



Summons to Meeting

Wednesday 4 August 2021

Standards Committee

Thursday 12 August 2021, 4.00 pm

Council Chamber, Allerdale House

Membership:

Councillor Malcolm Grainger (Chair)
Councillor Mary Bainbridge
Councillor Nicky Cockburn
Councillor Alan Kennon

Councillor Elaine Lynch (Vice-Chair)
Councillor Herbert Briggs
Councillor Peter Gaston

Members of the public are welcome to attend the meeting. If you have any questions or queries contact Lee Jardine on 01900 702502.

Agenda

1. Minutes (Pages 3 - 10)

To sign as a correct record the minutes of the meeting held on 03 June 2021 and 07 June 2021.

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.

4. Questions

To answer questions from members of the public – submitted in writing or by electronic mail no later than 5.00pm on a working day, allowing two clear working days before the day of the meeting.



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Allerdale Borough Council
Allerdale House
Workington
Cumbria CA14 3YJ
tel: 0303 123 1702
www.allerdale.gov.uk

The Chair 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 paragraphs 1 and 2 of part 1 of Schedule 12 (a) of the Act”.

5. Assessment of Code of Conduct Complaints (Pages 11 - 58)

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end.

Chief Executive

Agenda Item 1

At a meeting of the Standards Committee held in Wigton Market Hall on Thursday 3 June 2021 at 10.00 am

Members

Councillor Malcolm Grainger (Chair)
Councillor Carole Armstrong
Councillor Hilary Harrington
Councillor Paul Scott

Councillor Elaine Lynch (Vice-Chair)
Councillor Mary Bainbridge
Councillor Alan Kennon

Apologies for absence were received from Councillor Herbert Briggs, Councillor Nicky Cockburn and Councillor Peter Gaston

Staff Present

L Jardine, J Morgan and L Tomlinson

Also Present

P Burns (Independent Person)

24. Minutes

The minutes of the meeting held on 18 February 2020 were signed as a correct record.

25. Declaration of interests

None declared

26. Questions

None received.

27. Assessment of Standards Code of Conduct Complaints

The Deputy Monitoring Officer presented the report, explaining that the complaint cases on the agenda have been referred to the Standards Committee by the Monitoring Officer for assessment because of the nature of the complaints and the sensitivity around them.

The Chair Moved:

“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 paragraphs 1 and 2 of part 1 of Schedule 12 (a) of the Act.”

28. Complaint Reference - 2021/02

Outcome – Local Resolution

29. Complaint Reference - 2021/03

Outcome - No Further Action

Subject of Complaint was not acting in their capacity as a Councillor at time of the alleged breach of the Code of Conduct

30. Complaint Reference - 2021/04

Outcome - No Further Action

Subject of Complaint was not acting in their capacity as a Councillor at time of the alleged breach of the Code of Conduct

31. Complaint Reference - 2021/05

Outcome - No Further Action

Subject of Complaint was not acting in their capacity as a Councillor at time of the alleged breach of the Code of Conduct

32. Complaint Reference - 2021/06

Outcome - No Further Action

Subject of Complaint was not acting in their capacity as a Councillor at time of the alleged breach of the Code of Conduct

33. Complaint Reference - 2021/07

Outcome – Local Resolution

34. Complaint Reference - 2021/08

Outcome - No Further Action

Subject of Complaint was not acting in their capacity as a Councillor at time of the alleged breach of the Code of Conduct

35. Complaint Reference - 2021/09

Outcome – Local Resolution

36. Complaint Reference - 2021/10

Outcome – Local Resolution

37. Complaint Reference - 2021/11

Outcome – Local Resolution

38. Complaint Reference - 2021/12

Outcome – Local Resolution

39. Complaint Reference - 2021/13

Outcome – Local Resolution

40. Complaint Reference - 2021/14

Outcome – Local Resolution

41. Complaint Reference - 2021/15

Outcome

Decision 1 – Local Resolution

Decision 2 – Referred for Investigation

42. Complaint Reference - 2021/16

Outcome - No Further Action

Subject of Complaint was not acting in their capacity as a Councillor at time of the alleged breach of the Code of Conduct

43. Complaint Reference - 2021/17

Outcome – Local Resolution

44. Complaint Reference - 2021/24

Outcome – Local Resolution

The meeting closed at 1.35 pm

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At a meeting of the Standards Committee held in Theatre - The Wave Centre, Maryport on Monday 7 June 2021 at 10.00 am

Members

| | |
|------------------------------|--------------------------------------|
| Councillor Carole Armstrong | Councillor Elaine Lynch (Vice-Chair) |
| Councillor Herbert Briggs | Councillor Mary Bainbridge |
| Councillor Hilary Harrington | Councillor Marion Fitzgerald |
| | Councillor Alan Kennon |

Apologies for absence were received from Councillor Nicky Cockburn and Councillor Peter Gaston

Staff Present

L Jardine, J Morgan and L Tomlinson

(Tom Cook (Independent Person) was consulted on the complaints to be discussed prior to the meeting)

Councillor Lynch was Chair for the ensuing meeting

45. Declaration of interests

The following Councillors declared an interest in an agenda item(s).

Councillor Briggs
Councillor Fitzgerald
Councillor Harrington

46. Questions

None received.

47. Assessment of Standards Code of Conduct Complaints

The Deputy Monitoring Officer presented the report, explaining that the complaint cases on the agenda have been referred to the Standards Committee by the Monitoring Officer for assessment because of the nature of the complaints and the sensitivity around them.

The Chair Moved:

“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 paragraphs 1 and 2 of part 1 of Schedule 12 (a) of the Act”.

48. Complaint Reference - 2021/18

Outcome – No Further Action

No Breach of Code of Conduct

49. Complaint Reference - 2021/19

Outcome – No Further Action

No Breach of Code of Conduct

50. Complaint Reference - 2021/20

Outcome – No Further Action

No Breach of Code of Conduct

51. Complaint Reference - 2021/21

Outcome – No Further Action

No Breach of Code of Conduct

CIlr Kennon joined the meeting

52. Complaint Reference - 2021/22

Outcome – No Further Action

No Breach of Code of Conduct

53. Complaint Reference - 2021/23

Outcome – No Further Action

No Breach of Code of Conduct

54. Complaint Reference - 2021/25

Outcome - No Further Action

Subject of Complaint was not acting in their capacity as a Councillor at time of the alleged breach of the Code of Conduct

55. Complaint Reference - 2021/27

Outcome – No further action

Complaint has previously been considered and dealt with, complainant to be advised of this.

56. Complaint Reference - 2021/28

Outcome - No Further Action

Subject of Complaint was not acting in their capacity as a Councillor at time of the alleged breach of the Code of Conduct

The meeting closed at 11.30 am

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Allerdale Borough Council

Standards Committee – 12 August 2021

Assessment of Code of Conduct Complaints

| | |
|-------------------------------|--|
| Portfolio holder | Councillor Marion Fitzgerald, Policy, Governance and People Resources |
| Report from | Lindsay Tomlinson, Deputy Monitoring Officer |
| Wards affected | N/A |
| Is this a key decision | No |

1.0 The reason for the decision

- 1.1 To update the Committee on progress following the assessment of a number of code of conduct complaints in June 2021, and seek decisions on any further actions to be taken.

2.0 Recommendation

- 2.1 That members note the progress of code of conduct complaints and agree actions to be taken where local resolution has not been achieved.

3.0 Background and Introduction

- 3.1 Standards Committee met on 3 June and 7 June 2021 to assess a number of code of conduct complaints. The Monitoring Officer had taken the decision to refer a number of complaints to the Standards Committee for assessment because of the nature of the complaints and the sensitivity around them.
- 3.2 Decision Lists from both meetings are attached to this report as an exempt appendix. Members will note that a number of complaints were referred for local resolution. In all cases this has not been achieved, either because the subject member, the complainant or both failed to agree the terms of the resolution.
- 3.3 Where local resolution cannot be achieved, it is for the Standards Committee to apply the Public Interest Test, set out from page 18 of the “Arrangements for dealing with Standards Allegations” attached as Appendix A to this report, and agree what the appropriate course of action should be.

4.0 The Public Interest Test

4.1 For each complaint where local resolution has failed to be achieved the Committee will be asked to consider each of the following questions before deciding whether to refer for investigation:

1. How serious is the breach of the Code?
2. What is the level of culpability of the elected Member?
3. What are the circumstances of and the harm caused to the complainant?
4. What is the impact on the community?
5. Is an investigation or formal hearing a proportionate response?

5.0 Finance/Resource implications

If any of the complaints are referred for investigation then there will be a resource implication, the extent of which will depend on whether an internal or an external investigator is appointed.

6.0 Legal and governance implications

The process is in accordance with the adopted procedures for dealing with Standards issues and code of conduct complaints.

Appendices attached to this report

| Appendix number | Title of appendix |
|----------------------------|---|
| Appendix A | Arrangements for dealing with Standards allegations |
| Appendix B (exempt) | Decision Notices – Standards Committee 3 June 2021 and 7 June 2021 |

Report author:

Lindsay Tomlinson

Deputy Monitoring Officer

lindsay.tomlinson@allerdale.gov.uk

Appendix A

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 1 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 –

Monitoring Officer
Allerdale Borough Council
Allerdale House
Workington
Cumbria CA14 3YJ

Or –

monitoring.officer@allerdale.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 found on the authority's website, next to the Code of Conduct, and is available on request from Reception at the main council Offices.

Please 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, take a decision as to whether it merits formal investigation. The Monitoring Officer will undertake this consultation by telephone, by email or other electronic means or via a face to face meeting. In all instances a formal note of the discussion will be taken and placed on file.

In making this assessment the following factors will be determined:

1. That the complaint is against one or more named members of the Borough Council or a parish council within the Borough;
2. That the member was in office at the time of the alleged breach
3. That the member was acting in their capacity when the alleged breach occurred.
4. That the complaint, if proven, would constitute a breach of the Code.

If the complaint fails one or more of these tests then the decision of the Monitoring Officer will be that no further action can be taken.

Once the initial assessment has been conducted and if the complaint meets all of the tests set out above then the Monitoring Officer will need to decide whether the complaint will be investigated further. In reaching this decision the following factors will be taken into consideration:

1. Does the alleged breach relate to a Disclosable Pecuniary Interest (DPI)? If so then the matter will be referred to the police for investigation
2. Is there any scope for reaching a local resolution? If the Monitoring Officer believes that an agreement can be reached between both parties to resolve the matter without the need for a formal investigation then that should be explored before a decision is taken to investigate. The decision may be taken to explore a local resolution and that if this proves unachievable then an investigation can commence.
3. Is the alleged breach trivial, or the complaint vexatious or politically motivated? If so then Monitoring Officer may decide to take no further action.
4. The public interest test: The Monitoring Officer will apply the public interest test (see Appendix 1) in determining whether to refer a complaint for investigation, taking into consideration the seriousness of the alleged breach, the level of culpability of the Member, the harm caused to the complainant and whether an investigation is a proportionate response.

This decision will normally be taken within 20 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.

As explained above, 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.

If at any point of the process the Monitoring Officer identifies potential conflicts of interest then alternative arrangements will be put in place as appropriate.

5. Private capacity

Where an assessment of a code of conduct complaint has concluded that the member was acting in a private capacity, and was therefore not subject to the code of conduct at the time of the alleged breach, the Monitoring Officer will determine whether it is appropriate to take any further action separate from the Standards regime.

This action may involve writing direct to the member in question advising that the behaviour displayed falls short of that required of an elected member, pointing out the effect the behaviour is likely to have on the council's reputation, and reminding them of any relevant procedures and protocols. They may also be advised to attend appropriate training.

The Monitoring Officer may also refer the matter to the member's group leader, where appropriate, with a recommendation that appropriate sanctions be taken by the group.

In the case of a parish councillor the Monitoring Officer may write to the parish clerk to advise them of the behaviour complained about and advising that whilst action cannot be taken under the Code of Conduct complaint process, the parish council should monitor such behaviour and take appropriate steps to ensure it is not repeated, for example making procedures and protocols readily accessible to members and providing any relevant training.

Where any action is taken by the Monitoring Officer in response to a complaint where the member was found to be acting in a private capacity, the complainant will be advised of the action taken. However, in accordance with the Code of Conduct communications policy this information will not be made public unless the Monitoring Officer considers it to be in the public interest to do so.

6 How is the investigation conducted?

The Council has adopted a procedure for the investigation of misconduct complaints, which is attached as Appendix 2 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.

7 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.

8 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.

8.1 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.

8.2 Local Hearing

If the Monitoring Officer considers that local resolution is not appropriate, or you are not satisfied by the proposed resolution, or the member concerned is not prepared to undertake any proposed remedial action, such as giving an apology, then the Monitoring Officer will 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 3 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.

9 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 –

- 1 Publish its findings in respect of the member's conduct;
- 2 Send a formal letter to the Member;
- 3 Report its findings to Council or to the Parish Council for information;
- 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;
- 5 Recommend to the Leader of the Council that the member be removed from the Executive, or removed from particular Portfolio responsibilities;
- 6 Instruct the Monitoring Officer to or recommend that the Parish Council arrange training for the member;
- 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 Withdraw or recommend to the Parish Council that it withdraws certain facilities provided to the member by the Council; or
- 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.

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

10 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.

11 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.

12 Who is the Independent Person?

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

A person cannot be "independent" if he/she –

- 1 Is, or has been within the past 5 years, a member, co-opted member or officer of the authority;
- 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
- 3 Is a relative, or close friend, of a person within paragraph 1 or 2 above. For this purpose, "relative" means –
 - 3.1 Spouse or civil partner;
 - 3.2 Living with the other person as husband and wife or as if they were civil partners;
 - 3.3 Grandparent of the other person;
 - 3.4 A lineal descendent of a grandparent of the other person;
 - 3.5 A parent, sibling or child of a person within paragraphs 3.1 or 3.2;
 - 3.6 A spouse or civil partner of a person within paragraphs 3.3, 3.4 or 3.5; or
 - 3.7 Living with a person within paragraphs 3.3, 3.4 or 3.5 as husband and wife or as if they were civil partners.

13 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.

14 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 1 The authority's Code of Conduct

Appendix 2 The Public Interest Test

Appendix 3 Procedure for Local Investigation of Referred Complaints

Appendix 4 Procedure for Determination of Allegations about the Personal Conduct of Council Members

Appendix 5 Communications Policy

Allerdale Borough Council

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 Authority 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 Authority 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. (These principles were amended in February 2013, in accordance with the Committee on Standards in Public Life)
- 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 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.
- 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
(as updated by the Committee on Standards in Public Life – January
2013)**

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

- 1 Selflessness**
Holders of public office should act solely in terms of the public interest.
- 2 Integrity**
Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefit for themselves, their

family or their friends. They must declare and resolve any interests and relationships.

3 Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination and bias.

4 Accountability

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

5 Openness

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

6 Honesty

Holders of public office should be truthful.

7 Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour when it occurs.

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).

THE PUBLIC INTEREST TEST

In every case where there is sufficient evidence to justify an investigation or formal hearing, Monitoring Officer must go on to consider (in consultation with the Independent Person) whether an investigation or formal hearing is required in the public interest.

It is not the case that an investigation or formal hearing will automatically take place once the evidential stage is met. An investigation or formal hearing will usually take place unless the Monitoring Officer is satisfied that there are public interest factors tending against such an investigation/hearing which outweigh those tending in favour. In some cases, the Monitoring Officer may be satisfied that the public interest can be properly served by offering the relevant elected Member the opportunity to have the matter dealt with by an alternative remedy rather than bringing the complaint before a formal hearing of the Standards Committee.

When deciding the public interest, Monitoring Officer should consider each of the questions set out below as paragraphs a) to e) so as to identify and determine the relevant public interest factors tending for and against investigation/hearing. These factors should enable the Monitoring Officer to form an overall assessment of the public interest.

The explanatory text below each question in paragraphs a) to e) provides guidance to the Monitoring Officer when addressing each particular question and determining whether it identifies public interest factors for or against investigation/hearing. The questions identified are not exhaustive, and not all the questions may be relevant in every case. The weight to be attached to each of the questions, and the factors identified, will also vary according to the facts and merits of each case.

It is quite possible that one public interest factor alone may outweigh a number of other factors which tend in the opposite direction. Although there may be public interest factors tending against an investigation or in a particular case, the Monitoring Officer should consider whether nonetheless an investigation/formal hearing should go ahead and those factors put to the Standards Committee for consideration when coming to its decision.

The Monitoring Officer should consider each of the following questions:

a. How serious is the breach of the Code?

- The more serious the breach, the more likely it is that a formal hearing is required.
- When assessing the seriousness of a breach, the Monitoring Officer should include in their consideration the elected Member's culpability and the harm caused, by asking themselves the questions at b) and c).

b) What is the level of culpability of the elected Member?

- The greater the Member's level of culpability, the more likely it is that an investigation is required.
- Culpability is likely to be determined by:
 - the Member's level of involvement;
 - the extent to which the breach of the Code was premeditated and/or planned;
 - the extent to which the Member has benefitted from the conduct;
 - whether the Member has previously breached the Code of Conduct;
 - whether the breach was or is likely to be continued, repeated or escalated;

c) What are the circumstances of and the harm caused to the complainant?

- The circumstances of the complainant are highly relevant. The more vulnerable the complainant's situation, or the greater the perceived vulnerability of the complainant, the more likely it is that a formal investigation or hearing is required.
- This includes where a position of trust or authority exists between the Member and complainant.
- It is more likely that a formal hearing is required if the conduct complained of was motivated by any form of prejudice against the complainant's actual or presumed ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity; or if the Member targeted or exploited the complainant, or demonstrated hostility towards the complainant, based on any of those characteristics.
- The Monitoring Officer also needs to consider if a formal hearing is likely to have an adverse effect on the complainant's physical or mental

health, always bearing in mind the seriousness of the conduct complained of, the availability of special measures and the possibility of a formal hearing without the participation of the complainant.

- The Monitoring Officer should take into account the views expressed by the complainant about the impact that the conduct has had. In appropriate cases, this may also include the views of the complainant's family.
- However, the Monitoring Officer does not act for complainants or their families in the same way as solicitors act for their clients, and Monitoring Officers must form an overall view of the public interest.

d) What is the impact on the community?

- The greater the impact of the conduct complained of on the community, the more likely it is that an investigation or formal hearing is required.
- Community is not restricted to communities defined by location and may relate to a group of people who share certain characteristics, experiences or backgrounds, including an occupational group.

e) Is an investigation or formal hearing a proportionate response?

- In considering whether investigation or formal hearing is proportionate to the likely outcome, the following may be relevant:
 - i. The cost, especially where it could be regarded as excessive when weighed against any likely penalty. The Monitoring Officer should not decide the public interest on the basis of this factor alone. It is essential that regard is also given to the public interest factors identified when considering the other questions in paragraphs a) to e), but cost can be a relevant factor when making an overall assessment of the public interest.
 - ii. Cases should be dealt with in accordance with principles of effective case management.

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 cooperate 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 following a local investigation and referral by the Monitoring Officer, will be by a Sub-Committee of the Standards Committee and 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 a Sub-Committee of the Standards Committee (the Membership will be agreed in accordance with the protocol agreed by Group Leaders).

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 Sub-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 Sub-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 Sub-Committee, either verbally or in writing;
 - iv. wants to call relevant witnesses to give evidence to the Sub-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 Sub-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 Sub-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 Sub-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 Sub-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 Sub-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 Sub-Committee shall decide, on a balance of probabilities, whether the complaint[s] is or are upheld upon the evidence presented to it.
- 14 Each Sub-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 Sub-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 Sub-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 Sub-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 Sub-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 Sub-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 Sub-Committee is satisfied with such reasons, it shall adjourn the Hearing to another date;
 - iv. If the Standards Sub-Committee is not satisfied with such reasons, or if the Member has not given any such reasons, the Standards Sub-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 Sub-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 Sub-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 Sub-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 Sub-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 Sub-Committee.

23 Decision by the Sub-Committee

- 23.1 The Sub-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 Sub-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 Sub-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 Sub-Committee may ask questions of the Member and the Investigating Officer.
- 24 The Sub-Committee, having heard any representations, will consider what actions, if any, to take.
- The findings that the Sub-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 Sub-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 Sub-Committee will consider all relevant circumstances.
- 26 The Chairman will announce the decision of the Sub-Committee, the action, if any, it is proposed to take and the reasons for the decision.

- 27 The Sub-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 Sub-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 Sub-Committee determines that there has not been a breach of the Code of Conduct, the notice shall:
- i. State that the Sub-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 Sub-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 Sub-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 Sub-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 Sub-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.

Communications Policy for Code of Conduct Complaints

Allerdale Borough Council recognises the sensitivity and the need for confidentiality in respect of code of conduct complaints made against elected members. Therefore there is a presumption that there will not normally be any publicly available information on any code of conduct complaint until after the conclusion of a local hearing.

The exception to this will be in those instances where the Monitoring Officer has concluded that a likely breach did occur but a local resolution has been reached, or where the application of the public interest test found that an investigation was not in the public interest. In both of these situations the Monitoring Officer will confer with the Independent Person to agree whether it is in the public interest to publish details of the complaint and the resolution reached. Both parties will be consulted and any objection raised by either party will be considered by the Monitoring Officer before a final decision is made.

At all stages during a complaint both parties will be kept updated on progress, and particularly where there is any delay to any stage of the process.

All parties will be informed of the need to maintain confidentiality throughout the process. All communications will include this requirement as a matter of course.

In cases involving members of Allerdale Borough Council the Monitoring Officer will advise the member's group leader (if they are a member of a political group) of the complaint and will keep the group leader informed of progress.

In cases involving members of parish councils the Monitoring Officer will advise the relevant parish clerk of the complaint and will keep the clerk informed of progress.

Where the Monitoring Officer has determined that a member was acting in a private capacity at the time of the alleged breach but that it is appropriate to take action in accordance with paragraph 5 of the procedure, details of the complaint and action taken will not normally be made public unless the Monitoring Officer feels it is in the public interest to do so.

All parties to the complaint will be asked to provide an email address and telephone number so that communications about the complaint can be sent as quickly and efficiently as possible. Where an email address is not available the Monitoring Officer will send all communications by post. If a telephone number is provided the Monitoring Officer may use this to contact the parties to provide brief verbal updates or to request information. This will be in addition to and not in place of the written communication referred to above.

The Monitoring Officer can consult with the Independent Person by telephone, by email or other electronic means or via a face to face meeting. In all instances a formal note of the discussion will be taken and placed on file.

The personal contact details of complainants will be held confidentially and not shared with any other departments or individuals without the express written permission of the complainant.

The Council will issue a statement on its website and to local media where the outcome of an investigation has proven that there was a breach of the Code. A summary of the case will be made available on the council's website. The Monitoring Officer will redact any sensitive or confidential details of the case as appropriate. The Monitoring Officer may also decide to maintain the anonymity of the complainant where appropriate.

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By virtue of paragraph(s) 1, 2 of Part 1 of Schedule 12A of the Local Government Act 1972.

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