

Friday 1 March 2013

# Standards Committee

Will meet on  
Monday 11 March 2013  
at  
2.00 pm  
in  
Allerdale House, Derwent Room

Membership:

Councillor Janice Wood (Chairman)

Town Cllr Carole Armstrong  
Councillor Duncan Fairbairn  
Councillor Tony North  
Councillor Christine Smith  
Councillor Joan Wright

Parish Cllr David Birch  
Parish Cllr Ian McCambridge  
Councillor George Scott  
Councillor Sam Standage

If you have any questions or queries contact Claire Tyson on 01900 702 558.

## Agenda

**1. Minutes (Pages 1 - 2)**

To sign as a correct record the minutes of the meeting held on 24 September 2012.

**2. Apologies for Absence**

**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.



Allerdale - a great  
place to live,  
work and visit

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

**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. Work Plan (Pages 3 - 4)**

To consider and agree the draft work plan.

**6. Dispensations (Pages 5 - 32)**

To receive an update from the Monitoring Officer regarding dispensations issued to date.

**7. Training**

To receive an update from the Monitoring Officer regarding Standards Training.

**The Chairman will move:-**

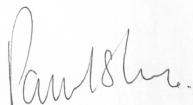
“That under Section 100 (A) (4) of the Local Government Act 1972, the public be excluded from the meeting for the following items of business on the grounds that they may involve the likely disclosure of exempt information as defined in paragraph 1 of part 1 of Schedule 12 (a) of the Act.”

**8. Update on complaints received to date (Pages 33 - 34)**

To receive an update from the Monitoring Officer regarding the complaints received to date.

**9. Complaint to the Standards Committee (Pages 35 - 36)**

To consider how to deal with an existing complaint.



**Corporate Director**

# Agenda Item 1

At a meeting of the Standards Committee held in Allerdale House, Lonsdale Room on Monday 24 September 2012 at 10.00 am

## Members

J Wood (Chairman)

D S Fairbairn  
G Scott  
C Smith

S Standage  
J Wright

Apologies for absence were received from Councillor T North

## Staff Present

T Gear and C Tyson

### 249 Appointment of a Chair

Councillor J Wood was appointed as temporary Chair of the Standards Committee.

Members were advised that a decision was made at the last Council meeting to appoint a Chair for the Standards Committee at the Council meeting on 14 November 2012.

### 250 Declaration of interests

None declared.

### 251 Questions

None received.

### 252 Procedures and Guidance

Members noted the Code of Conduct, Guidance and Arrangements for dealing with Standards allegations.

### 253 Update on Training

The Democratic Services Assistant advised members that two training sessions had been held for Allerdale Borough Council members.

A further training session had been arranged for Allerdale Borough Council members and 5 training sessions were also being held for Parish and Town Councillors in Workington, Maryport, Cockermouth, Keswick and Wigton.

**254 Update on Hearing**

The Legal Executive advised members that the investigating officer's report had been sent to the subject member for comment and to advise whether they wanted any witnesses and the hearing would be held in October.

**255 Work Plan**

Members considered the previous Standards Committee's work plan and felt that they would like to continue with the same format for the current committee.

The Democratic Services Assistant agreed to draft a work plan based on that format and circulate it to members for comment.

**The meeting closed at 10.15 am**

# Agenda Item 5

## Standards Committee Work Programme September 2012 – May 2013

	Topic	Timescale
1.	Standards Training for Members of Standards Committee	As required
2.	Code of Conduct Training for Parish and Borough Council Members	Ongoing
3.	Undertake Local Assessment of Complaints	As required
4.	Investigate and Determine Allegations of Misconduct.	As required
5.	Report from the Monitoring Officer on investigation(s)	As required
6.	Legislation updates	Ongoing
7.	Prepare Annual Report for Full Council	May/June 2013

This page is intentionally left blank

# Agenda Item 6

Allerdale Borough Council

Standards Committee – 11 March 2013

## Dispensations Update

---

<b>The Reason for the Decision</b>	To update members on dispensations granted by the Monitoring Officer.
<b>Summary of options considered</b>	N/A
<b>Recommendations</b>	That the update be noted.
<b>Financial / Resource Implications</b>	None
<b>Legal / Governance Implications</b>	These are set out in the main body of the report, namely the Localism Act 2011, the Member Code of Conduct and the Council's policy and procedure.
<b>Community Safety Implications</b>	None
<b>Health and Safety and Risk Management Implications</b>	None
<b>Equality Duty considered / Impact Assessment completed</b>	The Equality Duty has been considered.
<b>Wards Affected</b>	All
<b>The contribution this decision would make to the Council's priorities</b>	High standards of conduct underpin the Council's priorities.
<b>Is this a Key Decision</b>	N/A
<b>Portfolio Holder</b>	N/A
<b>Lead Officer</b>	Alison Dennett, Monitoring Officer, 01900 702703, Alison.Dennett@allerdale.gov.uk

---

### Report Implications (Please delete where applicable).

Community Safety	N	Employment (external to the Council)	N
Financial	N	Employment (internal)	N
Legal	Y	Partnership	N
Social Inclusion	N	Asset Management	N
Equality Duty	N	Health and Safety	N

Background papers :...Localism Act 2011, Member Code of Conduct.....

## **1.0 Introduction**

- 1.1 Under the previous Member Code of Conduct there was an automatic exemption for members from declaring interests and speaking on matters in respect of setting Council Tax. The new Code does not reproduce this exemption.
- 1.2 Therefore in order for those members who have a disclosable pecuniary interest (DPI) in these circumstances to be able to participate including speaking and voting on these matters they need to apply to the Monitoring Officer for a dispensation under the Localism Act 2011, since it is likely that Council will be inquorate otherwise.

## **2.0 Content (to include alternative options considered)**

- 2.1 The Proposals for Council Tax Technical Reforms and the Calculation of Council Tax Base for 2013-14 were considered at the Council meeting on 16 January 2013. The Council Tax Resolution will be debated and considered at the next full council meeting on 6 March 2013.
- 2.2 Under the Member Code of Conduct disclosable pecuniary interests (DPI) relate mainly to a Councillor's (or their spouse/partners') employment, property interests and shareholdings. As a property interest will give rise to a Council Tax liability it does appear that when the Council Tax is being set the majority of members will have a DPI.
- 2.3 Section 33 of the Localism Act 2011 sets out the circumstances in which dispensations be granted. The Council's 'Arrangements for dealing with standards allegations under the Localism Act 2011', agreed at Council on 18 July 2012, reflect this. (attached at Appendix 1)
- 2.4 The relevant ground in this situation was that without the dispensation the number of persons prohibited from participating in the business concerning the setting of Council Tax would be so great a proportion of the full Council to impede the debate and decision
- 2.5 Members were therefore advised to complete a dispensation request in order to be able to discuss items relating to Council Tax.
- 2.6 As Council Tax is discussed every year, members were given the option to request that their dispensation be approved for a 4 year period, rather than have to re-apply every year.
- 2.7 All members present at the full council meeting on 16 January completed and submitted a dispensation proforma in advance of the meeting and the Monitoring Officer granted the dispensations in accordance with the Council's guidance.

## **3.0 Recommendation**

That the update be noted.

**Alison Dennett  
Monitoring Officer**



## **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 –

Alison.Dennett@alldale.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.

By virtue of paragraph(s) 1 of Part 1 of Schedule 12A of the Local Government Act 1972.

Document is Restricted

This page is intentionally left blank

By virtue of paragraph(s) 1 of Part 1 of Schedule 12A of the Local Government Act 1972.

Document is Restricted

This page is intentionally left blank