

Standards Committee

Agenda

Date: Monday, 14th May, 2012
Time: 3.30 pm
Venue: Committee Suite 1 & 2, Westfields, Middlewich Road, Sandbach CW11 1HZ

The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and at the foot of each report.

PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT

1. **Apologies for Absence**

2. **Declarations of Interest**

To provide an opportunity for Members and Officers to declare any personal and/or prejudicial interests in any item on the agenda

3. **Public Speaking Time/Open Session**

In accordance with Procedure Rules Nos.11 and 35 a total period of 10 minutes is allocated for members of the public to address the Committee on any matter relevant to the work of the Committee.

Individual members of the public may speak for up to 5 minutes but the Chairman will decide how the period of time allocated for public speaking will be apportioned where there are a number of speakers.

Members of the public wishing to ask a question at the meeting should provide at least three clear working days' notice in writing and should include the question with that notice. This will enable an informed answer to be given. It is not required to give notice of the intention to make use of public speaking provision, however, as a matter of courtesy, a period of 24 hours notice is encouraged.

Please contact
E-Mail:

Diane Moulson on 01270 686476
diane.moulson@cheshireeast.gov.uk any apologies or requests for further information or to give notice of a question to be asked by a member of the public

4. **Minutes of Previous meeting** (Pages 1 - 4)

To approve the Minutes of the meeting held on 26 March 2012.

5. **Standards Regime: Dealing with Complaints Under a Future Code of Conduct** (Pages 5 - 32)

From 1 July 2012, Cheshire East Council will be expected to comply with the provisions of the Localism Act 2011 in respect of its ethical governance arrangements i.e. to adopt a Code of Conduct and appropriate procedures to deal with any breaches under the Code. Full Council will also need to appoint an Independent Person(s) in accordance with the Act.

To avoid the necessity of holding a special meeting of Council, the Committee is invited to consider the report of the Borough Solicitor and Monitoring Officer which sets out a series of recommendations which would enable the Council to comply with its obligations under the Act.

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Standards Committee**
held on Monday, 26th March, 2012 at Committee Suite 1,2 & 3, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

Mr N Briers	Independent Chairman
Mr D Sayer	Independent Vice-Chairman

Councillors R Fletcher, P Groves, J Hammond, F Keegan, M A Martin, H Murray and M Parsons

Councillor J P Findlow Substitute for Councillor D Marren

INDEPENDENT MEMBERS

Mr M Garratt and Mr R Pomlett

PARISH MEMBER

Mrs P Barnett

OFFICERS

Caroline Elwood	Borough Solicitor and Monitoring Officer
Julie Openshaw	Legal Team Leader (Places, Regulatory and Compliance) and Deputy Monitoring Officer
Diane Moulson	Committee Officer

APOLOGIES

Councillor D Marren, Mr I Clark (Independent Member), Mrs T Eatough and Mrs B Lawton (Parish Representatives)

25 DECLARATIONS OF INTEREST

No declarations of interest were made in any item of business on the agenda.

26 PUBLIC SPEAKING TIME/OPEN SESSION

In accordance with Procedure Rules Nos. 11 and 35 a total period of 10 minutes was allocated for members of the public to address the Committee on any matters relevant to its work.

Following a short statement by the Chairman on the appropriate use of public speaking time/open session, Mrs C Peters Rock addressed the Committee, directing her comments to agenda item 5 concerning the Standards regime under the Localism Act. She expressed a wish that the procedures agreed for introduction on 1 July 2012 were as strong as possible and that elected members would demonstrate their commitment to upholding the Nolan principles of public life i.e. selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

27 MINUTES OF PREVIOUS MEETING

The Committee was invited to approve the Minutes of the meeting held on 21 November 2011.

RESOLVED:

That the Minutes of the meeting held on 21 November 2011 be approved as a correct record.

28 STANDARDS REGIME UNDER THE LOCALISM ACT

The Committee considered the report of the Borough Solicitor and Monitoring Officer which i) set out the requirements of the Localism Act 2011; and ii) summarised the arrangements the Council would have to put in place to comply with its duties under the Act.

The Issues and Ideas Working Group had met on 23 January 2012 to facilitate an open discussion on the matter, the outcome of which was incorporated into the presentation now given by the Borough Solicitor. By way of introduction, it was reported that the Regulations, which would underpin much of the process were still awaited.

The Borough Solicitor began by outlining the requirements of the Act, Appendix D (flowchart) illustrating the procedure proposed i.e.

1. Complaint received and acknowledged by Monitoring Officer
2. Initial assessment by an ad-hoc Audit and Governance Sub-Committee to establish whether there had been a breach of the Code of Conduct within 21 days of receipt of the complaint
3. The Sub-Committee to have three options available to it;
 - ◆ no further action
 - ◆ refer to the relevant Group Leader for informal action (for Councillor to Councillor complaints)
 - ◆ refer for external investigation
4. There would be no right of appeal for 'no action' cases
5. External investigations would need to be completed within 8 weeks
6. Hearing to be conducted by way of written representations with no right of appeal

At the conclusion of the presentation, members were invited to ask questions and give their views on the draft procedure.

Of concern to the Committee was the new role of Independent Person; insofar as the Act prohibited Independent members from applying for the post. Following a lobbying campaign to which Cheshire East had added its voice, the Borough Solicitor reported that the Secretary of State had indicated he was minded to introduce transitional arrangements which would allow Independent members to apply for and be appointed as Independent Persons for the initial term of office, expected to be four years.

Having considered the flowchart, specifically the proposal to deal with Member to Member complaints within political groups; it was the Chairman's view that the procedure was not balanced as it provided no equivalent mechanism for dealing with Town and Parish complaints. Having considered the matter, the Chairman and Vice Chairman had produced a paper (tabled at the meeting) which proposed the appointment of an Advisory Panel (made up of elected members, parish representatives and Independent members/Persons) which would meet with the complainant and subject member to try and resolve the grievance, to avoid the necessity of a full investigation.

The idea of independent involvement and opportunities for conciliation found favour with the Committee although not necessarily in the format proposed.

Some members considered that Independent members/the Independent Person should participate in the gateway procedure to help filter out vexatious complaints and ensure that resources were not wasted on unnecessary investigations. Others were concerned that the involvement of the Independent Person at this stage might prejudice his/her view at a later point in the process where they were required to be consulted, in accordance with the Act.

There was also support amongst members for the complainant and subject member to be invited to attend the gateway meeting along with key witnesses/supporters. However, if the eventual consensus of the Committee was that they should not be involved at this stage, it was considered important that the complainant and subject member be then afforded the right to attend the hearing in person, again supported by witnesses/supporters as required.

Having heard the arguments put forward, it was unanimously accepted by the Committee that a gateway procedure was required to establish the validity of the complaint and filter out any which could be considered vexatious. Furthermore, there was a general view that this was a suitable role for the ad-hoc Sub-Committee and, should a separate Advisory Panel be established, it would be best placed to consider what should then happen to a complaint in accordance with the procedure.

Page 5 of the report set out a number of recommendations for the Committee to consider. In light of the absence of the Regulations, it was proposed that the Committee defer its decision in favour of holding another meeting of the Issues and Ideas Working Group to move the discussion forward.

RESOLVED: That

- a) A decision on the future of Standards under the Localism Act be deferred to a special meeting of the Standards Committee; to be held following publication of the Regulations; and

- b) In the interim, a meeting of the Issues and Ideas Working Group be convened on Monday 14th May 2012 at 2pm for the purposes of drawing up a draft procedure for consultation.

29 EXCLUSION OF THE PRESS AND PUBLIC

RESOLVED:

That the press and public be excluded from the meeting during consideration of the following item pursuant to Section 100 (A) (4) of the Local Government Act 1972 on the grounds that it involved the likely disclosure of exempt information as defined in Paragraphs 1, 2 and 7c of Part 1 of Schedule 12A of the Local Government Act 1972 and public interest would not be served in publishing the information.

30 COMPLAINTS RECEIVED UNDER THE CODE OF CONDUCT

The Committee received for information, the report of the Monitoring Officer and Borough Solicitor which provided an update on complaints received under the Code of Conduct.

The meeting commenced at 2.00 pm and concluded at 3.30 pm

Mr N Briers (Independent Chairman)

CHESHIRE EAST COUNCIL

REPORT TO: STANDARDS COMMITTEE

Date of Meeting: 14 May 2012
Report of: Borough Solicitor / Monitoring Officer
Subject/Title: Standards Regime under the Localism Act

1.0 Report Summary

- 1.1 The report identifies a number of recommendations which Council is asked to consider in relation to new ethical governance arrangements under the Localism Act 2011.

2.0 Decision Requested

- 2.1 That the Standards Committee recommends to Council that :-
1. The Council's existing model code of conduct for elected members and the procedure for the investigation of complaints under the code remain in force on an interim basis until the next meeting of the Council in July 2012, when further recommendations will be brought forward for the adoption of a new code of conduct.
 2. That the Audit and Governance Committee establish on an ad hoc basis a sub-committee with delegated powers to deal with standards issues with effect from the next meeting of the Council in July 2012.
 3. That the terms of Reference at Appendix (i) be adopted in respect of the Audit and Governance sub-committee.
 4. That the Monitoring Officer be given delegated authority to undertake a recruitment process for up to three Independent Persons as required under section 28(7) of the Localism Act 2011 once details of the transitional provisions have been received.
 5. That if necessary in order to comply with statutory timescales the Council's urgency sub-committee shall approve the provisional appointment of the Independent Persons subject to formal ratification by Full Council at the July meeting.
 6. Members note that work is ongoing to draft a new standard code of conduct to be adopted across the Cheshire Authorities which will include Town and Parish Councils and the Fire Authority.

3.0 Reasons for Recommendations

- 3.1 To comply with the provisions of the Localism Act 2011 which requires the Council to adopt a Code of Conduct and appropriate procedures to deal with any breaches with effect from 1 July 2012. The appointment of Independent Person(s) and the adoption of the new Code requires approval by Full Council.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All

**6.0 Policy Implications including - Carbon reduction
- Health**

- 6.1 The Act places a statutory duty upon the Council to promote and maintain high standards of conduct amongst its own elected members and any co-opted members. Strong ethical governance is key critical to the Corporate Governance of the Authority and supports the Council's decision making processes across the organisation as a whole.

7.0 Financial Implications (Authorised by the Director of Finance and Business Services)

- 7.1 Final costs of implementation of the new legislation will depend on the local arrangements approved by the Council. However it should be noted that the new regime is intended to be cheaper and more effective, accordingly it is anticipated that costs will be met from existing resources.

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 The Localism Act 2011 was enacted in November 2011 but its implementation is being phased. The provisions in relation to the replacement of the current Standards regime are due to be brought into force with effect from 1 July 2012. In the meantime regulations are awaited which will set out matters of details and in particular will define the new 'pecuniary interests' which in future members will be expected to register. It is also anticipated that Ministers are minded to make transitional provision for a Council to appoint a person as an Independent Person who has held the post of chairman or as a member of the Council's Standards Committee within the last 5 years.

9.0 Risk Management

- 9.1 It is important for the corporate governance of the Authority that the Council has the highest standards of conduct from its elected members and that the public has confidence that any complaints procedure is robust and transparent. If the Council fails to adopt a code of conduct which is fit for purpose or to establish an appropriate procedure for complaints to be effectively dealt with then there are risks to the Council from a reputational management viewpoint and also to the integrity of the Councils corporate governance and decision making process. Equally the Council must ensure frivolous or fit for tat complaints are discouraged if the process is not to fail into disrepute.

10.0 Background

- 10.1 The Standards Committee has been meeting as an Issues and Ideas Working Group to discuss proposals for revised ethical governance arrangements in accordance with the Localism Act 2011 which need to be adopted and in place by 1 July 2012.
- 10.2 The Regulations which underpin much of the new procedure have not yet been published and it has not been possible at this time for the Committee to reach a conclusion on some of the issues under consideration e.g. the adoption of a Code of Conduct. Notwithstanding this, matters need to be progressed pending publication of the Regulations.
- 10.3 With this in mind, the Issues and Ideas Working Group has been asked to consider the recommendations which were submitted to the Standards Committee at its meeting on 26 March 2012 and make recommendations where possible on the matters under consideration. A copy of the report is appended.
- 10.4 It is hoped to avoid the necessity of convening a special Council meeting prior to the date for implementation of 1 July by recommending that the existing code of conduct and procedure for investigation of any complaints remains in place until the next Full Council meeting on 19 July 2012.
- 10.5 In the meantime it is recommended that the Council approves that the Audit and Governance Committee establishes an ad hoc sub-committee to deal with complaints once any new code is adopted.
- 10.6 The regulations are not yet available in relation to any transitional provisions for existing independent members to stand as the new Independent Person under the Act. However as soon as these are available a recruitment process must be undertaken and delegated authority is sought for the Monitoring Officer to undertake the necessary procedure. The appointment of Independent Persons must be approved by the majority of members. In order to try to avoid the necessity for a

special Council meeting it is recommended that the Council's urgency sub-committee approves the provisional appointment to comply with any statutory deadline of 1 July 2012 but that this is subject to formal ratification by Council at its meeting on 19 July 2012.

- 10.7 Members subsequently need to approve a new code of conduct and procedure for investigation. Members are asked to note that work is ongoing to draft a standard code of conduct to be adopted across the Cheshire Authorities to include both Town and Parish Councils and the Fire Authority. This will be brought to a future meeting for member's approval.

Appendix (i)

Audit and Governance Standards sub-committee (Draft Terms of Reference)

The sub-committee comprising of # members is responsible for:-

- Promoting high standards of ethical behaviour by developing, maintaining and monitoring Codes of Conduct for Members of the Council (including co-opted Members and other persons acting in a similar capacity)
- Advising the Council on the adoption or revision of the Codes of Conduct for Members and Officers
- Ensuring that Members receive advice and training as appropriate on the Members' Code of Conduct
- Receiving and determining whether to refer for investigation, or other appropriate action, any written complaints regarding alleged misconduct and breach of the Code of Conduct by any Borough Councillor or Town or Parish Council Member
- Consideration of the written report of the External Investigator in relation to a complaint that a Borough Council or Parish Council Member has broken the Code of Conduct and the determination of any appropriate action, in consultation with the Independent Person
- Granting dispensations under the provisions of the Localism Act 2011 to enable a member or co-opted member to participate in a meeting of the authority.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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Designation: Borough Solicitor
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Email: caroline.elwood@cheshireeast.gov.uk

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CHESHIRE EAST COUNCIL

REPORT TO: STANDARDS COMMITTEE

Date of Meeting: 26 March 2012
Report of: Borough Solicitor / Monitoring Officer
Subject/Title: Standards Regime under the Localism Act

1.0 Report Summary

- 1.1 This report sets out the requirements of the Localism Act 2011 and summarises the provisions of the Act in relation to the arrangements the Council must put in place to ensure it complies with the duty under the Act to promote and maintain high standards of conduct for its own elected members.

2.0 Decision Requested

2.1 That Members:-

1. Agree in principle to recommend that the Audit and Governance Committee establishes a sub-committee with delegated powers to deal with Standards issues
2. Note and comment upon the draft procedure for complaints under the new Code of Conduct
3. Endorse the proposal to undertake a joint exercise to recruit Independent Person(s) with other local Public Bodies
4. Note that transitional provisions are likely to be made to ensure that existing Independent Members are eligible to apply for the position of Independent Person(s) at Cheshire East Council
5. Provisionally approve the draft ACSeS Model Code of Conduct as the Council's new Code of Conduct for Elected Members subject to a further report once the Code has been issued in its final format
6. Endorse the proposal to appoint a panel of external investigators approved to undertake investigation into breaches of the new code
7. Note that a further report will be brought to a future meeting once the Regulations are enacted and that it may be necessary to convene a special meeting of both the committee and the Full Council to comply with the statutory timescales

3.0 Reasons for Recommendations

- 3.1 To comply with the provisions of the Localism Act 2011 which requires the Council to adapt a Code of Conduct and appropriate procedures to deal with any breaches with effect from 1 July 2012. The appointment of Independent Person(s) and the adoption of the new Code requires approval by Full Council.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All

**6.0 Policy Implications including - Carbon reduction
- Health**

- 6.1 The Act places a statutory duty upon the Council to promote and maintain high standards of conduct amongst its own elected members and any co-opted members. Strong ethical governance is key critical to the Corporate Governance of the Authority and supports the Council's decision making processes across the organisation as a whole.

7.0 Financial Implications (Authorised by the Director of Finance and Business Services)

- 7.1 Final costs of implementation of the new legislation will depend on the local arrangements approved by the Council. However it should be noted that the new regime is intended to be cheaper and more effective, accordingly it is anticipated that costs will be met from existing resources.

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 The Localism Act 2011 was enacted in November 2011 but its implementation is being phased. The provisions in relation to the replacement of the current Standards regime are due to be brought into force with effect from 1 July 2012. In the meantime regulations are awaited which will set out matters of details and in particular will define the new 'pecuniary interests' which in future members will be expected to register. It is also anticipated that Ministers are minded to make transitional provision for a Council to appoint a person as an Independent Person who has held the post of chairman or as a member of the Council's Standards Committee within the last 5 years.

9.0 Risk Management

- 9.1 It is important for the corporate governance of the Authority that the Council has the highest standards of conduct from its elected members and that the public has confidence that any complaints procedure is robust and transparent. If the Council fails to adopt a code of conduct which is fit for purpose or to establish an appropriate procedure for complaints to be effectively dealt with then there are risks to the Council from a reputational management viewpoint and also to the integrity of the Councils corporate governance and decision making process. Equally the Council must ensure frivolous or tit for tat complaints are discouraged if the process is not to fall into disrepute.

10.0 Background and Options

- 10.1 The Localism Act 2011 was enacted on 15 November 2011. The final provisions within the Act differed from those set out initially in the Localism Bill. In particular it was originally envisaged that Council would not be required to have a mandatory Code of Conduct, although it was always open to the Council to adopt a voluntary code.

The main provisions set out within the Act in relation to Standards issues are:-

- All authorities will be required to have a Code of Conduct
- The Code must be in accordance with the Nolan Principles
- The Code must include a requirement for members to register and disclose pecuniary and non pecuniary interests
- Local authorities will have to put in place a system to deal with allegations that members have breached the Code
- A local authority must appoint an Independent Person through a transparent process and, where a local authority has investigated an allegation, it must seek the Independent Person's view before reaching a decision about the allegation. It must then have regard to that view
- A person against whom a complaint is made may also seek the views of the Independent Person
- Parish Councils must have a Code, but may adopt their principal Council's Code (thereby satisfying the obligation to ensure it meets the above requirements)
- Principal Councils are to deal with allegations of breach in relation to Parish Councillors

- 10.2 The intention of the Act was to replace the current standards regime with shorter, more cost effective and proportionate investigations with less formal time consuming hearings and procedures. As a result there is local discretion for each Authority to design a process which meets its own circumstances but is sufficiently robust to assure the public that complaints will be dealt with appropriately.
- 10.3 It is anticipated that the new arrangements will come into effect from 1 July 2012. This may present a challenge to the Council in terms of timescales as both the Code itself and the appointment of the new Independent Persons will be for Council to approve. Council meetings are currently scheduled for 16 May and 19 July 2012. **Members may therefore need to consider the possibility of a special Council meeting.**

11.0 Standards for England

- 11.1 Standards for England (previously known as the Standards Board) has been abolished by the Localism Act 2011. Its regulatory role has ceased with effect from 31 January 2012 and all existing guidance and information has been removed from its website. It is expected that the organisation will be closed fully with effect from 31 March 2012. Transitional arrangements are in place for those Councils with outstanding cases or investigations with Standards for England but Cheshire East Council is not affected as there are no outstanding matters in this category.

12.0 Duty to promote high standards of conduct

- 12.1 Under the 2011 Act Cheshire East Council will have a statutory duty to promote and maintain high standards of conduct by both its members and co-opted members. All Town and Parish Councils within the area will be under the same duty for their members.
- 12.2 The nationally prescribed Model Code of Conduct for members will be abolished but Cheshire East Council itself and all Town and Parish Councils within the Borough must adopt a Code of Conduct setting out the conduct expected of their members when acting in their capacity of an elected member. Any local code must be consistent with the Nolan principles of:
- Selflessness
 - Integrity
 - Objectivity
 - Accountability
 - Openness
 - Honesty
 - Leadership

- 12.3 Once the current legislation is repealed the statutory requirement to have a Standards Committee will also be abolished. Accordingly Cheshire East Council is free to consider how best to deal with any complaints and investigations in relation to breach of its new code subject to the requirement to appoint at least one Independent Person (IP) who must be consulted before any decision on an allegation that it has decided to investigate (see para 18)

13.0 The current arrangements

- 13.1 Cheshire East Council currently has a Standards Committee comprising 16 members as follows:-

- 8 Councillors (5·1·1·1)
- 5 statutory independent members
- 3 Parish members

The current terms of reference are set out at Appendix A

- 13.2 The full Standards Committee currently meets once a committee cycle. There are three sub-committees which deal with

- The initial assessment of complaints
- The review [appeal] of the decision of the initial assessment committee not to refer a complaint for investigation
- The determination or hearing of a complaint upon receipt of a final report by the external investigator
- All committees and sub committees are chaired by an independent member.

14.0 Future Standards Committee

- 14.1 Under the Localism Act the Council may if it wishes set up a “voluntary” Standards Committee or sub-committee with delegated powers to deal with Standards issues. This will be an ordinary committee or sub-committee of the Council and so it will

- Need to be politically balanced
- Be subject to the same requirements or confidential and exempt information and any other committee (NB the initial assessment process is no longer automatically confidential)
- Will not include independent members (other than as non-voting co-optees) as a result it cannot be chaired by an independent member as the chair has a second or casting vote

- Will not include Town / Parish Council representatives, other than as non-voting co-optees

14.2 At the meeting of the Issues and Idea Working Group on 23 January 2012 members considered the future format and role of any member body. It was felt that there was unlikely to be a future role for a formal Standards Committee to deal purely with Standards matters. It is suggested that in future Standards issues should be dealt with by a sub-committee of the Audit and Governance to be known as the 'Audit and Governance Standards sub-committee'.

14.3 Draft Terms of reference for the new sub-committee and proposed membership of the sub-committee are set out at Appendix B.

15.0 The new Code of Conduct

15.1 Although there is no mandatory Code of Conduct the Council must adopt a Code of Conduct which sets out the standards of behaviour expected of its elected and co-opted members when acting in their official capacity. Any local Code must be consistent with the Nolan principles of Public Life. The Council has three main options:-

- Retain the existing model Code of Conduct
- Draft its own Local Code of Conduct
- Adapt the ACSeS model Code of Conduct

15.2 At their meeting on the 23rd January 2012 members of the Issues and Ideas Working Group felt a balance that the most appropriate way forward was to adopt the ACSeS Draft Code of Conduct. This reflects the format of the current Model Code of Conduct but is written in a more user friendly style and format. Unfortunately the ACSeS Code cannot be finalised until regulations are enacted which define the new 'pecuniary interests'. A copy of the draft Code is appended at Appendix C. Members of the working group also felt it would be helpful to attach an explanatory definitions Appendix to assist in understanding the detailed application of the Code.

15.3 The Government is due to publish new regulations under the Act which will set out those new pecuniary interests which in future all members will be required to register. Failure to do so will be a criminal offence punishable upon summary conviction to a fine not exceeding level 5 on the standard scale. In addition the court may disqualify the person for a period of up to 5 years from being or becoming a member or co-opted member of any authority. However, proceedings under this section may only be brought with the consent of the Director of Public Prosecutions.

15.4 Until the regulations are published and the definition of a "pecuniary interest" is clear it is not possible to finalise the Council's Code of Conduct.

16.0 External Investigator

- 16.1 Once the sub-committee has referred a matter for investigation it is recommended that an external investigator should be appointed to report back to the sub-committee after interviewing the subject member, complainant and relevant witnesses.
- 16.2 Members have been critical of the time taken to produce the final report in recent investigations and it is therefore recommended that under the new procedure a guideline time of 8 weeks should be agreed.
- 16.3 In addition members may wish to approve a panel of external investigations and this is a further exercise which could be undertaken with neighbouring Councils.

17.0 Procedure for Investigations

- 17.1 Councils are free to adopt any suitable procedures at a local level to investigate complaints that a member is in breach of the new Code of Conduct. A suggested draft procedure is set out at Appendix D which provides for:-
- An initial assessment of the written complaint by the sub-committee within 21 days
 - Options to take no action / refer to the Group Leader for informal action / refer for external investigation
 - No right of appeal against the decision of the sub-committee
 - External investigator produces a written report within 8 weeks
 - Complainant and subject member have the opportunity to make written representations
 - Sub-committee considers the written report and submissions and consults with the Independent Person
 - Submission agrees any sanction
- 17.2 Members need to be satisfied that this procedure is acceptable and in particular that written submissions will be preferable to a full hearing. In reaching this conclusion, members need to balance the principles of natural justice and the right to a fair hearing with the policy driver that in future the process should be more streamlined, simpler and less resource intensive.

18.0 Independent Persons

18.1 The Act requires that the Authority appoint one or more Independent Persons (IPs) whose

- Views must be sought and taken into account by the Authority before it makes a finding that any member has failed to comply with its Code of Conduct or imposes any sanction
- Views may be sought on whether to investigate a complaint and how to deal with a particular allegation
- In addition any member against whom an allegation has been made (including a Town and Parish Councillor) may consult him or her regarding the allegation.

18.2 Unfortunately the Act prevents any person who has been a member or a co-opted member of Cheshire East Council in the last 5 years from being appointed as an IP. Accordingly the Association and Council Secretaries and Solicitors (ACSeS) has sought counsel's advice on whether current or past independent members of the Council's Standards Committee are prevented from becoming IPs for the same Council under the 2011 Act. Counsel's clear advice is that an independent member of an Authority's Standards Committee is prevented from becoming an IP of the same Authority by the Act, as they fall within the definition of a co-opted member. As a result ACSeS has now made representations to the CLG requesting that the transitional arrangements should enable Councils to have the option to appoint independent members as IPs in view of the loss of skill and expertise which would otherwise occur following the meeting of the Issues and Ideas Working Group on 23rd January 2012 Cheshire East Council has also written supporting this request. Recent indications are that the Minister would be minded to make such transitional provisions.

18.3 The Act requires that the Council follows a robust recruitment process for the appointment of IPs. The vacancy must be advertised, application forms must be submitted and the individual appointments must be approved at Full Council by a majority of the members of the Authority. Individuals are not eligible to be appointed as IPs if they are a relative or close friend of any member or co-opted member of Cheshire East Council and/ or any Town and Parish Council within the area.

18.4 In the absence of any transitional arrangements which would enable current members of Cheshire East Council Standards Committee to act as Independent Persons it has been suggested that it would be appropriate to co-ordinate the advertisement of all vacancies for IPs with neighbouring authorities so that experienced independent members could be appointed as an IP at a neighbouring Authority. The current suggestion is that Cheshire East, Cheshire West and Chester, Warrington, Halton, the Cheshire Fire and Rescue Service and Cheshire Police Authority co-ordinate a joint recruitment exercise and this is being co-ordinated at Officer Level.

19.0 Sanctions

19.1 Under the current legislation a number of sanctions may be imposed upon and members found to be in breach of the Code of Conduct as follows:-

- Censure
- Restricted access to Council premises or resources for up to 6 months provided this is reasonable and proportionate and does not unduly restrict the ability to perform the functions of a member.
- Partial suspension as a member for up to 6 months
- Suspension as a member for up to 6 months
- Submission of a written apology in a form approved by the committee
- Specified Training
- Conciliation
- Partial or full suspension for up to 6 months until the member either submits an apology or undergoes specified training or conciliation

19.2 Under the 2011 Act sanctions are less extensive and ACSeS has also taken Counsel's opinion on what sanctions are available to the Local Authority. His advice is that the following sanctions will be available in future:-

- Formal Letter
- Formal Censure through a motion
- Recommendation to a Political Group that the member be removed from a specific committee

19.3 He does not consider that it would be advisable to withhold a members allowance for breach of the Code of Conduct nor to withhold confidential information in future, even where the breach of the Code involves the breach of the duty of confidentiality by the Councillor in question. Counsel also advises it would not be possible to suspend and disqualify him from his or her role as an elected member as this interferes with the will of the local electorate and interferes with Local Democracy. Similarly there is no power to exclude a member from specific meetings as a disciplinary sanction.

19.4 Counsel does consider that there is no objection in principle to a press release and / or publicity that the member had breached the Authority's Code of Conduct.

20.0 Town and Parish Councils

- 20.1 Town and Parish Councils will also be under a duty to promote high standards of conduct amongst their members and will also have the same duty to adopt a Code of Conduct, which is consistent with the seven Nolan Principles of Public Office. Town and Parishes will be free to decide to adopt the service code as Cheshire East Council or retain the provisions in its existing Code (suitably amended)
- 20.2 Cheshire East Council will continue to remain responsible for handling complaints about member conduct at Town and Parish levels and must have a place in an appropriate procedure for investigations.
- 20.3 In addition the Monitoring Officer must keep registers of Interests for members of each Town and Parish Council in Cheshire East. They must be published on the Council's website and on the Town and Parish Council website, if it has one.

21.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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Appendix A

STANDARDS COMMITTEE

The Standards Committee is composed of 16 members as follows:

8 Councillors (5:1:1:1)

5 Statutory Independent Members, who are entitled to vote at meetings, but who are not Councillors or officers of the Council

3 Parish Members. At least one Parish Member must be present when matters relating to Parish Councils or their Members are being considered

The Committee is responsible for

- By itself or by sub-committee, the discharge of the Council's functions under Part III of the Local Government Act 2000, including:
 - Assessment of new complaints (discharge of any functions under S57A of the Act).
 - Reviewing decisions to take no action over a complaint (S57B of the Act)
 - Consider final investigation reports and conduct determination hearings.
- considering and granting, or otherwise, dispensations in respect of Members' Interests when so enabled under Part III of the Local Government Act 2000;
- promoting high standards of ethical behaviour by developing, maintaining and monitoring codes of Conduct for Members of the Council (including Co-opted Members and other persons acting in a similar capacity) and for employees in accordance with best practice and Government guidance;
- advising the Council on the adoption or revision of the Codes of Conduct for Members and Officers;
- ensuring that Members receive advice and training as appropriate on the Members' Code of Conduct;
- issuing advice to Members on the treatment of personal interests and on conduct matters generally;
- ensuring that the Council maintains appropriate links with the Standards Board for England and the Commission for Local Administration in England (Ombudsman);

- referring issues, which impinge on staff conduct, performance, terms of employment, training and development to the appropriate and responsible Executive Member and/or Manager;
- promoting high standards of responsiveness by the Council to its clients and contacts

(a) advising other persons/bodies on probity and ethics as appropriate, particularly where that person or body is exercising functions on behalf of the Council;

(b) supporting the Council's statutory officers as appropriate or their authorised deputies, in the performance of their duties;

- the local determination of complaints following any allegations of misconduct by Members;
- the determination of applications for exemption in respect of politically restricted posts.

The Committee has appointed three Sub-Committees as follows:

1. Assessment Sub-Committee
2. Review Sub-Committee
3. Hearings Sub-Committee

The rules governing the composition and procedures of the Standards Committee and its sub-committees, and the terms of reference of the sub-committees, are set out in the Standards Committee (England) Regulations 2008 and the Local Standards Framework guidance published by the Standards Board for England.

Appendix B

Audit and Governance Standards sub-committee (Draft Terms of Reference)

The sub-committee comprising of # members is responsible for:-

- Promoting high standards of ethical behaviour by developing, maintaining and monitoring Codes of Conduct for Members of the Council (including co-opted Members and other persons acting in a similar capacity)
- Advising the Council on the adoption or revision of the Codes of Conduct for Members and Officers
- Ensuring that Members receive advice and training as appropriate on the Members' Code of Conduct
- Receiving and determining whether to refer for investigation, or other appropriate action, any written complaints regarding alleged misconduct and breach of the Code of Conduct by any Borough Councillor or Town or Parish Council Member
- Consideration of the written report of the External Investigator in relation to a complaint that a Borough Council or Parish Council Member has broken the Code of Conduct and the determination of any appropriate action, in consultation with the Independent Person
- Granting dispensations under the provisions of the Localism Act 2011 to enable a member or co-opted member to participate in a meeting of the authority.

Appendix C

Ethical Governance Portfolio Draft CODE OF CONDUCT

Introduction

This Code applies to you as a member of this authority when you act in your role as a member and it is your responsibility to comply with the provisions of this Code.

You are a representative of this authority and the public will view you as such therefore your actions impact on how the authority as a whole is viewed and your actions can have both positive and negative impacts on the authority.

This Code is based upon the "Nolan Principles – the seven principles of public life" which are set out at Appendix 1.

This Code does not cover matters in respect of which the Secretary of State may, under the Localism Act (when in force), specifically provide that criminal sanctions will apply.

Interpretation

In this Code—

"meeting" means any meeting of—

- (a) the authority;
- (b) the executive of the authority;
- (c) any of the authority's or its executive's committees, sub-committees, joint committees, joint sub-committees, or area committees;

whether or not the press and public are excluded from the meeting in question by virtue of a resolution of members

"member" includes a co-opted member and an appointed member.

General Obligations

1. When acting in your role as a member of the authority:

1.1 **Do** treat others with respect.

1.2, **Do not** conduct yourself in a manner which is contrary to the Council's duty to promote and maintain high standards of conduct of members.

1.3 **Do not** disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—

- (i) you have the consent of a person authorised to give it;
- (ii) you are required by law to do so;
- (iii) the disclosure is made to a third party for the purpose of obtaining professional *legal* advice provided that the third party agrees not to disclose the information to any other person; or
- (iv) the disclosure is—
 - (aa) reasonable and in the public interest; and
 - (bb) made in good faith and in compliance with the reasonable requirements of the authority; and
 - (cc) you have consulted the Monitoring Officer prior to its release; or

1.4 **Do not** prevent another person from gaining access to information to which that person is entitled by law.

2. When using or authorising the use by others of the resources of the authority—

2.1 **Do** act in accordance with the authority's reasonable requirements including the requirements of the authority's ITC policy and the policies listed at appendix 3, copies of which have been provided to you and which you are deemed to have read ;

2.2 **Do** make sure that such resources are not used improperly for political purposes (including party political purposes); and

2.3 **Do** have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

Interests [Subject to localism Bill]

3. As a public figure, your public role may, at times, overlap with your personal and/or professional life and interests however when performing your public role as a member, **Do** act solely in terms of the public interest and **Do not** act in a manner to gain financial or other material benefits for yourself, your family, your friends, your employer or in relation to your business interests.

4. There will be no requirement for you to declare or register any gifts and hospitality; however **Do not** accept any gifts or hospitality in excess of £50.00 (Fifty Pounds).

Disclosure and participation [Dependant on contents of interests Above]

5. At a meeting where any such issues arise, **Do** declare any personal and/or professional interests relating to your public duties and **Do** to take steps to resolve any conflicts arising in a way that protects the public interest.

6. Certain types of decisions, including those relating to a permission, licence, consent or registration for yourself, your friends, your family members, your employer

or your business interests, are so closely tied to your personal and/or professional life that your ability to make a decision in an impartial manner in your role as a member may be called into question and in turn raise issues about the validity of the decision of the authority. **Do not** become involved in these decisions any more than a member of the public in the same personal and/or professional position as yourself is able to be and **Do not** vote in relation to such matters.

7. There are some decisions that your authority will need to make that could affect every member. A list of these is set out at Appendix 2. **You may** take part in these decisions *unless* you fall into one of the exceptions set out in the list.

8. **Do not** improperly use knowledge gained solely as a result of your role as a member for the advancement of yourself, your friends, your family members, your employer or your business interests.

Pre-determination or bias [Subject to Localism Bill provisions]

9. Where you have been involved in campaigning in your political role on an issue which does not impact on your personal and/or professional life you should not be prohibited from participating in a decision in your political role as member, however **Do not** place yourself under any financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.

10 When making a decision, **Do** consider the matter with an open mind and on the facts before the meeting at which the decision is to be taken.

Interests arising in relation to overview and scrutiny committees [Subject to Localism Bill provisions]

11. In relation to any business before an overview and scrutiny committee of the authority (or of a sub-committee of such a committee) where—

11.1 that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and

11.2 at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph 11.1 and you were present when that decision was made or action was taken;

Or

11.3 that business relates to a decision made (whether implemented or not) or action taken by you (whether by virtue of the Council's constitution or under delegated authority from the Leader);

You may attend a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

APPENDIX 1

THE SEVEN PRINCIPLES OF PUBLIC LIFE

SELFLESSNESS

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

INTEGRITY

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

OBJECTIVITY

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

ACCOUNTABILITY

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

OPENNESS

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

HONESTY

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

LEADERSHIP

Holders of public office should promote and support these principles by leadership and example.

APPENDIX 2

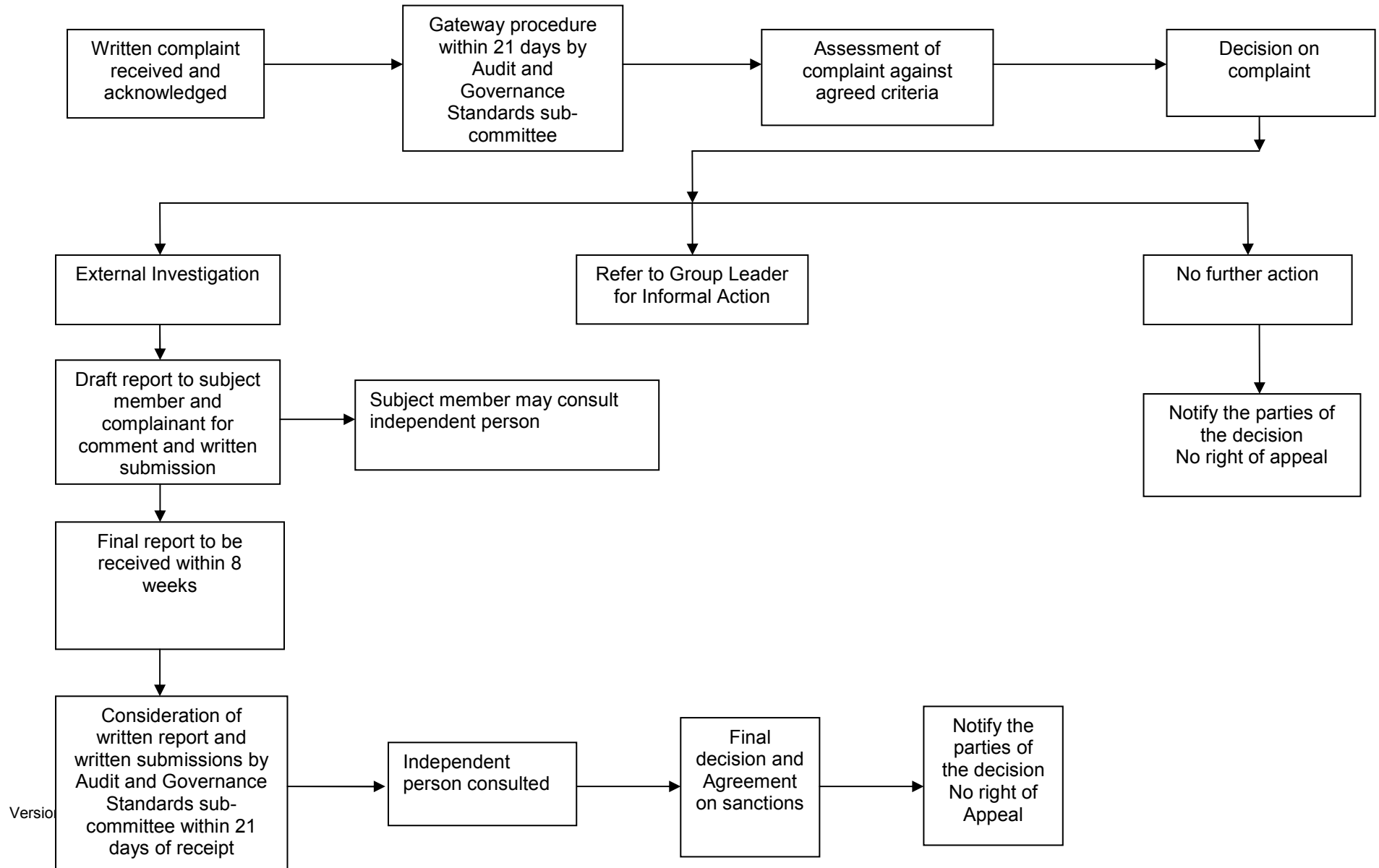
Where the decision referred to in Clause 7 above relates to one of the functions of the authority set out below, and the condition which follows that function does not apply to you when making that decision, you may participate in the decision:

- (i) housing, where you are a tenant of your authority *unless* those functions relate particularly to your tenancy or lease;
- (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, *unless* it relates particularly to the school which the child attends;
- (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
- (iv) an allowance, payment or indemnity given to members;
- (v) any ceremonial honour given to members; and
- (vi) setting council tax or a precept under the Local Government Finance Act 1992.

Deborah Collins
Ethical Governance Portfolio Officer

Appendix D

Proposed Draft Procedure for Complaints



Appendix D

Complaints under the New Code - Proposed Draft Procedure

1. The Monitoring Officer receives a written complaint and acknowledges receipt.

Initial Assessment / Gateway Procedure

2. The Monitoring Officer refers the complaint to Audit and Governance Standards Sub Committee to consider the written complaint within 21 days and determine whether to;
 - **Take no action**
 - **Refer the matter to the relevant Group Leader for informal action**
 - **Refer the matter for formal investigation by an external investigator**
3. Criteria will be developed to assist in determining complaints and ensuring consistency.
4. The independent person may be consulted and his / her views sought.
5. The initial assessment decision to take no action will be final. Accordingly there will be no right of review for either the complainant or subject member.

Independent Person

6. The subject member has the opportunity to consult the independent person at any stage in the investigation process and prior to the final determination.

External Investigation

7. The matter will be referred for an independent investigation by a suitably experienced external investigative officer. The investigation should be completed within 8 weeks of the referral.
8. The report of the external investigator should incorporate the following:-
 - **Executive Summary** - An outline of the allegation, who made it, the relevant provisions of the Code and whether there has been a breach.

- **Member's official details** - A brief outline of when the Member was elected, term of office, details of committees served on and any relevant training.
 - **Summary of facts and evidence gathered**- A summary of the facts and evidence gathered highlighting facts which are in dispute and setting out the investigating officer's conclusions based on the balance of probabilities
 - **Reasoning as to whether there has been a failure to comply with the Code and investigator's findings** – Dealing with each allegation in turn and outline of whether the investigating officer considers whether there has been a breach and any aggravating or mitigating facts.
 - **Schedule** - a list of witnesses interviewed and copies of relevant documents
9. A copy of the draft report will be circulated to the subject member and complainant to check for factual accuracy.
10. Both the complainant and the subject member will have the opportunity to make written submissions / representations to be considered by the sub-committee.

Final Determination

11. The Audit and Governance Standards sub-committee will consider the final report together with any written submissions from the complainant and the subject member.
12. The independent person must be consulted and his/her views taken into account before any decision as to whether there has been a breach of the Code and any appropriate sanction.
13. There will be no requirement for the subject member, complainant or any witnesses to attend. The matter will be determined purely on the written documentation.
14. There will be no further right of appeal.

Issues for Consideration

- a) When the complaint is initially received should the subject member be informed at that stage or only when a decision has been made whether or not to investigate?
- b) Is it appropriate for the Independent person to be involved in the initial assessment / gateway procedure?

- c) Are Members happy that the external Investigator circulates the draft report for comment on factual accuracy to the subject member and complainant?
- d) Are Members happy with the proposal that the sub-committee's determination should be dealt with by way of written representation? Is there a view that there ought to be the opportunity for the external investigating officer and the subject member and witnesses to appear and give evidence as is the case now?
- e) Should the Independent Person be present at the sub-committee as a moderator (he/she may not vote but their views must be sought and taken into account) or should the IP also make written representations?
- f) Should there be the opportunity to appeal the findings in the final report?
- g) Should the final outcome be publicised on the Council's website?