Additional Matters

Where, in the course of his/her investigation, the Investigating Officer becomes aware of any other matter which appears to him/her to indicate a breach of the Code of Conduct or local protocol by the Councillor other than the breach which he/she is currently investigating, the Investigating Officer shall either:

- (i) (where the additional matter relates to an apparent breach of the authority's Code of Conduct by a member of the principal authority) report the matter to the Monitoring Officer who will provide the Councillor with details of the matter in the form set out in paragraphs 2(b)(iii) and (iv) above and invite the Councillor to provide a statement as to why the additional matter does not constitute a breach of the Code of Conduct;
- (ii) (where the additional matter constitutes an apparent breach of the authority's local protocols but not a breach of the Code of Conduct by a member of the principal authority) report the matter to the Monitoring Officer who will provide the Councillor with details of the matter in the form set out in paragraphs 2(b)(iii) and (iv) above and invite the Councillor to provide a statement as to why the additional matter does not constitute a breach of the authority's code of conduct. The Monitoring Officer, in consultation with the Independent Person and the Chair of the Standards Committee, will then take a decision whether to refer the matter to an Investigating Officer for local investigation and/or report to the Standards Committee as appropriate;
- (iii) (Where the additional matter relates to an apparent breach of the Code of Conduct by a Parish or Town Councillor) notify the Clerk to the Town or Parish Council of the additional matter, and take no further action in respect thereof.

- (d) Following notification to the Councillor, the Investigating Officer will identify an initial list of persons to be interviewed, organisations from whom information is to be sought and documents to be inspected as part of the investigation. Where the Councillor has provided the Investigating Officer with the information requested in accordance with Paragraphs 2(f)(ii) and (iii) above, the Investigating Officer shall include in this list each document, person and organisation referred to in that response, unless he/she is of the opinion that the inclusion of that document, person or organisation would unreasonably delay the completion of the investigation rather than contribute to the accuracy of the Investigating Officer's final report. The Investigating Officer may supplement or amend this list at any stage of the investigation.
- (e) Production of documents, information and explanations
- (i) In the course of the investigation, the Investigating Officer and any person authorised on his/her behalf may make such enquiries of any person or organisation, and request any person or organisation to provide any document or information which is in his/its possession or control, or provide any explanation, as he/she thinks necessary for the purposes of carrying out the investigation.
- (ii) In the course of the investigation, the Investigating Officer and any person authorised on his/her behalf may require any authority of which the Councillor is a member to provide any document which is in his/its possession or control which he/she thinks necessary for the purposes of carrying out the investigation.
- (iii) Any decision about whether any particular document is sensitive or commercially sensitive and thus not suitable for publication shall rest with the Monitoring Officer in consultation with the Independent Person and Chair of the Standards Committee.
- (f) Interviews
- (i) Requesting attendance
- In the course of the investigation the Investigating Officer may request any person to attend and appear before him or otherwise provide any information, document or explanation for the purpose of Paragraph 3(e), as he/she thinks necessary for the purposes of carrying out the investigation.

(ii) Representation

Any person who appears before the Investigating Officer may arrange to be accompanied at their own expense by a solicitor or friend.

(iii) Notes of interviews

Where practicable, following the interview the Investigating Officer shall produce a written note of the material points of the interview, provide two copies of that note to the person interviewed and ask them to return one copy signed as a correct record of the interview, with such corrections or amendments as they may feel necessary for that purpose.

(g) Costs

The Investigating Officer may, where he/she considers that it is appropriate in order to facilitate the conduct of the investigation, pay to any person who provides any document, information, advice or explanation in response to his/her request, such fees or allowances as he/she considers to be appropriate subject to any maxima set by the authority.

#### **4. The Draft Report**

(a) When the Investigating Officer is satisfied that he/she has sufficient information to meet the requirement set out in Paragraph 3(a), or has obtained as much information as is likely to be reasonably capable of being obtained, he/she shall prepare a draft report with a “confidential” and “draft” marking setting out:

- (i) the details of the allegation;
- (ii) the relevant provisions of statute, of the Code of Conduct and any relevant local Protocols
- (iii) the Councillor’s initial response to notification of the allegation (if any);
- (iv) the relevant information, evidence, advice and explanations which he/she has obtained in the course of the investigation;
- (v) a list of any documents relevant to the matter;
- (vi) a list of those persons whom he/she has interviewed and those organisations from whom he/she has sought information;

- (vii) 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;
  - (viii) a statement of his/her draft findings of fact;
  - (ix) his/her conclusion (with reasons) as to whether the Councillor has or has not failed to comply with the Code of Conduct for Members of any authority or a local protocol, and
  - (x) any recommendations which the Investigating Officer is minded to make to any authority concerned for reviewing or reconsidering any decision which was the subject of the breach of the Code of Conduct or local protocol, for rectifying any deficiency in the authority's decision-making procedures or for preventing or deterring any breach of the Code of Conduct or local protocol or to remedy the position of any person who may have suffered detriment or injustice as a result of the breach. Where the allegation relates to a Parish or Town Councillor, such recommendations would be recommendations which the Investigating Officer would recommend that the Standards Committee make to the Parish or Town Council.
- (b) The draft report should also state that the report does not necessarily represent the Investigating Officer's final finding, and that the investigating Officer will present a final report to the Monitoring Officer once he/she has considered any comments received on the draft report.
- (c) The Investigating Officer shall then send a copy of his/her draft report in confidence to the Councillor and the person making the allegation, and request that they send any comments thereon to him/her within 14 days.
- (d) The Investigating Officer may send a copy of, or relevant extracts from his/her draft report in confidence to any person on whose evidence he/she has relied in compiling the draft report, and request that they send any comments thereon to him/her within 14 days.

## 5. The Final Report

- (a) After the expiry of that period (or such extended period as the Investigating Officer may allow), the Investigating Officer shall reconsider and amend his/her draft report in the light of any comments received, and produce and send to the Monitoring Officer his final report. The final report should be marked "final" and state that the report represents the Investigating Officer's final findings and may, if necessary, be presented to the Standards Committee, and should, subject to 3(e)(iii), have appended to it copies of any documents which the Investigating Officer has relied on in reaching his/her conclusions, such as background documents of telephone conversations, letters, notes of interviews with witnesses and a chronology of events;
- (b) The Monitoring Officer shall then send a copy of the final report to the Councillor, advising that:
  - (i) where the final report concludes that there has not been a failure to comply with the Code of Conduct for Members or a local protocol, (if the Monitoring Officer, in consultation with the Independent Person and Chair of the Standards Committee are satisfied) that no further action is required, and
  - (ii) where the final report concludes that there has been a failure by the Councillor to comply with the Code of Conduct for Members or with a local protocol, he/she will consider, in consultation with the Independent Person and Chair of the Standards Committee, whether the matter be further dealt with by Local Resolution or a Local Hearing.
- (c) If the complaint is dealt with by Local Resolution then that is the end of the matter.
- (d) If it is determined that there should be a Local Hearing then the Procedure for Determination of Allegations about the Personal Conduct of Members will apply.

## **ALLERDALE BOROUGH COUNCIL**

### **PROCEDURE FOR DETERMINATION OF ALLEGATIONS ABOUT THE PERSONAL CONDUCT OF COUNCIL MEMBERS**

#### **INTRODUCTION**

1. The local determination of complaints by the Standards Committee (or subcommittee thereof) following a local investigation and referral by the Monitoring Officer, will be governed by this procedure.
2. The person[s] making the complaint will be referred to in this procedure as the Complainant and the person against whom the complaint is made will be referred to as the Member. The allegation will be heard by the Standards Committee or a Sub- Committee of the Standards Committee.

#### **PRE-HEARING PROCESS [LOCAL INVESTIGATIONS]**

3. Upon receipt of the final report of the Investigating Officer including a finding that the Member failed to comply with the Code of Conduct for Members and where it has not been possible to reach a local resolution or the Monitoring Officer, in consultation with the Independent Person and the Chair of the Standards Committee, finds that the matter should be considered at a formal hearing the Monitoring Officer shall arrange for the Standards Committee to consider the matter.
4. Where the Monitoring Officer is the Investigating Officer he/she must arrange for a separate legal advisor to the Committee to be appointed in respect of the allegation.

#### **NOTIFYING THE MEMBER AND COMPLAINANT**

5. Within five working days of the receipt of the Investigating Officer's report the Monitoring Officer shall send a copy of the report to the Member and, where possible, the Complainant, making the provision of the report conditional upon any appropriate undertaking of confidentiality. The Chairman and Members of the Committee shall be informed of the allegation by the Monitoring Officer, as well as any Parish or Town Council Clerk where the allegation relates to conduct of a Member in his/her capacity as a member of a Parish or Town Council.
6. The Member shall be asked for a written response, within fifteen working days of the receipt of the report, which response shall set out the reply to the Investigating Officer's report and state whether or not he/she:

- i. disagrees with any of the findings of fact in the Investigating Officer's report, including the reasons for any disagreement;
  - ii. wants to be represented, at his/her own expense, at the hearing by any other person;
  - iii. wants to give evidence to the Committee, either verbally or in writing;
  - iv. wants to call relevant witnesses to give evidence to the Committee;
  - v. wants any part of the hearing to be held in private;
  - vi. wants any part of the Investigating Officer's report or other relevant documents to be withheld from the public.
7. The Member shall be informed that if, at the meeting of the Committee, he/she seeks to dispute any matter contained in the Investigating Officer's report without having previously notified the Monitoring Officer of the intention to do so the Committee may either [a] adjourn the meeting to enable the Investigating Officer to provide a response, or [b] refuse to allow the disputed matter to be raised.
8. Upon receipt, the Monitoring Officer shall invite the relevant Investigating Officer to comment, within ten working days, on the Member's response, and to say whether or not he/she:
  - i. wants to be represented or be present at the hearing;
  - ii. wants to call relevant witnesses to give evidence or submit written or other evidence to the Committee;
  - iii. wants any part of the hearing to be held in private;
  - iv. wants any part of the Investigating Officer's report or other relevant documents to be withheld from the public.
9. Upon receipt of the Investigating Officer's response, the Monitoring Officer will consider the responses of the Member and the Investigating Officer and request the Monitoring Officer to set a date for the hearing in consultation with the Chairman.
10. The Member and the Investigating Officer are entitled to request that any witnesses they want should be called. However, the Chairman of the Hearing may limit the number of witnesses to be called, if he/she believes the number requested is unreasonable and that some witnesses will simply be repeating the evidence of earlier witnesses, or else not providing evidence that will assist the Committee to reach its decision.

11. Nothing in this procedure shall limit the Chairman of the Hearing from requesting the attendance of any additional witnesses whose evidence he/she considers would assist the Committee to reach its decision.
12. The Monitoring Officer, in consultation with the Chairman, will:
  - i. confirm a date, time and place for the Hearing, which must be within three months from the date that the Investigating Officer's report was received;
  - ii. confirm the main facts of the case that are agreed;
  - iii. confirm the main facts that are not agreed;
  - iv. provide copies of any written evidence to the relevant parties;
  - v. confirm which witnesses will be called by the parties;
  - vi. provide the parties with a copy of the proposed procedure for the Hearing, specifying which parts of the matter, if any, may be considered in private; and
  - vii. ensure the appropriate information, with the agenda, is provided to everyone involved in the Hearing at least two weeks before the proposed date of the Hearing.

### **THE HEARING**

13. The Committee shall decide, on a balance of probabilities, whether the complaint[s] is or are upheld upon the evidence presented to it.
14. Each Committee Member shall have one vote, and all matters/issues shall be decided by a simple majority of votes cast. If there are equal numbers of votes for and against, the Chairman will have second or casting vote.
15. The meeting of the Committee will be open to the public and press unless confidential information or exempt information is likely to be disclosed.

### **PROCEDURE AT THE HEARING**

16. The initial order of business at the meeting shall be as follows:-
  - i. Establishing whether the Committee is quorate;
  - ii. Declarations of interest;
  - iii. Introductions

- iv. Consideration as to whether to adjourn or to proceed in the absence of the Member, if the Member is not present;
  - v. Consideration of any procedural issues and, in particular, any representation from the Investigating Officer and/or the Member as to reasons why the Committee should exclude the press and public and determination as to whether to exclude the press and public.
17. The purpose of the Hearing is to determine the facts at issue and what action, if any, should be taken. An inquisitorial approach will be adopted by the Committee members in seeking information and clarifying facts and issues. The Chairman will control the procedure and evidence presented at the Hearing, including the questioning of witnesses.
18. The Committee members may at any time seek legal advice from their advisor. [Such advice will be notified to the public in the presence of the Investigation Officer and the Member.]
19. The procedure will be as follows, subject to the Chairman being able to make changes as he or she thinks fit in order to ensure a fair and efficient hearing.

#### **PROCEEDING IN THE ABSENCE OF THE MEMBER**

20. If the Member is not present at the start of the Hearing:
- i. The Chairman will ask the Monitoring Officer whether the Member has indicated his/her intention not to attend the Hearing;
  - ii. The Standards Committee shall then consider any reasons which the Member has provided for not attending the Hearing and shall decide whether it is satisfied that there is sufficient reason for such failure to attend;
  - iii. If the Standards Committee is satisfied with such reasons, it shall adjourn the Hearing to another date;
  - iv. If the Standards Committee is not satisfied with such reasons, or if the Member has not given any such reasons, the Standards Committee shall decide whether to consider the matter and make a determination in the absence of the member or to adjourn the Hearing to another date.

## **21. Presentation by the Investigating Officer**

- 21.1 The Investigating Officer will present the evidence which is relevant to the matter. The Investigating Officer may introduce any witness required to substantiate any matter contained in the report which has been disputed and present any other relevant evidence.
- 21.2 The Member or his/her representative may ask questions of the Investigating Officer or any witness.
- 21.3 The Committee members may ask questions of the Investigating Officer or any witness.

## **22. Presentation by the Member**

- 22.1 The Member or his/her representative will present the evidence which is relevant to the matter. The Member or his/her representative may introduce witnesses or present any other relevant evidence.
- 22.2 The Investigating Officer may ask questions of the Member, or any witness.
- 22.3 The Committee members may ask questions of the Member or any witness.
- 22.4 The Investigating Officer and then the Member or his/her representative will be given the opportunity to sum up.
- 22.5 If the Committee at any time prior to determining whether there was a failure to comply with the Code of Conduct are of the opinion that they require additional evidence on any point in order to be able to come to a considered conclusion on the matter the Committee may (on not more than one occasion) adjourn the hearing and make a request to the Monitoring Officer to seek and provide such additional evidence and to undertake further investigation on any point specified by the Standards Committee.

## **23. Decision by the Committee**

- 23.1 The Committee will consider in private all the evidence which it has heard in order to establish its findings of fact.
- 23.2 At any stage in the consideration of the matter the Committee may return to ask further questions of the Investigating Officer or the Member or seek further information. The other party will be given an opportunity to comment upon the questions asked or the responses made.

- 23.3 The Committee may seek legal advice at any time. Such advice may be given in the presence of the Investigating Officer and the Member if appropriate.
- 23.4 At the conclusion of their deliberations, the Chairman will advise the Member and the Investigating Officer of their findings and whether the Code of Conduct has been breached.
- 23.5 If the Committee concludes that the Member has acted in breach of the Code representations will be invited from the Investigating Officer and the Member as to what action, if any, it should take. The Committee may ask questions of the Member and the Investigating Officer.
24. The Committee, having heard any representations, will consider what actions, if any, to take.

The findings that the Committee may make are:

- a) That there has been no breach of the Code;
- b) That the Member has failed to comply with the Code of Conduct, but that no action needs to be taken;
- c) That the Member has failed to comply with the Code of Conduct and the sanction(s) should be that the Standards Committee:
  - ◆ Publish its findings in respect of the Member's conduct;
  - ◆ Send a formal letter to the Member
  - ◆ Report its findings to the Council or Parish Council for information;
  - ◆ Recommend to the member's Group Leader (or in the case of an ungrouped member(s), recommend to Council or Committees) that he/she be removed from any or all committees or sub-committees of the Council;
  - ◆ Recommend to the Leader of the Council that the member be removed from the Executive or removed from particular Portfolio responsibilities;
  - ◆ Instruct the Monitoring Officer or recommend that the Parish Council arrange training for the member;
  - ◆ Remove or recommend to the Parish Council that the member be removed from all outside appointments to which he/she has been appointed or nominated by the Council or the Parish Council;
  - ◆ Withdraw or recommend to the Parish Council that it withdraws certain facilities provided to the member by the Council; or
  - ◆ Exclude or recommend that the Parish Council exclude the member from the member from Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committees and Sub-Committee meetings.

25. In deciding what penalty to set, the Committee will consider all relevant circumstances.
26. The Chairman will announce the decision of the Committee, the action, if any, it is proposed to take and the reasons for the decision.
27. The Committee will then consider in open session whether there are any recommendations which should be made to any Authority concerned arising from the consideration of the allegation.

## **APPEAL**

28. There is no right of appeal against the decision of the Hearing Panel.

## **NOTICE OF FINDINGS**

29. A full written decision in draft [including the reasons for it] will be prepared as soon as practicable. The draft decision will be forwarded to the Chairman of the Committee for approval.
30. Once approved and as soon as reasonably practicable after the Hearing the full written decision will be forwarded to the Member, the Complainant [where possible], the Investigating Officer and any other Authority concerned.
31. If the Hearing Panel wishes to publish its finding, the Monitoring Officer, subject to paragraph 32, shall arrange for a summary of the findings to be published in one newspaper circulating in the area of the Authority in accordance with paragraphs 33 and 34 or in such other manner as the Hearing Panel may determine (for example, by reporting the matter to Council for information).
32. Where the Committee determines that there has not been a breach of the Code of Conduct, the notice shall:
  - i. State that the Committee found that the Member had not failed to comply with the Code of Conduct and shall give its reasons for reaching that finding; and
  - ii. Not be published in the local newspaper if the Member so requests.
33. Where the Committee determines that there has been a failure to comply with the Code of Code but no action is required, the notice shall:
  - i. State that the Committee found that the Member had failed to comply with the Code of Conduct but that no action needs to be taken in respect of that failure;

- ii. Specify the details of the failure;
  - iii. Give reasons for the decision reached; and
34. Where the Committee determines that there has been a failure to comply with the Code of Conduct and that a sanction should be imposed, the notice shall:
- i. State that the Committee found that the Member had failed to comply with the Code of Conduct;
  - ii. Specify the details of the failure;
  - iii. Give reasons for the decision reached;
  - iv. Specify the sanction imposed; and
35. Copies of the agenda, reports and minutes of a Hearing, as well as any background papers, apart from sections of documents relating to parts of the Hearing that were held in private, shall be available for public inspection for six years after the Hearing.

## **Arrangements for Dispensations**

Section 33 Localism Act details the circumstances in which dispensations may be granted.

It is recommended:

That the Council delegate to the Monitoring Officer, in consultation with the Independent Person and Chairman of Standards Committee, the power to grant dispensations up to a maximum of 4 years in the following circumstances with an appeal to the Standards Committee –

1. That he/she considers that without the dispensation the number of persons prohibited 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.
2. 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.
3. That, without a dispensation, no member of the Executive would be able to participate on this matter.

That the Council delegate to the Standards Committee, in consultation with the Independent Person, to grant dispensations up to a maximum of 4 years in the following circumstances:

1. That the authority considers that the dispensation is in the interests of persons living in the authority's area;
2. That the authority considers that it is otherwise appropriate to grant a dispensation.

The Standards Committee to have authority to deal with any of those dispensations delegated to the Monitoring Officer where the Monitoring Officer considers it inappropriate to deal with a request and chooses to refer to the Standards Committee for determination.