

Notice of Meeting

Standards Committee

Monday, 13th January, 2014 at 5.30 pm
in Council Chamber Council Offices
Market Street Newbury

Date of despatch of Agenda: Tuesday 31st December 2013

For further information about this Agenda, or to inspect any background documents referred to in Part I reports, please contact Moira Fraser on (01635) 519045
e-mail: mfraser@westberks.gov.uk

Further information and Minutes are also available on the Council's website at
www.westberks.gov.uk

To: Councillors Peter Argyle (Chairman), Chris Bridges, Barry Dickens, Adrian Edwards, Mollie Lock, Gwen Mason (Vice-Chairman), Garth Simpson and Virginia von Celsing

Other Attendees: David Holling; Moira Fraser

Agenda

Part I

Page No.

1. Apologies

To receive apologies for inability to attend the meeting (if any).

2. Minutes

1 - 6

To approve as a correct record the Minutes of the meeting of this Committee held on the 14th October 2013 and the special virtual meeting on the 11th December 2013.

3. Declarations of Interest

To remind Members of the need to record the existence and nature of any Personal, Disclosable Pecuniary or other interests in items on the agenda, in accordance with the Members' [Code of Conduct](#).

4. Monitoring Officer's Quarterly Report to the Standards Committee - Quarter 3 of 2013/14 (SC2693)

7 - 14

Purpose: To provide an update on local and national issues relating to ethical standards and to bring to the attention of the Committee any complaints or other problems within West Berkshire.

5. Amendments to Appendix D (Gifts and Hospitality) and Appendix E (Procedure for Local Determination of Allegation) to Part 13 (Codes and Protocols) of the Constitution

15 - 38

Purpose: To consider any changes to the way Members need to deal with offers of Gifts and Hospitality and the procedure for determining complaints made under the Standards Regime.

Andy Day
Head of Strategic Support

If you require this information in a different format or translation, please contact Moira Fraser on telephone (01635) 519045.



West Berkshire
C O U N C I L

STANDARDS COMMITTEE**MINUTES OF THE MEETING HELD ON
MONDAY, 14 OCTOBER 2013**

Present: Peter Argyle (Chairman), Chris Bridges, Adrian Edwards, Mollie Lock, Garth Simpson and Virginia von Celsing

Also Present: David Holling (Head of Legal Services), Moira Fraser (Democratic and Electoral Services Manager)

Apologies for inability to attend the meeting: Barry Dickens and Councillor Gwen Mason

PART I**12. Minutes**

The Minutes of the meeting held on 01 July 2013 were approved as a true and correct record and signed by the Chairman.

13. Declarations of Interest

There were no declarations of interest received.

14. Monitoring Officer's Quarterly Update Report to the Standards Committee - Quarter 2 of 2013/14

The Committee considered a report (Agenda Item 4) which provided an update on local and national issues relating to ethical standards and complaints received during the second quarter of 2013/14 (July to September).

The Monitoring Officer in introducing the report explained that a small Task Group (comprising Councillors Peter Argyle and David Allen, James Rees (Independent Person) and Tony Renouf (Parish Councillor)) had met to review the Council's Code of Conduct and underpinning processes as had been agreed at the previous meeting. The revised Code of Conduct would be discussed as part of the next agenda item. Officers had also taken the opportunity to draft a Social Media Protocol for Members.

It was noted that Mauline Akins had stood down as a parish councillor and as a consequence a vacancy had arisen on the Standards Committee. Following discussions with the Chairman it was agreed that Barry Dickens (a Bucklebury Parish Councillor) be approached to join the Standards Committee as he had previously expressed an interest in joining the group. This appointment would be ratified at the December Council meeting.

It was noted that during quarter two one complaint (NPC10/13) pertaining to two parish councillors had been received. The Monitoring Officer and the Independent Person had met to consider the complaint and had concluded that no further action should be taken on the complaint. The Advisory Panel had not met.

The Standards Committee had met on the 01 July to make a determination in respect of complaint NPC5/13 and they had accepted the investigator's opinion and the recommendation of the Advisory Panel that no breach had occurred.

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The Monitoring Officer was very pleased to note that the number of complaints about district and parish councillors, throughout the year and especially in quarter two, had remained very low.

RESOLVED that the report be noted.

15. **Revised Code of Conduct for Members (including a Social Media Protocol) (C2737)**

The Committee considered a report (Agenda Item 5) which set out some proposed changes to the Members Code of Conduct following the scheduled review by the Standards Committee. The report also proposed that a Social Media Protocol for Members be adopted.

The Monitoring Officer explained that a small task group comprising Councillors David Allen and Peter Argyle, James Rees (Independent Person) and Tony Renouf (Parish Councillor) had been set up to review the Council's Code of Conduct and underpinning processes as they had been in operation for just over a year. A number of good comments had been received and the Monitoring Officer thanked participants for their input.

The following amendments to the existing Code of Conduct were proposed by the Task Group:

- a) The scope of when the code was applicable should be reviewed and if appropriate clarified;
- b) Footnotes pertaining to the Bribery Act 2010 and the Local Authority Code of Publicity should be inserted;
- c) The terms 'you must' and 'you must not' to be inserted into the Code relating to the obligations of Members;
- d) The level at which gifts and hospitality should be declared to be reviewed and if appropriate amended;

In addition the following amendments to the existing procedures were proposed by the Task Group:

- a) In future there would be an assumption that hearings should take place in public, in reality Members would be asked to vote on whether to go into Part II or not after hearing representations from the subject member or complainant;
- b) The flowchart (Appendix B) to be amended to allow the Advisory Panel to refer an investigation back to the investigator if appropriate; and
- c) The flowchart to be amended to include naming the meeting between the Monitoring Officer and the Independent Person as the 'Individual Assessment Meeting'.

The Standards Committee after considering the proposals agreed that the scope of when the Code was applicable should be amended to read as follows: 'This Code applies to you whenever you are acting in your capacity as a member of West Berkshire Council:

- a) When acting as a representative of the Council;

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- b) At briefing meetings with officers and members of the public;
- c) When corresponding with the authority other than in your private capacity.'

The insertion of the footnotes relating to the Bribery Act 2010 and the Local Authority Code of Publicity were welcome additions. The Standards Committee also felt that the layout using the terms 'you must' and 'must not' clarified the document.

Councillor Virginia von Celsing arrived at 5.18pm.

After some discussion it was agreed that the level at which Members should declare the receipt of a gift or hospitality should remain at £25.00. The Committee also requested that mention be inserted of 'serial givers'.

The typographical error on page 24 to be amended with the word 'vacation' being replaced by 'vocation'.

Members considered the introduction of the Social Media Protocol and agreed that it would be a useful tool for guiding Members. They also felt that it would also be a useful tool in assisting the Standards Committee should they be required to consider a complaint relating to the use of social media in the future. They would therefore be recommending that Full Council adopt the protocol.

RESOLVED that: the revised Code of Conduct, subject to the inclusion of the amendments agreed at the meeting, and the Social Media Protocol for Members be recommended to Council for approval.

(The meeting commenced at 5.00 pm and closed at 5.50 pm)

CHAIRMAN

Date of Signature

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DRAFT

Note: These Minutes will remain DRAFT until approved at the next meeting of the Committee

STANDARDS COMMITTEE

MINUTES OF THE VIRTUAL MEETING HELD ON WEDNESDAY, 11 DECEMBER 2013

Councillors Present: Peter Argyle (Chairman), Adrian Edwards, Mollie Lock, Garth Simpson and Virginia von Celsing

Councillor Absent: Councillor Gwen Mason

PART I

16. Declarations of Interest

Councillors Adrian Edwards and Mollie Lock declared an interest in Agenda Item 3, and reported that, as their interest was personal and prejudicial but not a disclosable pecuniary interest, they would not take part in discussions or vote on the matter.

17. Request for a Dispensation

(Councillors Mollie Lock and Adrian Edwards declared a personal and prejudicial interest but not a disclosable pecuniary interest in Agenda item 3 by virtue of the fact that they were two of the Members that had applied for a dispensation. As their interest was personal and prejudicial they took no part in the debate or voting on the matter).

The Committee considered a report (Agenda Item 3) concerning an application for dispensations for Councillors David Allen, Howard Bairstow, Jeff Beck, Brian Bedwell, Dominic Boeck, Jeff Brooks, Hilary Cole, Roger Croft, Richard Crumly, Adrian Edwards, Sheila Ellison, Marcus Franks, John Horton, Carol Jackson-Doerge, Alan Law, Mollie Lock, Royce Longton, Alan Macro, Tim Metcalfe, Andrew Rowles, Anthony Stansfeld, Julian Swift-Hook, Ieuan Tuck and Tony Vickers to be able to debate and vote on Recommendation 4 to Item 15 'Council Tax Reduction Scheme 2014/15' on the 12 December 2013 Council agenda as well as any associated amendments or discussions arising at the meeting.

One of the Disclosable Pecuniary Interests (DPIs) which Members were required to disclose under the Authority's Code of Conduct was "Membership of other bodies: Details of any body exercising functions of a public nature of which you are a member or in a position of general control or management."

It followed, therefore, that a District Councillor who was also a Town or Parish Councillor had a Disclosable Pecuniary Interest (DPI) to disclose in relation to item 15 (Council Tax Reduction Scheme 2014/15 – specifically Recommendation 4) on the 12 December 2013 Council agenda as it included a recommendation that "No transfer of funding will be made to parish and town councils".

The Standards Committee was asked to consider whether or not to grant a dispensation on the basis that "the authority considers that the dispensation is in the interests of persons living in the authority's area" might be applicable. This was due to the fact that 25 of the 48 Councillors who had notified Officers that they would be present at the Council meeting had notified the Monitoring Officer that they had a DPI. The Monitoring Officer was of the view that this issue was substantive and a failure to grant a

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dispensation would impede the transaction of the business because of the number of members having the same DPI.

RESOLVED that:

Councillors David Allen, Howard Bairstow, Jeff Beck, Brian Bedwell, Dominic Boeck, Jeff Brooks, Hilary Cole, Roger Croft, Richard Crumly, Adrian Edwards, Sheila Ellison, Marcus Franks, John Horton, Carol Jackson-Doerge, Alan Law, Mollie Lock, Royce Longton, Alan Macro, Tim Metcalfe, Andrew Rowles, Anthony Stansfeld, Julian Swift-Hook, Ieuan Tuck and Tony Vickers be granted a dispensation be able to debate and vote on Recommendation 4 to Item 15 Council Tax Reduction Scheme 2014/15 as well as any associated amendments or discussions arising at the meeting.

(This was a virtual meeting)

CHAIRMAN

Date of Signature

Agenda Item 4.

Title of Report:	Monitoring Officer's Quarterly Update Report to the Standards Committee – Quarter 3 of 2013/14
Report to be considered by:	Standards Committee
Date of Meeting:	13 January 2014
Forward Plan Ref:	SC2693

Purpose of Report: To provide an update on local and national issues relating to ethical standards and to bring to the attention of the Committee any complaints or other problems within West Berkshire.

Recommended Action: To note the report.

Reason for decision to be taken: The Standards Committee is responsible for ensuring that District and Town/Parish Councillors in West Berkshire are aware of the standards of conduct expected of them and that they observe those standards.

Other options considered: None

Key background documentation:

- Localism Act 2011
- Reports to Council 10 May 2012 and Special Council on the 16 July 2012
- New Terms of Reference for the Standards Committee and Advisory Panel;
- A new Code of Conduct for West Berkshire District Councillors (Full Council December 2013).

The proposals will also help achieve the following Council Strategy principle:

CSP9 - Doing what's important well

The proposals contained in this report will help to achieve the above Council Strategy priorities and principles by:

Good governance arrangements are fundamental to the well being of the Council

Member Details	
Name & Telephone No.:	Councillor Peter Argyle
E-mail Address:	pargyle@westberks.gov.uk
Date Member agreed report:	Emailed to Councillor Argyle on 24 December 2013

Contact Officer Details	
Name:	David Holling
Job Title:	Head of Legal Services (Monitoring Officer)
Tel. No.:	01635 519422
E-mail Address:	dholling@westberks.gov.uk

Implications

Policy:	Revised policy and changes to processes adopted at Council in May 2012 and December 2013
Financial:	There are no financial issues arising from this report. All costs associated with the investigation of complaints are met from within existing budgets.
Personnel:	There are no personnel issues associated with this report
Legal/Procurement:	There are no legal issues arising from this report. The matters covered by this report are generally requirements of the Localism Act 2011 and regulations made under it.
Property:	None
Risk Management:	The benefits of this process are the maintenance of the Council's credibility and good governance by ensuring a high standard of ethical behaviour. The threats are the loss of credibility of the Council if standards fall.

Is this item relevant to equality?	Please tick relevant boxes	
	Yes	No
Does the policy affect service users, employees or the wider community and:		
<ul style="list-style-type: none"> Is it likely to affect people with particular protected characteristics differently? Is it a major policy, significantly affecting how functions are delivered? Will the policy have a significant impact on how other organisations operate in terms of equality? Does the policy relate to functions that engagement has identified as being important to people with particular protected characteristics? Does the policy relate to an area with known inequalities? 	<input type="checkbox"/>	X
Outcome (Where one or more 'Yes' boxes are ticked, the item is relevant to equality)		
Relevant to equality - Complete an EIA available at www.westberks.gov.uk/eia	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Not relevant to equality	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Executive Report

1. Introduction

- 1.1 The Localism Act 2011 was enacted on 15th November 2011 and it made fundamental changes to the system of regulation of the standards of conduct for elected and co-opted members of Councils and Parish Councils.
- 1.2 In order to ensure that the process is working effectively it was agreed that the Monitoring Officer would make a quarterly report to Standards Committee which sets out the number and nature of complaints received and draw the Committee's attention to areas where training or other action might avoid further complaints in the future. It also provides a means of updating the Committee on the progress of investigations together with any costs incurred and other activity that has taken place which may impact on the Standards Committee.

2. The Standards Regime

- 2.1 The Council adopted a new Standards Regime to implement the requirements of the Localism Act 2011 and the Regulations made under that Act. This included the following documents which were approved at Full Council on the 10 May 2012:
 - New Terms of Reference for the Standards Committee and Advisory Panel;
 - A new Code of Conduct for West Berkshire District Councillors;
 - New outline complaints procedures for breaches of that code;
 - A new dispensations procedure.
- 2.2 At the time the new Code was adopted it was agreed that the Code of Conduct would be reviewed a year after its inception. A small task group was set up in the summer of 2013 to consider the Council's existing Code and to suggest amendments in line with good practice. The Task Group comprised Councillors David Allen and Peter Argyle, James Rees (Independent Person) and Tony Renouf (Parish Councillor). The Task Group concluded that overall the revised Code and underpinning processes had worked well. Therefore only a number of minor amendments to the existing Code of Conduct were suggested. These included:
 - a) The scope of when the code was applicable should be reviewed and if appropriate clarified;
 - b) Footnotes pertaining to the Bribery Act 2010 and the Local Authority Code of Publicity should be inserted;
 - c) The terms 'you must' and 'you must not' to be inserted into the Code relating to the obligations of Members;
 - d) The level at which gifts and hospitality should be declared to be reviewed and if appropriate amended.
- 2.3 The following amendments to the existing procedures were also proposed by the Task Group:

- a) In future there would be an assumption that hearings should take place in public, in reality Members would be asked to vote on whether to go into Part II or not after hearing representations from the subject member or complainant;
 - b) The flowchart to be amended to allow the Advisory Panel to refer an investigation back to the investigator if appropriate; and
 - c) The flowchart to be amended to include naming the meeting between the Monitoring Officer and the Independent Person as the 'Individual Assessment Meeting'.
- 2.4 The Standards Committee met on the 14 October 2013 to consider the Task Group's proposals and agreed to make the following recommendations to Council.
- a) that the scope of when the Code was applicable should be amended as set out in the revised document;
 - b) the insertion of the footnotes relating to the Bribery Act 2010 and the Local Authority Code of Publicity should be retained;
 - c) the layout using the terms 'you must' and 'must not' clarified the document;
 - d) the level at which Members should declare the receipt of a gift or hospitality should remain at £25.00 and that mention be inserted of 'serial givers';
 - e) the typographical error on page 24 to be amended with the word 'vacation' being replaced by 'vocation' notwithstanding that this is contained in the Regulations;
 - f) the suggested amendments to the flowchart be accepted.
- 2.5 At the July Standards Committee meeting it was also suggested that it would be useful for the Council to produce a Social Media Protocol for Members. A draft protocol was discussed at the 14 October 2013 Standards Committee meeting and was referred to Full Council in December 2013 for adoption.
- 2.6 Following the adoption of the revised Code of Conduct and the Social Media Protocol by the December 2013 Council meeting copies of the documents have been sent to all parish and town councils should they wish to adopt or amend their existing documents.

3. Membership

- 3.1 At the Council meeting on the 27 September 2012 Mr James Rees and Mr John Bingham were appointed as Independent Persons in accordance with Section 28 of the Localism Act 2011.
- 3.2 The following Members have been appointed to the Standards Committee:
- Peter Argyle; (Chairman)
 - Adrian Edwards;

- Virginia von Celsing;
- Garth Simpson;
- Mollie Lock;
- Gwen Mason (Vice Chairman)
- Barry Dickens (co-opted non-voting Parish Councillor)
- Chris Bridges (co-opted non-voting Parish Councillor)

3.3 The following Councillors have been appointed to the Advisory Panel:

- Quentin Webb;
- Andrew Rowles;
- Geoff Mayes;
- David Allen;
- Tony Renouf (Parish Council Representative);
- Peter Iveson (Parish Council Representative);
- Mike Wall (Independent Member)
- Darren Peace (Parish Council Representative – Substitute)
- Lee Dillon (Parish Council Representative – Substitute)

3.4 There is still a vacancy for an Independent Member on the Advisory Panel.

4. Parish/ Town Councils

4.1 Parishes have continued to provide the Monitoring Officers with updates to parish councillors Registers of Interest and changes to their membership which are fed through and posted on the relevant websites.

5. Council's Constitution

5.1 Since October 2013 Part 4 (Council Rules of Procedure), Part 5 (Executive Rules of Procedure), Part 6 (Overview and Scrutiny Management Commission Rules of Procedure), Part 7 (Regulatory and Other Committees Rules of Procedure) and Part 13 (certain Codes and Protocols) have been amended.

6. Dispensations

6.1 The Standards Committee is reminded that the Standards Committee or Monitoring Officer may grant a dispensation to a Parish or District Council Member or co-opted Member in the following circumstances:

- (i) that so many Members of the decision making body have Disclosable Pecuniary Interests in a matter that it would “impede” the transaction of the business of that body. [In practice this means the decision making body would be inquorate as a result.]
- (ii) that without the dispensation the representation of different political groups on the body transacting the business would be such as to alter the outcome of the vote on that particular matter.
- (iii) that the authority considers that the dispensation is in the interests of persons living in the authority’s area.
- (iv) that without a dispensation no Member of the Executive would be able to participate in a particular matter. They suggest that where the Executive would be inquorate as a result then the particular decision could be dealt with by an individual Member of the Executive. It may be necessary to make provision in the Scheme of Delegation to enable this to occur although it does appear to be an unlikely event.
- (v) that the Council considers that it is “otherwise appropriate” to grant a dispensation. This is a particularly wide provision as to some extent is (iii) above.

- 6.2 It is considered that grounds (i) and (iv) are objective and it is recommended that dispensations on these grounds are delegated to the Monitoring Officer with an appeal to a Standards Committee. This would enable dispensations to be granted effectively “at the door of the meeting”.
- 6.3 Grounds (ii), (iii) and (v) are rather more complex and subjective and it is considered appropriate that the discretion to grant dispensations on these grounds remains with Standards Committee after consultation with the independent person.
- 6.4 Since October 2013 the Monitoring Officer and the Standards Committee have each been asked to grant a dispensation to a group of West Berkshire District Councillors.
- 6.5 Members will recall that following the introduction of the Localism Act 2011 one of the Disclosable Pecuniary Interests (DPIs) which Members are required to disclose under the Authority’s Code of Conduct is “any beneficial interest” in land within the Authority’s area. It follows, therefore, that a Member who owns or rents (and/or whose spouse/partner owns or rents) land or property within West Berkshire has a DPI to disclose when any matter to do with the setting of the council tax is being considered by the Authority. Under the previous Standards regime an automatic dispensation was granted in relation to this matter but this situation has not been replicated under the Localism Act 2011.
- 6.6 As a member who has a DPI in a matter cannot participate in any discussion of, or vote on, that matter unless they have been granted a dispensation, a dispensation needed to be granted to all relevant district Councillors to enable them to participate in any matter which has a bearing on the setting of the council tax. The Monitoring Officer granted the dispensation to allow all 52 Members to speak and vote on items pertaining to the setting of Council Tax on the basis that failure to grant a dispensation would impede the transaction of the business because of the number of members having the same disclosable pecuniary interest.

- 6.7 The Standards Committee considered a dispensation request from Councillors David Allen, Howard Bairstow, Jeff Beck, Brian Bedwell, Dominic Boeck, Jeff Brooks, Hilary Cole, Roger Croft, Richard Crumly, Billy Drummond, Adrian Edwards, Sheila Ellison, Marcus Franks, John Horton, Carol Jackson-Doerge, Alan Law, Mollie Lock, Royce Longton, Alan Macro, Tim Metcalfe, Andrew Rowles, Anthony Stansfeld, Julian Swift-Hook, Ieuan Tuck and Tony Vickers. The reason for the request was that one of the Disclosable Pecuniary Interests (DPIs) which Members are required to disclose under the Authority's Code of Conduct is "Membership of other bodies: Details of any body exercising functions of a public nature of which you are a member or in a position of general control or management."
- 6.8 It followed, therefore, that a District Councillor who is also a Town or Parish Councillor had a DPI to disclose in relation to one of the recommendations in a report to the 12 December 2013 Council meeting as it included a recommendation that "No transfer of funding will be made to parish and town councils".
- 6.9 A failure to grant this dispensation would have meant that 25 of the 48 Councillors that were due to be present at the December 2013 Council meeting would have been prevented from taking part in the discussion or voting on this item. In this instance it was considered that ground iii) "that the authority considers that the dispensation is in the interests of persons living in the authority's area" may be applicable and the matter was therefore referred to the Standards Committee for determination. The Standards Committee agreed to grant a dispensation in this instance.
- 6.10 In addition, the Monitoring Officer wrote to all Parish and Town Councils on the 12 November 2013 to remind them that under the provisions of the Localism Act 2011 the ability to grant dispensations in order to discuss precepts had been delegated to the Town or Parish Council. The Parish and Town Councils were reminded that if any such dispensations were granted this should be recorded in the ensuing set of minutes of the meeting at which the precept was set.

7. Complaints Against Councillors

- 7.1 During Quarter 3 of 2013/14 (October –December 2013) two complaints were received by the Monitoring Officer: NPC11/13 and NDC4/13.
- 7.2 The Monitoring Officer, in consultation with the Independent Person, concluded that in respect of NPC11/13 informal resolution would be the most appropriate course of action. The subject member was asked to write to the complainant and set out the circumstances surrounding the comments that she had made and explain that they were made in her private capacity and that she had not sought to cause any offence.
- 7.3 Under the previous regime if the complainant disagreed with this finding they could ask for the item to be reconsidered by a Review Sub-Committee. The Localism Act does not provide any appeals mechanism. However the decision could be open to Judicial Review by the High Court should the complainant wish to take up this option.
- 7.4 In respect of complaint NDC4/13 the complainant had asked for their identity to be kept confidential. Despite several attempts to contact the complainant no response has been received and therefore the complaint has not been progressed.
- 7.5 The Advisory Panel has not met during Quarter 3 nor has the Standards Committee met to consider any complaints.

8. Training or Other Action Identified to avoid Further Complaints

8.1 No training was undertaken during Quarter 3.

9. Conclusion

9.1 The number of complaints at this stage remains low and consequently no specific training needs have been identified. A number of minor changes have been made to the existing Code of Conduct for Members, primarily in respect of layout and it is hoped that these will clarify matters for members.

9.2 In addition in line with other principal Local Authorities a Social Media Protocol has been adopted ensure that councillors make use of social media effectively whilst avoiding potential accusations that they may be breaching the Council's Code of Conduct. It is also designed to ensure that the reputation of the Council and members is not adversely affected and that the Council is not subject to legal challenge as a result of information posted on social networking sites or blogs.

Appendices

There are no appendices to this report

Consultees

Local Stakeholders: N/A

Officers Consulted: Moira Fraser, Andy Day, Sarah Clarke

Trade Union: Not consulted

Agenda Item 5.

Title of Report:	Amendments to Appendix D (Gifts and Hospitality) and E (Procedure for Local Determination of Allegations) to Part 13 (Codes and Protocols) of the Constitution
Report to be considered by:	Council
Date of Meeting:	04 March 2013
Forward Plan Ref:	Will feed into C2771

Purpose of Report:	To consider any changes to the way Members need to deal with offers of Gifts and Hospitality and the procedure for determining complaints made under the Standards Regime.
Recommended Action:	To discuss the amendments that may be required to be made to Appendix D (Gifts and Hospitality) and E (Procedure for Local determination of local Allegations) as set out in Part 13 (Codes and Protocols) of the Councils Constitution for the Governance and Audit Committee and Full Council to agree.
Reason for decision to be taken:	To ensure that the Council's Constitution accords with legislation and changes to other parts of the Constitution.
Other options considered:	None
Key background documentation:	Localism Act 2011
<p>The proposals will also help achieve the following Council Strategy principles:</p> <p><input checked="" type="checkbox"/> CSP7 - Empowering people and communities</p> <p><input checked="" type="checkbox"/> CSP9 - Doing what's important well</p> <p>The proposals contained in this report will help to achieve the above Council Strategy priorities and principles by: ensuring that the constitution is up to date and accords with the relevant legislation</p>	

Member Details	
Name & Telephone No.:	Peter Argyle/ Jeff Beck
E-mail Address:	pargyle@westberks.gov.uk jbeck@westberks.gov.uk
Date Member agreed report:	Emailed on 24 December 2013

Contact Officer Details	
Name:	David Holling
Job Title:	Head of Legal Services
Tel. No.:	01635 519422
E-mail Address:	dholling@westberks.gov.uk

Implications

Policy:	Will require Part 13 (Codes and Protocols) of the Constitution to be amended
Financial:	None – will be undertaken within existing resources
Personnel:	None
Legal/Procurement:	Will require changes to the Constitution in accordance with relevant Local Government Acts
Property:	None
Risk Management:	None

Is this item relevant to equality?	Please tick relevant boxes		Yes	No
Does the policy affect service users, employees or the wider community and:				
<ul style="list-style-type: none"> • Is it likely to affect people with particular protected characteristics differently? • Is it a major policy, significantly affecting how functions are delivered? • Will the policy have a significant impact on how other organisations operate in terms of equality? • Does the policy relate to functions that engagement has identified as being important to people with particular protected characteristics? • Does the policy relate to an area with known inequalities? 	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Outcome (Where one or more 'Yes' boxes are ticked, the item is relevant to equality)				
Relevant to equality - Complete an EIA available at www.westberks.gov.uk/eia	<input checked="" type="checkbox"/>			
Not relevant to equality	<input checked="" type="checkbox"/>			

Is this item subject to call-in?	Yes: <input type="checkbox"/>	No: <input checked="" type="checkbox"/>
If not subject to call-in please put a cross in the appropriate box:		
The item is due to be referred to Council for final approval	<input checked="" type="checkbox"/>	
Delays in implementation could have serious financial implications for the Council	<input type="checkbox"/>	
Delays in implementation could compromise the Council's position	<input type="checkbox"/>	
Considered or reviewed by Overview and Scrutiny Management Commission or associated Task Groups within preceding six months	<input type="checkbox"/>	
Item is Urgent Key Decision	<input type="checkbox"/>	
Report is to note only	<input type="checkbox"/>	

Executive Summary and Report

1. Introduction

- 1.1 West Berkshire Council's Code of Conduct for Councillors was adopted by Full Council at its meeting on 10th May 2012 and came into effect from 1st July 2012. A scheduled review of the Code of Conduct and the underpinning processes was undertaken in the second half of 2013 by both the Standards Committee and the Governance and Audit Committee. The ensuing amendments were adopted at the December 2013 Council meeting.
- 1.2 It is therefore now necessary to re-write Appendix E (Procedure for Local Determination of Allegations) to reflect the revised governance arrangements and procedures for dealing with complaints made against district, town and parish councillors.
- 1.3 Following an internal audit of the management of the Constitution in 2010 it was noted that one of the responsibilities of the Finance and Governance Group is to have ownership of the Council's Constitution. The content of the Local Code of Corporate Governance says that there will be an annual review of the operation of the Constitution.
- 1.4 A timetable has been established for the Finance and Governance Group to review individual sections of the Constitution and a number of Officers have been involved in revising specific parts of the Constitution. This report proposes amendments to Appendix D (Gifts and Hospitality) to Part 13 (Codes and Protocols) of the Constitution.
- 1.5 The existing protocol for dealing with gifts and hospitality by Members did neither accord with legislative changes nor current nor best practice and it has therefore also been substantially re-written.
- 1.6 The Independent Persons have been consulted in the suggested changes. Mr James Rees commented that "the provision that an offer of gifts must be cleared by the Monitoring Officer in advance is a little uncomfortable as, in real life, there must be occasions when it will be difficult for the Councillor concerned to refuse a gift without causing offence or without having the opportunity to refuse the gift. The first situation is covered in the draft. I am not sure about the second."
- 1.7 Mr John Bingham commented that "Appendix D - gifts and hospitality - Rule'1' would put the recipient under some pressure particularly at, say, the conclusion of a complicated discussion which may bring great benefits to the council. In thinking about the remainder of the 'rules' one can understand the need for restrictions, I just feel, there should be, perhaps, a little more lee-way."

2. Proposals

- 2.1 The Standards Committee are asked to consider and comment on the revised procedure and protocol before recommending the documents to the Governance and Audit Committee for consideration and to full Council for adoption.

3. Equalities Impact Assessment Outcomes

3.1 This item is not relevant to equality.

4. Conclusion

4.1 The Standards Committee is asked to comment on and where appropriate amend the rewritten Appendix D (Gifts and Hospitality) and E (Procedure for Local Determination of Allegations) to Part 13 (Codes and Protocols) of the Constitution.

Appendices

Appendix A – Gifts and Hospitality

Appendix B – Procedure for Local Determination of Allegations

Consultees

Local Stakeholders: N/a

Officers Consulted: Andy Day, Sarah Clarke, Moira Fraser,

Trade Union: Not consulted.

Appendix D

Gifts and Hospitality: A Code of Conduct for Councillors

Introduction

This Guidance is intended to complement the Council's Members' Code of Conduct. It offers guidance to Councillors with regard to best practice and the need to preserve integrity and demonstrate good governance. It has been written to protect both individual Councillors and the Council itself. The intention of the Guidance is to ensure that the Council can demonstrate that no undue influence has been applied or could be said to have been applied by any supplier or anyone else dealing with the Council and its stewardship of public funds.

This protocol sets out Councillors' obligations to declare gifts and hospitality received in their capacity as Members of the Council and to provide guidance on those obligations. A breach of this protocol amounts to a breach of the Council's Code of Conduct and a complaint can be reported to the Monitoring Officer or the Standards Committee and dealt with in accordance with the Members' Complaints Procedure.

This Code does not apply to the acceptance of any facilities or hospitality which may be provided to you by the Council.

What are the rules?

1. Prior to accepting **any** gift or hospitality with a value of **£25** or more, a Councillor must seek authorisation from the Monitoring Officer. Only once consent has been given should the Councillor take ownership.
2. You must register **every** individual gift or item of hospitality received that is over £25 in value.
3. Members should be aware of serial givers or repeat offers of hospitality as these may indicate a pattern of behaviour which may result in a breach of the Code of Conduct for Councillors.
4. Your registration of the gift or hospitality must be made *within 28 days of the date you received it*, by completing and sending the attached form to the Member Services Officer(s) (working on behalf of the Monitoring Officer).
5. You must declare the *value (or estimated value)* and details of the gift or hospitality received on the form, as well as whether the donor of the gift

has or has had in the past or is likely to have in the future, dealings with the Council.

6. You must declare, if the gift or hospitality has been accepted, the reason for that acceptance.
7. The form must be signed by you *personally*.
8. An invitation that appears over-generous should be declined; it could be seen as an inducement to affect a Council decision.
9. Even if all Members, or a large number of them, received the same gift or were invited to the same event, they must each make *individual* notifications.
10. Failure to comply with these rules is a breach of the Members' Code of Conduct and could lead to a complaint being reported to the Monitoring Officer or the Standards Committee.
11. The press and public have the right to inspect your gift and hospitality declaration forms. The Register is also public via the Council's web site at [XXXX](#). (follow link to 'Councillors' page). (You should have this in mind when completing declaration forms, as we cannot edit your comments.)

Should I accept gifts and hospitality?

Registering gifts or hospitality received under the Code of Conduct does not automatically mean it is appropriate or sensible to accept them in the first place. The general test of caution is one of common sense. Would the public question the appropriateness of hospitality or gifts received by the Councillor? If you are concerned the acceptance could be misinterpreted you should decline it or declare it.

You must never solicit a gift or hospitality, or accept any gift or hospitality offered as an inducement or which puts you under any obligation. On the other side of the coin, Councillors often do not wish to cause offence by rejecting a gift or offer of hospitality.

Particular care should be taken in relation to gifts and hospitality offered by current or potential contractors for the Council. In certain cases the acceptance of a gift or hospitality from these sources could constitute a criminal offence, even if declared. If there is any suspicion that any offer is intended as an inducement then the matter should be reported in accordance with established procedures.

The Bribery Act 2010, which came into force on 1 July 2011, creates offences of "bribing another person" (active bribery) and of "being bribed" (passive bribery).

The offences consist of “promising, offering or giving” or “requesting, agreeing to receive or accepting an advantage (financial or otherwise)” in circumstances involving the improper performance of a relevant function or activity. In the context of the Council the relevant function or activity means a public activity which a reasonable person would expect to be performed in good faith, impartially or in a particular way by a person performing it in a position of trust. There is a maximum penalty of 10 years imprisonment or an unlimited fine for these offences.

In considering whether to accept gifts or hospitality Members should have regard to the following general principles:

1. Never accept a gift or hospitality as an inducement or reward for anything which you do as a Councillor;
2. Only accept a gift if there is a commensurate benefit to the Council;
3. Never accept a gift or hospitality which might be open to misinterpretation;
4. Never accept a gift or hospitality which puts you under an improper obligation; and
5. Never solicit a gift or hospitality.

Must I register all gifts and hospitality which I receive or am offered?

You must register any gifts or hospitality worth over £25 that you receive in connection with your official duties as a Member. Where the value of any gift or hospitality is under £25 you may wish to declare receiving it. You should register any offer of gift and/or hospitality over £25 which you have declined, since this protects both your position and that of the Council.

Only gifts and hospitality offered to you in your official capacity must be registered. Gifts and hospitality offered to you in your private capacity, of whatever value, should not be registered at all. You do not need to register gifts and hospitality which are not related to your role as a Member. However, you should always consider whether any gifts or hospitality could be seen as being connected with your public role as a Member.

What is the value of the gift/ hospitality?

You may have to estimate how much a gift or some hospitality is worth. The form requires you to give an estimate of the value. It is suggested that you take a common sense approach, and consider how much you reasonably think it would cost a member of the public to buy the gift, or provide the hospitality in question. If as a result you estimate that the value is greater than £25, then you should declare receipt.

Where hospitality is concerned, you can disregard catering on-costs and other overheads, e.g. staff and room hire. If the sandwiches or your meal, including drinks and alcohol, would cost £25 in a comparable establishment providing food of comparable quality, register it.

If you are not certain whether the value is under £25, the safest course is to register it and give an approximate value.

What about gifts of low value?

There is no requirement to declare gifts of a value of less than £25. However, in order to be transparent, if you receive a series of related gifts in connection with your role as a Member which are all under £25, but together total above £25, then you should register them if they are from the same person. If the small gifts received from different persons are connected in some way, it is *good practice* to register them.

How do I register gifts and hospitality I receive?

You must give the Member Services Officer(s) (working on behalf of the Monitoring Officer) written details about the gifts and hospitality you are offered using the standard form for this purpose. The best advice is to get into the habit of registering things as soon as possible, and if in doubt, register receipt. The appropriate form is available on the Council's website or from Strategic Support.

Which organisation do I make declarations to?

As mentioned, anything received in your private capacity is not declarable. However, what is your "*official capacity*"? So far as the Council is concerned it is when you do any of the following -

- a) When acting as a representative of the Council;
- b) At briefing meetings with officers and members of the public;
- c) When corresponding with the authority other than in your private capacity.

How to deal with the issue of when things are received in different capacities or where there are overlapping roles:

Only use the Council's gifts and hospitality registration declaration form for things received in your capacity as a West Berkshire District Councillor, and send it to the Member Services Officer(s) (working on behalf of the Monitoring Officer).

If you receive things in another capacity, i.e. arising from holding another public office, register in accordance with whatever code is in place for that other body. If a particular body does not actually require you to register anything, then you do

not need to do anything in respect of the receipt of a gift or hospitality directly attributed to your role within that organisation.

If you cannot decide what capacity you received something in, provided you declare the gift/ hospitality *at least once* with the body that appears to be the most appropriate, you will have fulfilled your duties. The overriding purpose is public transparency.

What happens if I do not register a gift or hospitality?

Failure to notify the Monitoring Officer of the receipt of a gift or hospitality is a breach of this protocol and consequently also a breach of the Code of Conduct. An alleged breach of the Code can be the subject of a complaint to the Monitoring Officer or Standards Committee which could result in the matter becoming the subject of an investigation.

Gifts which are more likely to be considered acceptable

It is up to individual Members to decide whether or not to declare gifts and hospitality

The Council has however agreed that in appropriate circumstances members may choose to accept gifts and hospitality in the following circumstances:

- Civic hospitality provided by another authority;
- modest refreshments received in the ordinary course of duties as a councillor e.g. at formal meetings or when in contact with constituents;
- Tickets for sporting or cultural events which are sponsored or supported by the Council;
- Small gifts of low intrinsic value i.e. below £25 which are branded with the name of the company or organisation making the gift (e.g. diaries, calendars etc);
- Modest souvenir gifts with a value below £25 from another public body given on the occasion of a visit by or to that body;
- Hospitality received in the course of an external visit or meeting which has been authorised by the Council. In such cases the arrangements should be made by officers rather than the members who will be benefiting and hospitality should be commensurate with the nature of the visit; and
- Other unsolicited gifts where it is impracticable to return them or where refusal would in the circumstances cause offence. In such cases you may wish to pass the gift to the Chairman's Charity.

Receipt of gifts and hospitality of this type is still subject to the requirements of the protocol regarding the notification to the Monitoring Officer of gifts and hospitality of greater than £25 in value. The appropriateness of acceptance should always be considered beforehand. It should also be noted that the mere

fact that a gift or hospitality does not have to be notified under the protocol does not necessarily mean that it is appropriate to accept it.

Will the register be open to the public?

Yes, the register is available to the public in the same way as the register of disclosable pecuniary interests is. It is open for inspection and also available on the Council's website.

Regular updates of declarations will be reported to the Standards Committee as part of the quarterly performance monitoring reports.

Further assistance

It is each Member's own individual responsibility to observe this protocol, but the Monitoring Officer will help where possible. If you have any questions at all please contact the Monitoring Officer, Deputy Monitoring Officer(s) or the Democratic and Electoral Services Manager for advice and assistance.

Definitions

“Gift or hospitality” includes:

- (i) the free gift of any goods or services
- (ii) the opportunity to acquire any goods or services at a discount or on terms which are more advantageous than those which are available to the general public.
- (iii) the opportunity to obtain any goods or services which are not available to the general public.
- (iv) the offer of food, drink, accommodation or entertainment, or the opportunity to attend any cultural, sporting or entertainment event.

Reference to the “value” or “cost” of any gift or hospitality are references to the higher of:

- (i) your estimate of the cost to the person or organisation of providing the gift or consideration;
- (ii) the open market price which a member of the public would have to pay for the gift or hospitality, if it were made available commercially to the public, less the case sum, of any contribution which you would be required to make toward that price to the person or organisation providing or offering the gift or hospitality.

Appendix E

Procedure for Local Determination of Allegations

The Localism Act 2011

1. Introduction

- 1.1 The procedure referred to in this document sets out the process which will be followed in the local determination of allegations of misconduct made against either a district councillor or parish/town councillor, where West Berkshire Council is the responsible authority. The purpose of the procedure is to ensure that every effort is made to deal with the complaint as smoothly as possible and to ensure that complaints are dealt with in accordance with the relevant legislation and within the agreed timescales. All allegations will be dealt with objectively, fairly and consistently. The Monitoring Officer will also have regard to what is in the public interest and the Council's fiduciary duty to the tax payers.
- 1.2 Arrangements for dealing with complaints against councillors underwent significant changes following the introduction of the Localism Act 2011. West Berkshire Council's new arrangements came into effect on the 01 July 2012 and were reviewed in December 2013.
- 1.3 As part of the revised Standards regime all complaints are received by the Monitoring Officer who has delegated authority to take an initial decision on whether a complaint requires investigation, some other form of action, should be referred to the Director of Public Prosecution or the Police or whether no further action is required.
- 1.4 Within this procedure references to the "Monitoring Officer" also refers to their duly appointed representative(s).
- 1.5 Within this procedure references to the "Head of Strategic Support" also refers to their duly appointed representative(s).
- 1.6 The person making the complaint is referred to as the *complainant* and the district/town or parish councillor being complained about is referred to as the *subject member*.

2. Process for Dealing with Complaints – Initial Assessment

- 2.1 A flowchart summarising the procedure that will be followed when a complaint is received is attached at Appendix A to this procedure.
- 2.2 Once the Monitoring Officer has received a formal complaint they need to

ensure that it is acknowledged within five working days of receipt.

2.3 All complaints must be submitted in writing (electronic submissions are acceptable). The Monitoring Officer also needs to ensure that the complaint complies with the Council's **Assessment Criteria** i.e.

- it is a complaint against one or more named councillors of the authority or an authority covered by West Berkshire Council as responsible authority;
- the subject member was in office at the time of the alleged conduct and the relevant Code of Conduct was in force at the time;
- the complaint, if proven, would be a breach of the Code under which the councillor was subject at the time of the alleged misconduct.

2.4 If the complaint fails one or more of these tests it cannot be investigated as a breach of the Code, and the complainant will be informed that no further action will be taken in respect of the complaint.

2.5 A complaint can also be rejected if :

- the complainant fails to provide enough information to base a decision on;
- the subject member is no longer a councillor of the authority (although if they are a member of another authority the Monitoring Officer could refer the complaint to that authority);
- the complaint has been the subject of an investigation or other action relating to the Code of Conduct or the complaint has been the subject of an investigation by other regulatory authorities;
- the complaint is about something that happened so long ago that there would be little benefit in taking action now;
- the complaint is too trivial to warrant further action;
- the complaint appears to be simply malicious, politically motivated or tit-for-tat;
- the complainant appears to be submitting persistent or prolific complaints.

2.6 Following receipt of a complaint that meets the agreed Assessment Criteria the complainant will be asked if there is any additional information they wish to submit and they may also be asked to clarify any issues that they have raised.

2.7 A copy of the complaint will also be sent to the subject member (unless the complainant has asked to keep their identity confidential – see Requests for Confidentiality) for written comment. The subject member will also have the opportunity to submit any additional information that they feel will support their submission. This can include written witness statements.

2.8 Both the subject member and the complainant can consult one of the Council's Independent Persons directly to seek advice. The Council has therefore appointed two Independent Persons to ensure that a conflict situation does not arise i.e. once they have been consulted the Independent

Person will not be involved in the decision making process.

- 2.9 The Monitoring Officer will also collate any additional information (e.g. minutes and agendas of meetings, information on websites, the applicable Code of Conduct, Standing Orders and any other relevant policies, background information including correspondence and witness statements) that will assist the initial assessment process.
- 2.10 An Initial Assessment meeting will take place usually within 20 *clear working days of receipt of the complaint. The Monitoring Officer will consult the Independent Person at this meeting. As this is not a public meeting neither the subject member nor the complainant, nor members of the press or public will have the opportunity to attend or speak at the meeting. In accordance with the Localism Act 2011, following the Initial Assessment the Monitoring Officer (in consultation with the Independent Person) is able to decide on one of the following four outcomes:
- no further action will be taken on the complaint;
 - some form of informal resolution will be sought;
 - the matter will be referred to the Director of Public Prosecution or the Police where it is suspected that some form of criminal conduct has occurred in relation to interests that have not been disclosed;
 - the complaint will be investigated fully by an independent investigator.

*(*clear working days do not include weekends, bank holidays, the date of receipt of the complaint and the day of the meeting)*

- 2.11 The subject member, complainant and if appropriate the clerk to the relevant town or parish council will be notified of the outcome of the Initial Assessment meeting usually within three clear working days of the meeting taking place. Details of the discussion will be included in an Initial Decision Notice which will be sent to the subject member, the complainant and the relevant parish or town clerk if appropriate.

3. Requests for Confidentiality

- 3.1 In the interests of fairness and in compliance with the rules of natural justice, district, town and parish councillors who are complained about have a right to know who has made the complaint and the substance of the allegation(s) made against them.
- 3.2 Complainants do however have the right to request that their identity is not revealed to the subject member and the Monitoring Officer, in consultation with the Independent Person, may grant such requests at their discretion in exceptional circumstances. The Monitoring Officer is unlikely to withhold a complainant's personal details or the details of the complaint unless they consider there to be good reasons to believe that a complainant has justifiable grounds for anonymity/confidentiality.

- 3.3 When considering a request for confidentiality the Monitoring Officer, in consultation with the Independent Person, will consider any such request alongside the substance of the complaint itself and apply the following criteria:
- the complainant has reasonable grounds for believing that they will be at risk of physical harm from, or that they may be victimised or harassed by the subject member(s) against whom they are submitting the complaint (or from or by a person associated with the subject member(s));
 - the complainant is an officer of a relevant authority who fears the consequences as regards their employment if their identity is revealed;
 - the complainant works closely with the subject member, and is therefore afraid of the consequences to their employment or of losing their job;
 - there is a medical risk to the complainant's health if their identity is revealed and is this supported by medical evidence;
 - the complainant has reasonable grounds for the belief that they may receive less favourable treatment from the Council because of the identity and/or seniority of the subject member(s) in terms of any existing Council service provision or any tender/contract that they may have or are about to submit to the Council; or
 - other exceptional circumstances?
- 3.4 When considering a request for confidentiality against these criteria the Monitoring Officer will also:
- balance the request for confidentiality against the substance of the complaint;
 - consider whether it is possible to investigate the complaint without making the complainant's identity known to the subject member, given the requirement for a proper investigation.
- 3.5 If the Monitoring Officer, in consultation with the Independent Person, decides to refuse a request for confidentiality they may decide to offer the complainant the opportunity to withdraw their complaint. When deciding whether to allow a complaint to be withdrawn the Monitoring Officer must consider whether the public interest in proceeding with an investigation outweighs the complainant's wish to have their identity withheld from the subject member.

4. Outcome of Initial Assessment – No Further Action

- 4.1 If, following the Initial Assessment, the Monitoring Officer, in consultation with

the Independent Person, decides that no further action should be taken on a complaint then this will be the end of the matter.

- 4.2 Under the previous regime if the complainant disagreed with this outcome they could appeal to the Review Sub-Committee of the Standards Committee. The Localism Act 2011 does not provide any appeals mechanism. However the decision could be open to Judicial Review by the High Court should they wish to take up this option. The complainant would be advised to seek independent legal advice about taking up this option.

5. Outcome of Initial Assessment – Informal Resolution or Other Action

- 5.1 If, following the Initial Assessment, the Monitoring Officer, in consultation with the Independent Person, decides that other action should be taken on the complaint the nature, format and timescales for this action needs to be articulated in the Initial Assessment Notice.
- 5.2 If other action is determined as appropriate and either party declines to comply, this will be reported to the Monitoring Officer who may decide to treat the facts as a further complaint.
- 5.3 Under the previous regime if the complainant or subject disagreed with this outcome they could appeal to the First Tier Tribunal of the Standards Board. The Localism Act 2011 does not provide any appeals mechanism. However the decision could be open to Judicial Review by the High Court should they wish to take up this option. The complainant or subject member would be advised to seek independent legal advice about taking up this option

6. Outcome of the Initial Assessment – Referred to the Director of Public Prosecution or the Police

- 6.1 If, following the Initial Assessment, the Monitoring Officer, in consultation with the Independent Person, decides that the matter needs to be referred to the Director of Public Prosecution or the Police both the subject member and the complainant and if appropriate the town or parish clerk will be informed.
- 6.2 The Monitoring Officer will pass to the Police or Director of Public Prosecutions any relevant evidence relating to the allegations received which disclose behaviour that may constitute a criminal offence, whether under the ethical standards provisions of the Localism Act or otherwise.
- 6.3 If potential criminal offences are identified and the complaint is referred for investigation with a view to prosecution the appropriate procedures of the Police or Council will be followed so as to protect the integrity of the investigation.

7. Outcome of the Initial Assessment – Investigation by Appointed Person

- 7.1 If, following the Initial Assessment, the Monitoring Officer, in consultation with the Independent Person, decides that if the allegations were substantiated they may constitute a breach of the Code of Conduct of the relevant authority, they can refer the complaint for investigation.
- 7.2 The Monitoring Officer will usually appoint an external independent investigator to undertake an investigation on behalf of the Standards Committee. The Council will notify the complainant and subject member of the details of the investigator who will contact them to arrange an interview with them. In addition the investigator may wish to interview additional witnesses. All information provided to the Standards Committee already will be given to the investigator.
- 7.3 Once the investigation is concluded (preferably within three months of receipt of instruction) the investigator will be required to produce a written report setting out their findings. The Monitoring Officer, subject member, the complainant and the Independent Person(s) will all be provided with an opportunity to comment on the initial report.
- 7.4 The subject member and the complainant will be asked to complete a form articulating any areas of the report they disputed. All comments would need to be received within 10 clear working days of receipt of the draft report. The complainant will also be given an additional three days to comment on any of the subject member's comments on the draft report.

8. Process for Dealing with Complaints – Advisory Panel

- 8.1 The report, including the comments from the relevant parties, would initially be assessed by the Standards Committee's Advisory Panel. The Panel can refer the report back to the investigator where additional detail or clarity is required. The Monitoring Officer should ensure that the Panel meeting takes place within 20 clear working days of receipt of the final investigator's report, but must allow the relevant parties adequate time to consider and respond to the report.
- 8.2 **No Evidence of Breach** – Where the investigator has concluded that there was no evidence of a breach of the Code of Conduct the Advisory Panel must consider if it concurs with the investigator's finding(s). If the Panel concurs that no breach has occurred the matter will be considered to be closed and relevant parties will be informed of the outcome within three clear working days of the meeting. The Advisory Panel meeting is not a public meeting and there will be no requirement to publish any of the findings.
- 8.3 As this meeting is not a public meeting neither the subject member nor the complainant will have the opportunity to attend or speak at the meeting.

- 8.4 The Localism Act does not provide any appeals mechanism. However the decision could be open to Judicial Review by the High Court should the complainant wish to take up this option. The complainant would need to seek independent legal advice about taking up this option.
- 8.5 If the Advisory Panel disagrees with the finding that no breach has occurred they can refer the complaint to the Standards Committee for determination. They should set out any issues they disputed and their recommendation can include an opinion on a suitable sanction should the Standards Committee concur with their opinion.
- 8.6 The relevant parties will be informed of the outcome within three clear working days of the Advisory Panel meeting.
- 8.7 **Evidence of Breach** – Where the investigator has concluded that there was evidence that a breach of the relevant Code of Conduct had occurred, the Advisory Panel must decide if it concurs with the investigator's finding.
- 8.8 The Advisory Panel must then make a recommendation to the Standards Committee. The recommendation must set out whether or not they concur with the investigator's findings, any issues they disputed and can include a recommendation setting out their opinion on a suitable sanction if they agree that a breach of the Code of Conduct has occurred. The relevant parties will be informed of the recommendation within three clear working days of the Advisory Panel meeting. As this meeting is not a public meeting neither the subject member nor the complaint will have the opportunity to attend or speak at the meeting and the findings will not be published.

9. Arranging the Meeting of the Standards Committee

- 9.1 The meeting of the Standards Committee must be held within 15 clear working days of the Advisory Panel meeting or as soon as practicably possible after the meeting. The Head of Strategic Support shall arrange a time and date for the Standards Committee to meet and consider the matter.
- 9.2 At least 5 clear working days before the date of the meeting of the Standards Committee, the Head of Strategic Support shall notify the subject member, complainant and any relevant witnesses of the date, time and place of the meeting and the membership of the Standards Committee at which the matter will be considered.
- 9.3 At least 5 clear working days before the day of the meeting of the Standards Committee, the Head of Strategic Support will send to each member of the Standards Committee, to the subject member and the complainant and to the Monitoring Officer, a copy of the paperwork for the meeting. The paperwork will include the agenda for the meeting of the Committee, a copy of the investigator's report, a copy of any written statement in response to the report which has been received from the subject member, complainant and Independent Person and the recommendation from the Advisory Panel.

- 9.4 The Monitoring Officer may make the provision of any such copy conditional upon an appropriate undertaking of confidentiality until such time as the Head of Strategic Support makes the report available to the press and public or the Standards Committee agree that the press and public shall not be excluded from the meeting.
- 9.5 At the same time the Head of Strategic Support will write to the subject member and complainant and advise them that, at the commencement of the meeting, the Standards Committee will consider whether the press and public should be excluded from the meeting. There will be an assumption that the majority of hearings should take place in public.
- 9.6 All paperwork associated with the Standards Committee meeting will be subject to the Council's Access to Information Procedure Rules (see Part 8 of the Constitution).

10. Procedure at the Meeting

10.1 Attendance of the Subject Member and Complainant

- (i) The subject member and complainant may arrange to be accompanied at the meeting at their own expense by a solicitor, counsel or friend.
- (ii) Where the subject member or complainant opt to be accompanied at the meeting by a solicitor, counsel or friend they must notify the Monitoring Officer of their intention to do so at least three clear working days before the meeting.
- (iii) If the subject member or complainant are not present at the start of the meeting, the Committee shall adjourn to enable them to attend, unless they are satisfied that there is sufficient reason for their failure to attend, in which case the Committee may resolve to proceed in their absence. Where the Committee proceeds in their absence, the procedure for the meeting shall be adapted as necessary, giving any representative of the subject member or complainant who is present such rights as would otherwise be accorded to them.

10.2 Order of business

The order of business at the meeting shall be as follows:

- (i) elect a person to preside if the Chairman or Vice-Chairman are not present;
- (ii) receive apologies for the inability to attend the meeting;
- (iii) approve the Minutes of the last meeting;
- (iv) receive any Declarations of Interest from Members;
- (v) consideration as to whether to adjourn or to proceed in the absence of the subject member or complainant;
- (vi) introduction of the Committee, Monitoring Officer (or their representative), Independent Person, independent investigator, the

- legal adviser to the Committee (if appropriate) the clerk, the subject member, complainant and any other witnesses present.
- (vii) any representation from the Monitoring Officer, or his representative and/or the subject member as to reasons why the Committee should exclude the press and public and determination as to whether to exclude the press and public. Where the Committee decides that it will not exclude press and public, the clerk shall at this point provide copies of the agenda and reports to any members of the press and public who are present.
 - (viii) consideration of the complaints in the order in which they have been received.

10.3 Speaking

- (i) Presentation by the Monitoring Officer or the independent investigator of the investigator's report.
- (ii) Committee's questions to the Monitoring Officer/ independent investigator. (There shall be no cross-examination by the subject member, but the subject member may request the Chairman of the Meeting to direct appropriate questions to the Monitoring Officer).
- (iii) The Monitoring Officer may introduce any witnesses required to substantiate any matter contained in the report that the complainant and subject member have disputed.*
- (iv) Committee's questions to the Monitoring Officer's witnesses. (There shall be no cross-examination by the subject member, but the subject member may request the Chairman of the Meeting to direct appropriate questions to the Witnesses).
- (v) Opportunity for the complainant or their representative to raise any issues in the report which they have disputed in their written submission. (The legal advisor shall ensure that the Committee are aware of any written submissions.)
- (vi) Committee's questions to the complainant. (There shall be no cross-examination by the subject member, they will have the opportunity to raise any issues when they address the Committee)
- (vii) The complainant may introduce any witnesses required to substantiate any matter contained in the report that they have disputed.
- (viii) Committee's questions to the complainant's witnesses. (There shall be no cross-examination by the subject member, they will have the opportunity to raise any issues when they address the Committee)
- (ix) Presentation by the subject member or their representative. They should only raise any issues in the report which they have disputed in their written submission. (The legal advisor shall ensure that the Committee are aware of any written submissions.)
- (x) Committee's questions to the subject member.
- (xi) The subject member may introduce any witnesses required to substantiate any matter contained in the report that they have disputed.

- (xii) Committee's questions to the subject member's witnesses
- (xiii) The Committee may at any time seek legal advice from its legal advisor. Such advice will on all occasions be given in the presence of the subject member (or their representative) and complainant (or their representative).

(*Where the subject member or complainant seeks to dispute any matter not included in their written statement, the Monitoring Officer or clerk should draw this to the attention of the Committee. The Committee may then decide:

- (a) *not to admit the information but to proceed to a decision on the basis of the information contained in the report;*
- (b) *to admit the dispute, but invite the Monitoring Officer to respond or recall any witness as necessary; or*
- (c) *to adjourn the meeting to enable the Monitoring Officer to investigate and report on the dispute and/or to arrange for the attendance of appropriate witnesses as to the disputed information.)*

10.4 Making a Decision

- (ix) At the conclusion of the presentation by the last speaker, the Chairman will ask the Monitoring Officer whether there was any matter raised during the course of meeting which was not addressed in the investigator's report or in the information submitted by the complainant or subject member disputing elements of the report. The Monitoring Officer will then have an opportunity to respond to any such new matter, or may request the Committee to adjourn to enable the Monitoring Officer to investigate and report on that new matter and/or to secure the attendance of witnesses as to the new matter;
- (x) If no adjournment is requested, the Committee is then required to come to a decision as to whether the subject member has breached the relevant Code of Conduct. The Committee needs to satisfy themselves that they have sufficient information upon which to take that decision. In the event that they require additional information they may question the Monitoring Officer, the subject member, complainant or any witness present in order to obtain sufficient information to enable the Committee to come to a decision on this issue.
- (xi) The Committee will then adjourn into another room where they will consider in private session whether the subject member has acted in breach of the relevant Code of Conduct. Should they require any additional clarity they will raise matters with those present. Any advice will be sought from the clerk or legal advisor as to process or legislative provisions.
- (xii) At the conclusion of their consideration, the Committee will return and the Chairman will advise the complainant and the subject member of their decision as to whether a breach of the Code of Conduct has occurred, and the reasons for that decision.
- (xiii) If the Committee conclude that the subject member has acted in breach of the Code of Conduct, the Committee will then hear

representations from the Monitoring Officer and the subject member as to whether the Committee should take any action against the Councillor and what form any sanction should take. Members of the Committee may ask questions of the Monitoring Officer and the subject member and seek legal advice in order to satisfy themselves that they have the information upon which to take a proper decision.

- (xiv) The Committee will then adjourn into another room where they will consider in private session whether to take any action in respect of the subject member and what form any sanction should take. The sanctions available to the Committee are set out in Appendix A to this procedure. The Committee will then return and the Chairman will advise the subject member of their decision as to whether any action would be taken and what sanctions, if any, would be applied and the reasons for those decisions.
- (xv) The Committee can also consider in open session whether there are any recommendations which the Committee should make to the authority of which the subject member is a member arising from their consideration of the allegation.

11. Reporting of Decision of Standards Committee

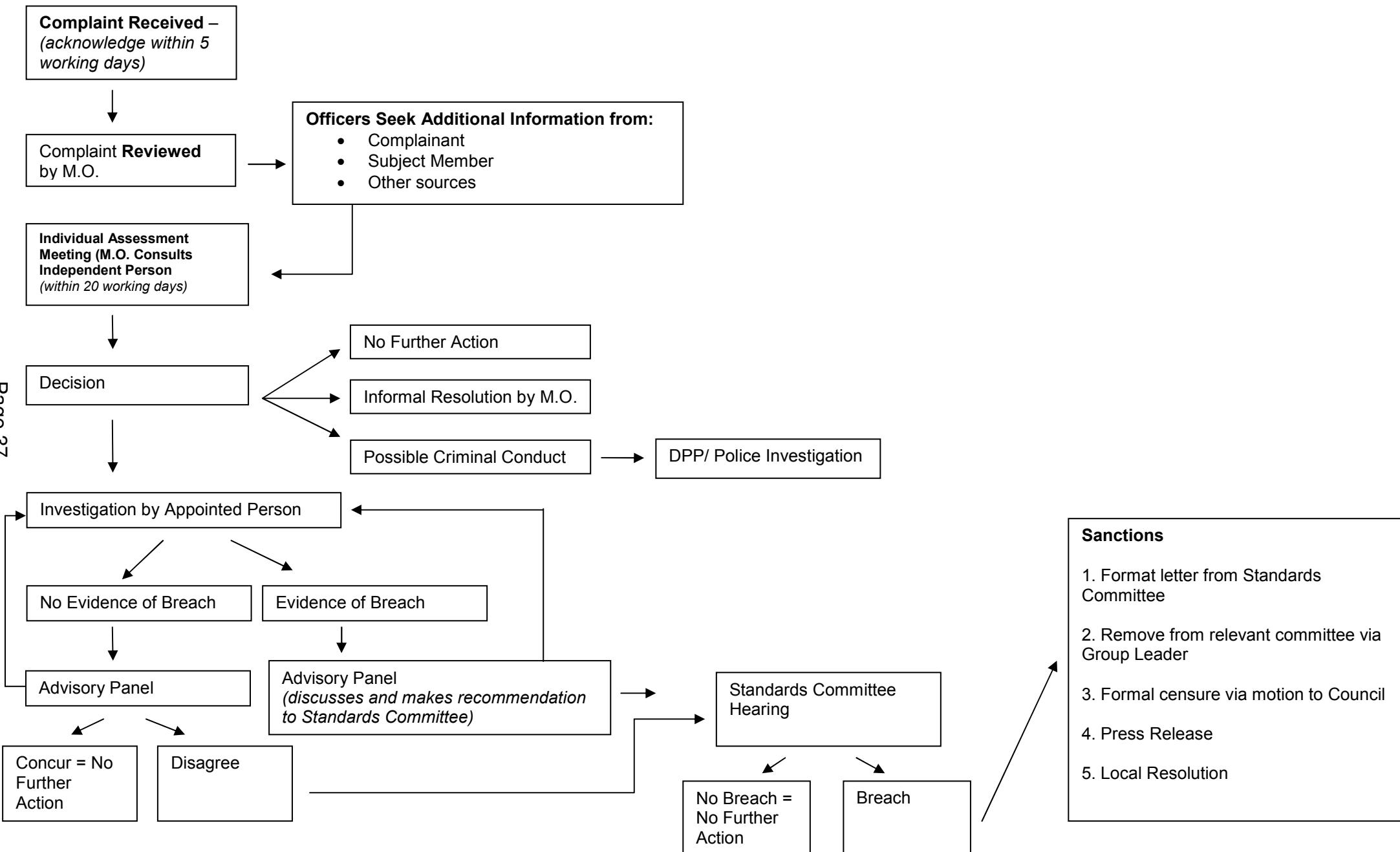
- 11.1 As soon as reasonably practicable (usually within three clear working days) after the Committee has made its determination in respect of an allegation, the Monitoring Officer shall take reasonable steps to give written notice of that determination and the reasons for such determination to the complainant, subject member, the investigator, Independent Person and if appropriate the relevant parish/ town clerk.
- 11.2 Where the Committee determines that there has not been a breach of the Code of Conduct the notice shall:
 - (i) state that the Committee found that the subject member concerned had not failed to comply with the code of conduct of the authority concerned or the code of conduct of any other authority concerned and shall give its reasons for reaching that finding; and
 - (ii) not be published in summary in one or more local newspapers unless the subject member requests that it is.
- 11.3 Where the Committee determines that there has been a failure to comply with the Code of Conduct the notice shall:
 - (i) state that the Committee found that the subject member concerned had failed to comply with the Code of Conduct of the authority;
 - (ii) specify the details of the failure;
 - (iii) give reasons for the decision reached by the Committee; and
 - (iv) specify the sanction imposed if any.
 - (v) state that the disclosure is for the purpose of criminal proceedings and the information in question was not obtained as a result of personal enquiries of the person subject to the criminal proceedings (if appropriate).

11.4 Where the Committee determines that there has been a failure to comply with the Code of Conduct but no action is required, the notice shall:

- (i) state that the Committee found that the subject member concerned had failed to comply with the Code of Conduct of the authority;
- (ii) specify the details of the failure;
- (iii) give reasons for the decision reached by the Committee.

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