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Date: 9<sup>th</sup> December, 2021

Dear Sir/Madam,

Our Ref: KB

A meeting of the **AUDIT & STANDARDS SUB-COMMITTEE** will be held in the Council Chamber, Town Hall, Nuneaton, on **Monday 20<sup>th</sup> December at 6.00 p.m.**

Please note that meetings will be recorded for future publication on the Council's website.

Yours faithfully,

**BRENT DAVIS**  
Chief Executive

To: All Members of the  
Audit & Standards  
Sub-Committee

Councillors, B. Beetham, J. Kennaugh, N.  
Phillips, R. Tromans and. H. Walmsley

## **AGENDA**

### 1. EVACUATION PROCEDURE

A fire drill is not expected, so if the alarm sounds please evacuate the building quickly and calmly. Please use the stairs and do not use the lifts. Once out of the building, please gather outside the Virgin Money building (formerly the Yorkshire Bank) on the opposite side of the road.

Please exit by the door by which you entered the room or by the fire exits which are clearly indicated by the standard green fire exit signs.

If you need any assistance in evacuating the building, please make yourself known to a member of staff.

Please also make sure all your mobile phones are turned off or set to silent.

### 2. APOLOGIES - to receive apologies for absence from the meeting.

### 3. DECLARATIONS OF INTEREST

To receive declarations of Disclosable Pecuniary and Other Interests, in accordance with the Members' Code of Conduct.

#### **Declaring interests at meetings**

If there is any item of business to be discussed at the meeting in which you have a disclosable pecuniary interest or non-pecuniary interest (Other Interests), you must declare the interest appropriately at the start of the meeting or as soon as you become aware that you have an interest.

Arrangements have been made for interests that are declared regularly by members to be appended to the agenda (**Page 4**). Any interest noted in the Schedule at the back of the agenda papers will be deemed to have been declared and will be minuted as such by the Democratic Services Officer. As a general rule, there will, therefore, be no need for those Members to declare those interests as set out in the schedule.

There are, however, TWO EXCEPTIONS to the general rule:

1. When the interest amounts to a Disclosable Pecuniary Interest that is engaged in connection with any item on the agenda and the member feels that the interest is such that they must leave the room. Prior to leaving the room, the member must inform the meeting that they are doing so, to ensure that it is recorded in the minutes.

2. Where a dispensation has been granted to vote and/or speak on an item where there is a Disclosable Pecuniary Interest, but it is not referred to in the Schedule (where for example, the dispensation was granted by the Monitoring Officer immediately prior to the meeting). The existence and nature of the

dispensation needs to be recorded in the minutes and will, therefore, have to be disclosed at an appropriate time to the meeting.

**Note: Following the adoption of the new Code of Conduct, Members are reminded that they should declare the existence and nature of their personal interests at the commencement of the relevant item (or as soon as the interest becomes apparent). If that interest is a Disclosable Pecuniary or a Deemed Disclosable Pecuniary Interest, the Member must withdraw from the room.**

Where a Member has a Disclosable Pecuniary Interest but has received a dispensation from Standards Committee, that Member may vote and/or speak on the matter (as the case may be) and must disclose the existence of the dispensation and any restrictions placed on it at the time the interest is declared.

Where a Member has a Deemed Disclosable Interest as defined in the Code of Conduct, the Member may address the meeting as a member of the public as set out in the Code.

**Note: Council Procedure Rules require Members with Disclosable Pecuniary Interests to withdraw from the meeting unless a dispensation allows them to remain to vote and/or speak on the business giving rise to the interest.**

**Where a Member has a Deemed Disclosable Interest, the Council's Code of Conduct permits public speaking on the item, after which the Member is required by Council Procedure Rules to withdraw from the meeting.**

4. PUBLIC CONSULTATION - Members of the Public will be given the opportunity to speak on specific agenda items or have their submitted statement read by an officer of the Council, if notice has been received.
5. MEMBERS COMPLAINTS PROCEDURE a report of the Monitoring Report attached **(page 6)**
6. ANY OTHER ITEMS which in the opinion of the Chair of the meeting should be considered as a matter of urgency because of special circumstances (which must be specified).

## Audit & Standards Sub-Committee - Schedule of Declarations of Interests – 2021/2022

	Name of Councillor	Disclosable Pecuniary Interest	Other Personal Interest	Dispensation
	General dispensations granted to all members under s.33 of the Localism Act 2011			Granted to all members of the Council in the areas of: <ul style="list-style-type: none"> <li>- Housing matters</li> <li>- Statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992</li> <li>- An allowance, payment given to members</li> <li>- An indemnity given to members</li> <li>- Any ceremonial honour given to members</li> <li>- Setting council tax or a precept under the Local Government Finance Act 1992</li> <li>- Planning and Licensing matters</li> <li>- Allotments</li> <li>- Local Enterprise Partnership</li> </ul>
	B. Beetham	Employed at The George Eliot Hospital; Warwickshire County Council – Camp Hill	Member of the following Outside Bodies: <ul style="list-style-type: none"> <li>• Camp Hill Urban Village: Pride in Camp Hill Board</li> </ul> Committee of Management of Hartshill and Nuneaton Recreation Ground	
	J. Kennaugh	County Councillor W.C.C.  Employed by UK Flooring Direct Ltd.	Member of the W.C.C. Regulatory Committee Member of the Conservative Party Member of UNITE the Union Nuneaton and Bedworth representative for the Equality and Inclusion Partnership NBBC Representative on Warwickshire Race Equality Partnership	
	N. Phillips	Employee of DWP	Member of: <ul style="list-style-type: none"> <li>• Nuneaton Labour CLP</li> <li>• The Fabian Society</li> <li>• The George Eliot Society</li> <li>• The PCS Union</li> <li>• Central Credit Union</li> <li>• Stockingford Sports and Allotment Club</li> </ul> Haunchwood Sports and Social Club	

	<b>Name of Councillor</b>	<b>Disclosable Pecuniary Interest</b>	<b>Other Personal Interest</b>	<b>Dispensation</b>
	H. Walmsley	Chief of Staff to Julian Knight MP	Chartered Institute of Public Relations  Member on the following Outside Bodies: <ul style="list-style-type: none"> <li>• Friendship Project for Children</li> </ul> West Midlands Combined Authority Audit Group	Dispensation to speak and vote
	R. Tromans	RTC, Nuneaton AFL, Wellingborough	W.C.C. Warwick  Member of the following Outside Bodies: <ul style="list-style-type: none"> <li>• Nuneaton Neighbourhood Watch Committee</li> <li>• Nuneaton Festival of Arts</li> </ul>	

## AGENDA ITEM NO.5

### NUNEATON AND BEDWORTH BOROUGH COUNCIL

**Report to:** Audit & Standards Sub-committee (20<sup>th</sup> December 2021)

**From:** Monitoring Officer

**Subject:** Members' Complaints Procedure

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#### 1. Purpose of Report

1.1 To consider options to streamline and improve the complaints process.

#### 2. Recommendations

2.1 The Sub-committee consider options for recommendation to the Audit & Standards Committee.

#### 3. Background

3.1 On 28<sup>th</sup> September 2021 Audit & Standards Committee resolved:

“a Sub-Committee consisting of five Members be formed to investigate options to streamline and improve the complaints processes.”

3.2 The complaints procedure was established in 2012, following the changes effected by the Localism Act 2011. In essence, this abolished the Standards Board for England and placed the effective management of standards with the Council. At that time, a model complaints procedure was produced by the Association of Council Secretaries & Solicitors (ACSeS) for use by Councils. The model procedure was adopted by Council in July 2012.

3.3 Since then, there have been only minor changes to the procedure. Following the County Council's decision not to adopt the LGA Model Code, a proposal is to come forward to Audit & Standards Committee recommending the adoption of a Code similar to the County Council's Code. This achieves one of the principal reasons for updating the Code, which is to have a common code between upper and lower tier Councils.

There is, therefore, the opportunity to update both the Code and the associated procedure at the same time.

3.4 The current procedure is set out as Appendix A. In contrast, the procedure adopted by the County Council is reproduced at Appendix B.

#### 4. Other potential changes

4.1 The complaints process was reviewed in 2017, when a proposal was discussed to re-introduce either a right of appeal at assessment stage; or the use of an assessment sub-committee to assist in the initial assessment stage. A report was produced at that time, which is appended as Appendix C. At that time Council rejected the options and opted to leave the procedure unchanged. The Sub-committee could consider introducing one of the options stated back in 2017 (or both).

#### 5. The legislative Framework

5.1 The legal framework for the complaints system is set out in the Localism Act 2011. The Act is minimal in terms of its requirements. These state that the Council must::

5.1.1 promote and maintain high standards of conduct by members and co-opted members

5.1.2 adopt a code dealing with the conduct that is expected of members and co-opted members when they are acting in that capacity.

5.1.3 have in place—

- arrangements under which allegations can be investigated, and
- arrangements under which decisions on allegations can be made.

5.2 The arrangements must include provision for the appointment by the authority of at least one independent person—

5.2.1 whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate, and

5.2.2 whose views may be sought—

- by the authority in relation to an allegation; or
- by a member, or co-opted member, of the authority if that person's behaviour is the subject of an allegation.

#### 6. Appendices

Appendix A – the current complaints procedure

Appendix B – The complaints procedure for Warwickshire County Council

Appendix C – A report prepared in 2017 outlining other options for dealing with complaints.

7. Background Papers (if none, state none)

The Committee on Standards in Public Life report Ethical Standards Best Practice for Local Authorities (January 2019)

LGA report on Civility in Public Life and the review of the model Code of Conduct



**5A.1 ARRANGEMENTS FOR STANDARDS ALLEGATIONS UNDER THE LOCALISM ACT 2011**

**a) CONTEXT**

These Arrangements set out how you may make a complaint that an elected or co-opted Member of this Council has failed to comply with the Council's Code of Conduct, and sets out how the Council will deal with allegations of a failure to comply with the Council's Code of Conduct.

Under S.28(6) and (7) of the Localism Act 2011, the Council must have arrangements in place under which allegations that a Member or co-opted Member of the Council, or of a Committee or Sub-Committee of the Council, has failed to comply with that Council's Code of Conduct can be investigated and decisions made on such allegations.

Such arrangements must provide for the Council to appoint at least one independent person, whose views must be sought by the Council before it takes a decision on an allegation which it has decided shall be investigated, and whose views can be sought by the Council at any other stage, or by a Member against whom an allegation has been made.

**5A.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 is available for inspection on the Council's website and on request from Reception at the Civil Hall, Bedworth and Town Hall, Nuneaton.

**5A.3 MAKING A COMPLAINT**

To make a complaint, please write to:

The Monitoring Officer  
Town Hall  
Coton Road, Nuneaton  
CV11 5AA

Or email: [monitoring.officer@nuneatonandbedworth.gov.uk](mailto:monitoring.officer@nuneatonandbedworth.gov.uk)

The Monitoring Officer is a senior officer of the Council 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 Council's website, next to the Code of Conduct, and is available on request from Receptions at Civic Hall, Bedworth and Town Hall, Nuneaton.

Please provide 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 Council does not normally investigate anonymous complaints.

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

### 5A.4 Will Your Complaint be Investigated?

The Monitoring Officer will review every complaint received against the criteria set out in Appendix 2 and, after consultation with the independent person, take a decision as to whether it merits formal investigation. This decision will normally be taken within 14 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.

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.

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 Council. Where the Member or the Council makes 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.

### 5A.5 How is the Investigation Conducted?

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 Council, an officer of another Council 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, and so that you can explain your understanding of events and 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. The Monitoring Officer will then arrange for the report to be considered by the Audit & Standards Committee.

**5A.6 What happens if the Investigating Officer concludes that there is no evidence of a failure to comply with the Code of Conduct?**

The Audit & Standards Committee will review the Investigating Officer's report and, if he is satisfied that the Investigating Officer's report is sufficient, instruct the Monitoring Officer to write to you and to the member concerned, notifying you that he is satisfied that no further action is required, and give you both a copy of the Investigating Officer's final report.

**5A.7 What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct?**

The Audit & Standards Committee 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.

**a) Local Resolution**

The Audit & Standards Committee may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, the Monitoring Officer will be asked to 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 Council. If the Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Audit & Standards Committee 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.

**b) Local Hearing**

If the Audit & Standards Committee considers that local resolution is not appropriate, 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.

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.

If 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.

**5A.8 What action can the Hearings Panel take where a member has failed to comply with the Code of Conduct?**

The Audit & Standards Committee 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:

- a) Censure or reprimand the Member;
- b) Publish its findings in respect of the Member's conduct;
- c) Report its findings for information;
- d) Recommend to the Member's Group Leader (or in the case of un-grouped Members, recommend to or to Committees) that he/she be removed from any or all Committees or Sub-Committees;
- e) Recommend to the Leader that the member be removed from the Cabinet, or removed from particular portfolio responsibilities;
- f) Instruct the Monitoring Officer to arrange training for the Member;
- g) Remove from all outside appointments to which he/she has been appointed or nominated by the Council;
- h) Withdraw facilities provided to the Member by the Council, such as a computer, website and/or email and internet access, or
- i) Exclude the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Panel's Council, Committee and Sub-Committee meetings.

The Hearings Panel has no power to suspend or disqualify the Member, or to withdraw Members' or special responsibility allowances.

**5A.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 make that Decision Notice available for public inspection, and report the decision to the next convenient meeting of the Council.

**5A.10 Who is the Hearings Panel?**

The Hearings Panel is a Sub-Committee of the Council's Audit & Standards Committee. The Audit & Standards Committee has decided that it will comprise a maximum of 11 Members of the Council appointed on the nomination of party group leaders in proportion to the strengths of each party group on the Council.

The independent person is invited to attend all meetings of the Hearings Panel and his 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.

**5A.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 appointed by a positive vote from a majority of all the Members.

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

- a) Is, or has been within the past five years, a Member, co-opted Member or officer of the Council, with the exception that former independent Members of Audit & Standards Committees can be appointed as Independent Persons;
- b) N/A
- c) Is a relative, or close friend, of a person within para (a) or (b) above. For this purpose, "relative" means:
  - d) Spouse or civil partner;
  - e) Living with the other person as husband and wife or as if they were civil partners;
  - f) Grandparent of the other person;
  - g) A lineal descendant of a grandparent of the other person;

- h) A parent, sibling or child of a person within paras (d) or (e);
- i) A spouse or civil partner of a person within paras (a), (g) or (h); or
- j) Living with a person within paragraphs (f), (g) or (h) as husband and wife, or as if they were civil partners.

#### **5A.12 Revision of these Arrangements**

The Council's Audit & Standards Committee 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.

#### **5A.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 Council has failed to deal with your complaint properly, you may make a complaint to the Local Government Ombudsman.

## Warwickshire County Council Member Complaint Process

### Filter Stage

Complaint considered by the Monitoring Officer in consultation with the Chief Executive and Political Group Leader of member complained about. Where appropriate the Monitoring Officer may also consult an independent person.

Where the allegation concerns matters which may amount to a criminal offence the Monitoring Officer will consult with the Police on whether the matter should be referred to them.

### **Options available at the filter stage are**

Complaint resolved by informal action acceptable to both member and complainant.	No further action where complaints fall outside the Code or do not justify investigation and there is no informal resolution	Allegations of criminal matters if appropriate referred to Police	Referral for investigation if criteria are met
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### **We will only refer a complaint for investigation if the following criteria are met**

- it is serious enough, if proven, to justify the costs of an investigation **or**
- it is part of a continuing pattern of less serious misconduct that is unreasonably disrupting the business of the Council and there is no other avenue left to deal with it **and**
- the conduct complained of occurred within 6 months of the date the complaint was received

### **We will not normally refer complaints for investigation where they fall within one or more of the following categories**

- we believe it to be malicious, relatively minor, or tit-for-tat
- the same, or substantially similar, complaint has already been the subject of an investigation or inquiry and there is nothing further to be gained
- the complaint concerns acts carried out in the member's private life, when they are not carrying out the work of the authority or have not misused their position as a member
- it appears that the complaint is really about dissatisfaction with a council decision
- there is not enough information currently available to justify a decision to refer the matter for investigation

### **Referral for investigation**

The complaint is investigated by an Investigator appointed by the Monitoring Officer. Estimated timescales for investigation to be agreed between Investigator and Monitoring Officer on case by case basis.

Before finalising the investigation report, the Monitoring Officer will seek the views of an independent person.

### **Report Stage**

If the member agrees with the recommendations in the Investigators Report (including any sanctions that may be suggested) then the Monitoring Officer will arrange for those recommendations to be implemented and inform the complainant of the outcome.

Where the member disagrees with the recommendations in the Investigators report the Monitoring Officer will refer the matter for hearing before a Sub-committee of members and advise the complainant of the proposed hearing.

### **Hearing Stage**

The Hearing Sub-committee will consider the investigation report, take account of the views of any independent person consulted in relation to the matter, hear representations from the member concerned and the Monitoring Officer. Other people may be heard at the discretion of the Chair.

If the Sub-committee finds there is no failure to comply with the Code of Conduct the matter will end there.

If the Sub-committee finds that there is a failure to comply with the Code of Conduct of it will recommend what action if any should be taken, this may or may not include the imposition of sanctions on the member concerned

### **Imposition of Sanctions**

If the Sub-committee recommends that sanctions should be imposed on the member concerned those sanctions may be immediately implemented if accepted by the member.

Where the member does not accept the proposed sanctions the Sub-committee will make recommendations to Council.

### **Hearing Sub-committee**

#### **Composition**

Any three or more elected members of the Audit & Standards Committee to sit as and when required. Where possible the sub-committee will include representation from at least two of the political groups represented on the Council. The selection of members to form a sub-committee to deal with a particular matter or matters shall be made by the Chief Executive.

#### **Terms of Reference**

To consider complaints about members in relation to the Code of Conduct and determine whether or not there has been a failure to comply with the Code of Conduct

Where there has been a failure to comply with the Code of Conduct the Sub-committee may impose sanctions with the agreement of the member concerned or make recommendations to Council on the imposition of sanctions.



**NUNEATON AND BEDWORTH BOROUGH COUNCIL****Report to: Standards Committee – 27<sup>th</sup> February 2017****From: Director – Governance and Recreation****Subject: The Sifting process for dealing with complaints****1. Purpose of Report**

- 1.1 To consider the current arrangements for the processing of complaints and to suggest changes to Council.

**2. Recommendation**

- 2.1 That the option at paragraph 4.2.3 be approved; and

- 2.2 IT BE RECOMMENDED TO COUNCIL THAT:

the Constitution be amended accordingly.

**3. Background**

- 3.1 On the 11<sup>th</sup> July 2012, Council approved revised arrangements for the management of complaints against members. The changes were necessary following the abolition of the Standards Board for England and repeal of the legislation in the Local Government Act 2000 by the Localism Act 2011.

- 3.2 Amongst other things Council resolved ( Minute 88 2012/13):

- “That the criteria for assessing complaints be as set out in Appendix sic [A];  
...
- That the Monitoring Officer be appointed as the Proper Officer to receive complaints of failure to comply with the Code of Conduct;
- That the Monitoring Officer be given delegated power, after consultation with the Independent Person, to determine whether a complaint merits formal investigation and to arrange such investigation.
- That the Monitoring Officer be authorised to seek resolution of complaints without formal investigation wherever practicable, and to report quarterly to Standards Committee on the discharge of this function;
- That Hearings Panels (as sub-committees of Standards Committees) be authorised to exercise the powers as can be delegated to take decisions in respect of a member who is found on hearing to have failed to comply with the Code of Conduct ...”

3.3 The current arrangements have, therefore, been in operation now for approximately 5 years and are due for review. In addition, following concerns expressed as to the lack of oversight into some of the arrangements, this report has been brought forward at the request of the Chair.

3.4 Having regard to the background to the current arrangements, the Committee are reminded of the rationale for the change, as expressed by the then coalition Government in 2010. The minister concerned Andrew Stunell stated:

*“The Standards Board regime ended up fuelling petty complaints and malicious vendettas. Nearly every council had investigations hanging over them - most of which would be dismissed but not before reputations were damaged and taxpayer money was wasted. Frivolous allegations undermined local democracy and discouraged people from running for public office.*

*“That’s why we are axing the unpopular and unelected standards board regime. Instead we will legislate to ensure that if a councillor is corrupt and abuses their office for personal gain they will be dealt with in the criminal courts. If a councillor behaves ineffectively or irresponsibly then it’s a matter for the electorate not an unelected quango.*

*“This government is freeing councillors from central prescription and top down bureaucracy so they can get on with their job. In the future councillors must expect to be judged at the ballot box by an electorate with real access to their accounts and personal interests in a new transparent era.”*

Communities Secretary Eric Pickles added:

*“The standards board regime became the problem, not the solution. Unsubstantiated and petty allegations, often a storm in a teacup, damaged the reputation and standing of local government, as well as wasting taxpayers’ money.*

*“But by abolishing the failed standards committees we’re not letting councillors off the hook. Failure to register or declare an interest, or deliberately seeking to mislead the public about an interest, will become a criminal offence while a newly empowered Local Government Ombudsman will investigate incompetence on behalf local people.”*

3.5 The new Standards arrangements came into effect on the 1<sup>st</sup> July 2012 and swept away a raft of processes and procedures that were regarded as overly bureaucratic and expensive. The current arrangements brought into replace those arrangements were devised by the Association of Council Secretaries and Solicitors in 2012.

3.6 As part of the changes brought into effect, a number of pieces of secondary legislation were repealed, including the Standards Committees (England) Regulations 2008 which made provision for the management of complaints. Up

to the point of repeal, the system operated under Standards for England made provision for all complaints to be submitted to an assessment sub-committee to determine whether the criteria at Appendix A to this report applied and, if so, to determine whether a case should be submitted for formal investigation by the Monitoring Officer. These sub-committees had to be chaired by an independent co-opted member of the Committee.

3.7 As part of the process, decisions of the assessment sub-committee were confidential and non-disclosable. There was, however, an obligation to inform the complainant who was also afforded a right of appeal to a review sub-committee. That sub-committee had to comprise of another independent co-opted chair together with other members of the committee not involved in the initial assessment. The decision of the review sub-committee was final on the point, although it was susceptible to challenge by way of a judicial review.

#### **4 Current concerns**

4.1 Following a summary report of how the process was operating, some Members expressed concern that the process lacked oversight and placed a considerable burden upon the Monitoring Officer to determine whether a case, in particular, falls in or out of scope of the Councillor's Code of Conduct. For this reason, the chair agreed that a report be submitted setting out the options open to the committee. There are 3 suggested options, as set out below.

#### 4.2 Options

##### 4.2.1 Do nothing and retain the current process.

This process retains the current arrangements and does carry with it the burden placed upon the Monitoring Officer to undertake the initial assessment of a complaint. The key advantage of this process is the relative speed with which an initial assessment can be carried out, compared to the need to convene members to consider a formal report on the issue. The key drawback is, however, the lack of member oversight of the process and the constraints placed upon the disclosure of private information.

##### 4.2.2 Re-introduce the assessment sub-committees and review sub-committees.

This option will reintroduce fairly unwieldy and bureaucratic processes. With the resource constraints already evident within the legal team, the already stretched timescales for dealing with complaints against members will be further elongated. One additional difficulty is the size of the Standards Committee which was increased some years ago to take account of the potential demands for assessments and reviews, but subsequently reduced. It is unlikely that the current size of the committee could absorb the potential increase in workloads. Furthermore, the introduction of an appeal mechanism is likely to increase the workload of the sub-committees.

##### 4.2.3 Retain the current arrangements, but with the right of appeal to a sub-committee.

A half-way house solution (bit which is by no means perfect) would be to introduce a right of appeal against the determination of the Monitoring Officer to a review sub-committee. The rules on the privacy of information would still apply, but the sub-committee could discharge the requirements of oversight, as

some members have requested. The only potential difficulty with this proposal is the likelihood of an appeal. Under the original arrangements, complainants often felt dissatisfied with the decisions of the assessment sub-committee and it was a frequent occurrence that appeals would be heard by the review sub-committee. Importantly, in the majority of cases, the original decision was upheld. There is, therefore, a potential resource and time issue.

## **5 Suggested Approach**

5.1 The lack of oversight is an issue that can be addressed by the Committee, subject to the common law rules on confidentiality being observed. With the recent reduction in the size of the Committee, it is suggested that it wouldn't be possible to manage a 2 tier member-led assessment process. However, if the Committee agreed, the better option would be to introduce an appeals mechanism to a sub-committee of 3 Members. This would require compliance with the rules on reports and agendas as set out in the Local Government Act 1972.

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