

BIRMINGHAM CITY COUNCIL

STANDARDS SUB- COMMITTEE

FRIDAY, 22 MARCH 2024 AT 11:00 HOURS
IN COMMITTEE ROOM 6, COUNCIL HOUSE, VICTORIA SQUARE,
BIRMINGHAM, B1 1BB

A G E N D A

1 **ELECTION OF CHAIR FOR THE MEETING**

To elect a Chair for the meeting.

2 **APOLOGIES**

To receive any apologies.

3 **DECLARATIONS OF INTERESTS**

Members are reminded they must declare all relevant pecuniary and other registerable interests arising from any business to be discussed at this meeting.

If a disclosable pecuniary interest is declared a Member must not participate in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation.

If other registerable interests are declared a Member may speak on the matter only if members of the public are allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation.

If it is a 'sensitive interest', Members do not have to disclose the nature of the interest, just that they have an interest.

Information on the Local Government Association's Model Councillor Code of Conduct is set out via <http://bit.ly/3WtGQnN>. This includes, at Appendix 1, an interests flowchart which provides a simple guide to declaring interests at meetings.

4 **EXEMPT INFORMATION – POSSIBLE EXCLUSION OF THE PRESS AND PUBLIC**

a) To highlight reports or appendices which officers have identified as containing exempt information within the meaning of Section 100I of the Local Government Act 1972, and where officers consider that the public interest in maintaining the exemption outweighs the public interest in disclosing the information, for the reasons outlined in the report.

b) To formally pass the following resolution:-

RESOLVED – That, in accordance with Regulation 4 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, the public be excluded from the meeting during consideration of those parts of the agenda designated as exempt on the grounds that it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press and public were present there would be disclosure to them of exempt information.

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5 **HEARING TO CONSIDER A COMPLAINT UNDER THE COUNCILS CODE OF CONDUCT**

Report of the Interim City Solicitor and Monitoring Officer.

6 **OTHER URGENT BUSINESS**

To consider any items of business by reason of special circumstances (to be specified) that in the opinion of the Chair are matters of urgency.

Birmingham City Council Standards Committee

22nd March 2024



Subject: Hearing into Alleged breach of the Code of Conduct.

Report of: Marie Rosenthal, Interim City Solicitor & Monitoring Officer

Report Writer: Robert Connelly Assistant Director – Governance

This report contains exempt information and Appendix 1 has been published as an exempt item under Schedule 12A Part 1 (1) (2) & (7) of the Local Government Act 1972

1. Purpose of report:

- 1.1 To consider a complaint received against an elected member.

2. Recommendations

- 2.1 That the Committee considers the complaint and investigation report into the alleged breaches of the Code of Conduct in accordance with the Council's arrangements for dealing with the complaints against elected members.

3. Background

- 3.1 Under Section 27 of the Localism Act 2011, a relevant authority must:
- i. promote and maintain high standards of conduct by its members and co-opted members; and
 - ii. when discharging its duty, adopt a voluntary code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in their capacity as members (that is in an official capacity)
- 3.2 Under section 28(6) of the Act a relevant authority must have in place arrangements:
- i. under which allegations can be investigated; and
 - ii. under which decisions on allegations can be made

4. Financial Implications

4.1 There are none arising from this report

5. Legal Implications

5.1 None other than those set out above

6. Human Resources

6.1 There are none arising from this report.

7. Equalities / EIA

7.1 There are no public sector equality duties which are of relevance at this stage.

8. Implications for (or impact on) climate change and the environment

8.1 None

9. List of appendices accompanying this report

9.1 Appendix 1 - Councillors Code of Conduct

9.2 Appendix 2 - Arrangements for dealing with code of conduct allegations under the Localism Act 2011.

9.3 Exempt Appendix A

C4. CODE OF CONDUCT FOR MEMBERS

Introduction

- i. It is important that councillors can be held accountable and all adopt the behaviours and responsibilities associated with the role. Your conduct as an individual councillor affects the reputation of all councillors. The role of councillor should be one that people aspire to and individuals from a range of backgrounds and circumstances should be putting themselves forward to become councillors.
- ii. This Code has been designed to protect your democratic role, encourage good conduct and safeguard the public's trust in local government.

Definitions

- i. For the purposes of this Code of Conduct, a "councillor" means a member or co-opted member of a local authority or a directly elected mayor. A "co-opted member" is defined in the Localism Act 2011 Section 27(4) as "a person who is not a member of the authority but who
 - a) is a member of any committee or sub-committee of the authority, or;
 - b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority;
- ii. and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee".
- iii. For the purpose of this Code of Conduct, "local authority" includes district councils, parish councils and town councils.

Purpose of the Code of Conduct

- i. The purpose of the Code is to assist you, as a councillor, in modelling the behaviour that is expected of you to provide a personal check and balance, and to set out the type of conduct that could lead to action being taken against you. It is also to protect you, the public, fellow councillors, officers and the reputation of the council.
- ii. The fundamental aim of the Code is to create and maintain public confidence in the role of councillor and local government.

General principles of councillor conduct

- i. Everyone in public office at all levels, all who serve the public or deliver public services, including ministers, civil servants, councillors and local authority officers, should uphold

the Seven Principles of Public Life, also known as the Nolan Principles (see section 4.6 below).

- ii. Building on these principles, the following general principles have been developed specifically for the role of councillor.
- iii. In accordance with the public trust placed in me, on all occasions:
 - I act with integrity and honesty;
 - I act lawfully;
 - I treat all persons fairly and with respect; and
 - I lead by example and act in a way that secures public confidence in the role of councillor.
- iv. In undertaking my role:
 - I impartially exercise my responsibilities in the interests of the local community;
 - I do not improperly seek to confer an advantage, or disadvantage, on any person;
 - I avoid conflicts of interest;
 - I exercise reasonable care and diligence;
 - I ensure that public resources are used prudently in accordance with my local authority's requirements and in the public interest;
 - I affirm my commitment to and encouragement of others to promote Corporate Parenting (including their safeguarding and welfare) in respect of the City Council's children in care;
 - I will take into account and abide by all other relevant council policies and procedures.

Application of the Code of Conduct

- i. This Code of Conduct applies to you as soon as you sign your declaration of acceptance of the office of councillor or attend your first meeting as a co-opted member and continues to apply to you until you cease to be a councillor or co-opted member.
- ii. This Code of Conduct applies to you when you are acting in your capacity as a councillor which may include when:
 - you are acting in your capacity as a councillor and /or as a representative of your council;
 - you are claiming to act as a councillor and/or as a representative of your council;

- you are giving the impression, or the circumstances may give rise to the perception, that you are acting as a councillor and/or as a representative of your council;
 - you refer publicly to your role as a councillor and/or as a representative of your council.
- iii. This Code applies to all forms of communication and interaction, including:
- at face to face meetings;
 - at online or telephone meetings;
 - in written communication;
 - in verbal communication;
 - in non-verbal communication; and
 - in electronic and social media communication, posts, statements and comments.
- iv. You are also expected to uphold high standards of conduct and show leadership at all times when acting as a councillor.
- v. The Monitoring Officer has statutory responsibility for the implementation of the Code of Conduct, and you are encouraged to seek advice from your Monitoring Officer on any matters that may relate to the Code of Conduct. Town and parish councillors are encouraged to seek advice from their Clerk, who may refer matters to the Monitoring Officer.

The Nolan Principles

- vi. Everyone in public office at all levels, all who serve the public or deliver public services, including ministers, civil servants, councillors and local authority officers, should uphold the Seven Principles of Public Life, also known as the Nolan Principles. These are:

Selflessness

Holders of public office should act solely in terms of the public interest.

Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

Objectivity

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

Accountability

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

Openness

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

Honesty

Holders of public office should be truthful.

Leadership

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

Standards of Conduct

This section sets out your obligations, which are the minimum standards of conduct required of you as a councillor. Should your conduct fall short of these standards, a complaint may be made against you, which may result in action being taken. Guidance is included to help explain the reasons for the obligations and how they should be followed. Guidance is shown in *italics*.

i. Respect

As a councillor:

1.1 I treat other councillors and members of the public with respect.

1.2 I treat local authority employees, employees and representatives of partner organisations and those volunteering for the local authority with respect and respect the role they play.

Respect means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a councillor, you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. You should not, however, subject individuals, groups of people or organisations to personal attack. As part of this you should not swear or use inappropriate language during any meetings. In your contact with the public, you should treat them politely and courteously. Rude and offensive behaviour lowers the public's expectations and confidence in councillors.

In return, you have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening you are entitled to stop any conversation or interaction in person or online and report them to the local authority, the relevant social media provider or the police. This also applies to fellow councillors, where action could then be taken under the Councillor Code of Conduct, and local authority employees, where concerns should be raised in line with the local authority's councillor-officer protocol.

ii. Bullying, harassment, discrimination and victimisation

As a councillor:

2.1 I do not bully any person.

2.2 I do not harass any person.

2.3 I promote equalities and not discriminate unlawfully against any person.

2.4 I do not victimise any person.

The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as "offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient". Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or during phone calls, in the workplace or at work-related social events. Such behaviour may not always be obvious or noticed by others.

The Protection from Harassment Act 1997 defines harassment as conduct that causes alarm or distress or puts people in fear of violence and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person.

Unlawful discrimination is where someone is treated unfairly because of a protected characteristic. Protected characteristics are specific aspects of a person's identity defined by the Equality Act 2010. They are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The Equality Act 2010 places specific duties on local authorities. Councillors have a central role to play in ensuring that equality issues are integral to the local authority's performance and strategic aims, and that there is a strong vision and public commitment to equality across public services.

iii. Impartiality of officers of the council

As a councillor

3.1 I do not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the local authority.

Officers work for the local authority as a whole and must be politically neutral (unless they are political assistants)⁴. They should not be coerced or persuaded to act in a way that would undermine their neutrality. You can question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written. However, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

iv. Confidentiality and access to information

As a councillor:

4.1 I do not disclose information:

- a. given to me in confidence by anyone;
- b. acquired by me which I believe, or ought reasonably to be aware, is of a confidential nature, unless:
 - i) I have received the consent of a person authorised to give it;
 - ii) I am 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:
 - 1) reasonable and in the public interest; and
 - 2) made in good faith and in compliance with the reasonable requirements of the local authority; and
 - 3) I have consulted the Monitoring Officer prior to its release.

4.2 I do not improperly use knowledge gained solely as a result of my role as a councillor for the advancement of myself, my friends, my family members, my employer or my business interests.

4.3 I do not prevent anyone from getting information that they are entitled to by law.

Local authorities must work openly and transparently, and their proceedings and printed materials are open to the public, except in certain legally defined circumstances. You should work on this basis, but there will be times when it is required by law that discussions, documents and other information relating to or held by the local authority must be treated in a confidential manner. Examples include personal data relating to individuals or information relating to ongoing negotiations.

v. Disrepute

⁴ Officers of the Council must abide by the Employee Code of Conduct- set out in part C of the constitution

As a councillor:

5.1 I do not bring my role or local authority into disrepute.

As a councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other councillors and/or your local authority and may lower the public's confidence in your or your local authority's ability to discharge your or its functions. For example, behaviour that is considered dishonest and/or deceitful can bring your local authority into disrepute.

You are able to hold the local authority and fellow councillors to account and are able to challenge constructively and express concern about decisions and processes undertaken by the council whilst continuing to adhere to other aspects of this Code of Conduct.

vi. Use of position

As a councillor:

6.1 I do not use, or attempt to use, my position improperly to the advantage or disadvantage of myself or anyone else.

Your position as a member of the local authority provides you with certain opportunities, responsibilities and privileges, and you make choices all the time that will impact others. However, you should not take advantage of these opportunities to further your own or others' private interests or to disadvantage anyone unfairly.

vii. Use of local authority resources and facilities

As a councillor:

7.1 I do not misuse council resources;

7.2 I will, when using the resources of the local authority or authorising their use by others:

- a. act in accordance with the local authority's requirements; and
- b. ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the local authority or of the office to which I have been elected or appointed.

You may be provided with resources and facilities by the local authority to assist you in carrying out your duties as a councillor.

Examples include:

- office support
- stationery
- equipment such as phones and computers

- transport
- access and use of local authority buildings and rooms.

These are given to you to help you carry out your role as a councillor more effectively and are not to be used for business or personal gain. They should be used in accordance with the purpose for which they have been provided and the local authority's own policies regarding their use.

viii. **Complying with the Code of Conduct**

As a councillor:

- 8.1 I undertake Code of Conduct training provided by the local authority;**
- 8.2 I cooperate with any Code of Conduct investigation and/or determination;**
- 8.3 I do not intimidate or attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings;**
- 8.4 I comply with any sanction imposed on me following a finding that I have breached the Code of Conduct.**

It is extremely important for you as a councillor to demonstrate high standards, for you to have your actions open to scrutiny and for you not to undermine public trust in the local authority or its governance. If you do not understand or are concerned about the local authority's processes in handling a complaint you should raise this with your Monitoring Officer.

Protecting your reputation and the reputation of the local authority

ix. **Interests**

As a councillor:

- 9.1 I register and disclose my interests.**

Section 29 of the Localism Act 2011 requires the Monitoring Officer to establish and maintain a register of interests of members of the authority.

You need to register your interests so that the public, local authority employees and fellow councillors know which of your interests might give rise to a conflict of interest. The register is a public document that can be consulted when (or before) an issue arises. The register also protects you by allowing you to demonstrate openness and a willingness to be held accountable. You are personally responsible for deciding whether or not you should disclose an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be disclosed by you or other councillors when making or taking part in decisions, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.

You should note that failure to register or disclose a disclosable pecuniary interest as set out in Table 1, is a criminal offence under the Localism Act 2011.

Appendix B sets out the detailed provisions on registering and disclosing interests. If in doubt, you should always seek advice from your Monitoring Officer.

x. Gifts and hospitality

As a councillor:

10.1 I do not accept gifts or hospitality, irrespective of estimated value, which could give rise to real or substantive personal gain or a reasonable suspicion of influence on my part to show favour from persons seeking to acquire, develop or do business with the local authority or from persons who may apply to the local authority for any permission, licence or other significant advantage;

10.2 I register with the Monitoring Officer any gift or hospitality with an estimated value of at least £50 within 28 days of its receipt;

In order to protect your position and the reputation of the local authority, you should exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you because you are a councillor. The presumption should always be not to accept significant gifts or hospitality. However, there may be times when such a refusal may be difficult if it is seen as rudeness in which case you could accept it but must ensure it is publicly registered. However, you do not need to register gifts and hospitality which are not related to your role as a councillor, such as Christmas gifts from your friends and family. It is also important to note that it is appropriate to accept normal expenses and hospitality associated with your duties as a councillor. If you are unsure, do contact your Monitoring Officer for guidance.

Conduct at Meetings of the Council

- i. Councillors are expected to treat each other with respect and abide by the Code of Conduct when attending meetings of the council.
- ii. The Chair may, as she/he sees fit, direct a Councillor to discontinue his/her speech.
- iii. If there is more general disorder, the Chair may direct a Councillor causing such disorder to retire from the meeting.

APPENDIX TO CODE

Registering interests

Within 28 days of becoming a member or your re-election or re-appointment to office you must register with the Monitoring Officer the interests which fall within the categories set out in Table 1 (Disclosable Pecuniary Interests) which are as described in "The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012". You should also register details of your other personal interests which fall within the categories set out in Table 2 (Other Registerable Interests).

"Disclosable pecuniary interest" means an interest of yourself, or of your partner if you are aware of your partner's interest, within the descriptions set out in Table 1 below.

"Partner" means a spouse or civil partner, or a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners.

1. You must ensure that your register of interests is kept up-to-date and within 28 days of becoming aware of any new interest, or of any change to a registered interest, notify the Monitoring Officer.
2. A 'sensitive interest' is as an interest which, if disclosed, could lead to the councillor, or a person connected with the councillor, being subject to violence or intimidation.
3. Where you have a 'sensitive interest' you must notify the Monitoring Officer with the reasons why you believe it is a sensitive interest. If the Monitoring Officer agrees they will withhold the interest from the public register.

Non-participation in case of disclosable pecuniary interest

4. Where a matter arises at a meeting which directly relates to one of your Disclosable Pecuniary Interests as set out in Table 1, you must disclose the interest, not participate in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest, just that you have an interest. Dispensation may be granted in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest.
5. Where you have a disclosable pecuniary interest on a matter to be considered or is being considered by you as a Cabinet member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it.

Disclosure of Other Registerable Interests

6. Where a matter arises at a meeting which **directly relates** to the financial interest or well-being of one of your Other Registerable Interests (as set out in Table 2), you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

Disclosure of Non-Registerable Interests

7. Where a matter arises at a meeting which ***directly relates*** to your financial interest or well-being (and is not a Disclosable Pecuniary Interest set out in Table 1) or a financial interest or well-being of a relative or close associate, you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest.
8. Where a matter arises at a meeting which ***affects*** –
 - a) your own financial interest or well-being;
 - b) a financial interest or well-being of a friend, relative, close associate; or
 - c) a financial interest or well-being of a body included under Other Registerable Interests as set out in Table 2you must disclose the interest. In order to determine whether you can remain in the meeting after disclosing your interest the following test should be applied
9. Where a matter (referred to in paragraph 8 above) ***affects*** financial interest or well-being:
 - d) to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision; and
 - e) a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest.You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation.
If it is a 'sensitive interest', you do not have to disclose the nature of the interest.
10. Where you have an Other Registerable Interest or Non-Registerable Interest on a matter to be considered or is being considered by you as a Cabinet Member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it.

Table 1: Disclosable Pecuniary Interests

This table sets out the explanation of Disclosable Pecuniary Interests as set out in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.

Subject	Description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	<p>Any payment or provision of any other financial benefit (other than from the council) made to the councillor during the previous 12-month period for expenses incurred by him/her in carrying out his/her duties as a councillor, or towards his/her election expenses.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.</p>
Contracts	<p>Any contract made between the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners (or a firm in which such person is a partner, or an incorporated body of which such person is a director* or a body that such person has a beneficial interest in the securities of*) and the council —</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
Land and Property	<p>Any beneficial interest in land which is within the area of the council.</p> <p>'Land' excludes an easement, servitude, interest or right in or over land which does not give the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/ civil partners (alone or jointly with another) a right to occupy or to receive income.</p>
Licenses	Any licence (alone or jointly with others) to occupy land in the area of the council for a month or longer.
Corporate tenancies	<p>Any tenancy where (to the councillor's knowledge)—</p> <p>(a) the landlord is the council; and</p>

Subject	Description
	(b) the tenant is a body that the councillor, or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/ civil partners is a partner of or a director* of or has a beneficial interest in the securities* of.
Securities	<p>Any beneficial interest in securities* of a body where—</p> <p>(a) that body (to the councillor's knowledge) has a place of business or land in the area of the council; and</p> <p>(b) either—</p> <p>(i) the total nominal value of the securities* exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the councillor, or his/ her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p>

'director' includes a member of the committee of management of an industrial and provident society.

* 'securities' means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

Table 2: Other Registerable Interests

You must register as an Other Registerable Interest:

- a) Any unpaid directorships
- b) any body of which you are in general control or management and to which you are nominated or appointed by your authority;
- c) any body
 - i. exercising functions of a public nature
 - ii. directed to charitable purposes or
 - iii. one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union).

of which you are a member or in a position of general control or management.

Appendix 2



PROCEDURE FOR CONSIDERING COMPLAINTS ALLEGING A FAILURE TO COMPLY WITH THE MEMBERS' CODE OF CONDUCT FOR BIRMINGHAM CITY COUNCIL

Context

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

The Code of Conduct

The Council has adopted a Code of Conduct and is available for inspection on the Council's website: The Code of Conduct, Part C4 of the City Council's Constitution

Making a Complaint

If you wish to make a complaint, please use the complaint form. This is available on request and is on the Council's website.

You will need to cite which parts of the code you are relying upon and where possible you should provide supporting evidence.

This needs to be sent to:

The Monitoring Officer
Birmingham City Council
PO Box 15992
Birmingham
B2 2UQ
E-mail: monitoringofficer@birmingham.gov.uk

You will have to identify yourself as the complainant on the form as the assumption is that any member has the right to know who has made the complaint against them. However in **exceptional** circumstances the Monitoring Officer may agree that your name can be withheld but you will need to provide detailed reasons as to why that should be the case.

Such reasons could include;

- You have reasonable grounds to believe you would be at risk of physical harm or;
- You are an officer working closely with the Member in question and you fear the employment consequences or
- It would create medical risks associated with a serious health condition.

Requests to keep your name and address confidential will not automatically be granted.

However, if you have made such a request you will be contacted and advised of the decision and, if your request is not granted, we will allow you the option of requesting the withdrawal of your complaint.

DEFINITIONS AND GENERAL PRINCIPLES

Terms used in this document in the masculine form apply equally to the feminine form and words in the singular form include the plural form where the context allows. The following terms are defined for the purposes of this document:-

1. "Authority" or "The Council" means Birmingham City Council or a Parish/Town Council within the City of Birmingham, whichever is the Council whose code of conduct is alleged to have been breached by the Member.
2. "Code of Conduct" means the code of conduct applicable to the Authority at the material time in relation to allegation.
3. "Member" means the member/councillor (or co-opted member) who is the subject of the allegation being considered by the Monitoring Officer/Standards Committee.
4. "Monitoring Officer" means the person appointed by Birmingham City Council under section 5 of the Local Government and Housing Act 1989, and includes any person designated by him to perform any functions under these procedures.
5. "Independent Person" means the person(s) appointed by Birmingham City Council under section 28 of the Localism Act 2011 and who will be invited to attend the Hearing to provide advice to the Panel.
6. "Investigating Officer" means the person commissioned by the Monitoring Officer to investigate the allegation, and the term includes the Investigating Officer's nominated representative.
7. "Legal advisor" means the officer responsible for providing legal advice to the Standards committee. This may be the Monitoring Officer, another legally qualified officer of BCC, or someone appointed for this purpose from outside BCC.
8. "BCC" means Birmingham City Council.

Introduction

1. This procedure should be used to deal with complaints submitted under the Members' Code of Conduct adopted by Birmingham City Council and any Parish/Town Councils in the Birmingham City Council area.
2. The Members' Code of Conduct applies to elected Members and co-opted members when they are acting in that capacity. Complaints which relate to a failure to comply with the rules about 'Disclosable Pecuniary Interests' may be directed to the West Midlands Police for their consideration. Complaints about a potential breach of the general obligations should be submitted to the Monitoring Officer for consideration.
3. The Monitoring Officer will ordinarily nominate another officer of suitable experience and seniority (usually the Deputy Monitoring officer or other senior officer) to carry out any of the functions listed in this procedure.

Stage 1 - Initial assessment by the Monitoring Officer

4. Complaints must be submitted in writing and should be on the City Council's complaints form. Full details of the complaint must be provided, and should outline what form of resolution the complainant is seeking. The complainant should also state how the subject member is alleged to have breached the code of conduct.
5. Other written complaints may be considered so long as they contain all of the relevant information.
6. The Deputy Monitoring Officer will consider the complaint and make a decision as to whether it will be treated as a valid complaint or not, within 7 days of receipt of the form from the complainant.
7. The following types of complaint will not be considered as 'valid complaints' under this procedure:
 - a. Complaints which are submitted anonymously^{1 2};
 - b. Complaints which do not identify a subject Member;

¹ Complaints which contain a request for the complainant's identity to be withheld may be considered to be 'valid complaints', although the complainant's identity will only be withheld in exceptional circumstances. If the Monitoring Officer does not consider it appropriate to withhold the complainant's identity, the complainant will be given the opportunity to withdraw their complaint before it proceeds to the next stage.

² Anonymous complaints which reveal potential fraud or corruption may be dealt with by the Council's Whistle blowing Policy

- c. Complaints which relate to a Member's personal or private life;
 - d. Complaints concerning a failure to respond to a request from a constituent or other individual;
 - e. Complaints which relate to the alleged actions of employees of the Council or co-optees;
 - f. Complaints which relate to a decision of an employee or a Committee;
 - g. Complaints which relate to a person who is no longer a Member of the Council or which refer to alleged incidents before the person became a Member of the Council³;
 - h. Complaints which refer to alleged incidents which happened so long ago that there would be little benefit in taking action now;
 - i. Complaints containing trivial allegations, or which appear to be simply malicious, politically motivated or tit-for-tat;
 - j. Complaints regarding alleged behaviour which has already been the subject of an investigation or some form of action;
 - k. Complaints which do not relate to the Members' Code of Conduct.
8. In all cases where the complaint names a Member, the Member will be notified of the complaint⁴.
 9. The Monitoring Officer (or her/his Deputy) will determine whether the investigation is invalid or whether it should proceed to Stage 2 - an initial Investigation. If the Monitoring Officer decides that the complaint is 'invalid', the notification will be made to the member for information only.
 10. If the complaint relates to an employee or is a service related issue, the Monitoring Officer will refer the complaint to the relevant service in order for them to respond to the complainant directly.
 11. In any case where the Monitoring Officer decides that the complaint is 'invalid', they will write to the complainant explaining why the complaint cannot be dealt with under this procedure. There is no appeal process for decisions taken by the Monitoring Officer at this stage.
 12. In cases involving member to member complaints, these will not be investigated until the Monitoring Officer considers other processes eg mediation or political

³ The Monitoring Officer will only investigate allegations during the period in which the person was an elected member.

⁴ Information shared will include details of the complainant and their complaint. The Subject Member will receive this information as a data controller in their own right and all usual data protection controls will apply.

group processes with the Group Secretaries and/or the Group Whip (see also paragraph 25 below).

Stage 2 – Initial Investigation

13. If, following initial assessment, the Monitoring Officer decides that the complaint should be treated as a 'valid complaint' they will write to the complainant and explain that the matter is to be referred to the subject Member and the Deputy Monitoring Officer (or other senior officer) who will oversee the investigation.
14. The Deputy Monitoring Officer may appoint an Investigating Officer to conduct the initial review on behalf of the Monitoring Officer.
15. However in appropriate cases the Monitoring Officer may appoint an external Investigating Officer to undertake a full investigation where circumstances warrant such an appointment.
16. The complainant will also be provided with an outline of the procedure for dealing with complaints against Councillors and that the assumption is that all complaints will be resolved in accordance with this procedure.
17. The Deputy Monitoring Officer will provide the subject member with a reasonable timescale within which to respond to the complaint. This will usually be within 21 days although this may be extended at the discretion of the Deputy Monitoring Officer.
18. At the same time the Deputy Monitoring Officer will forward a copy of the complaint to the relevant Group Secretary or Group whip⁵.
19. Following receipt of the member's comments in response to the complaint, the Deputy Monitoring Officer /Investigating Officer will undertake an initial review based on the complaint form and any written responses.
20. Whilst the aim is to consider the complaints based on the written submissions, the Deputy Monitoring Officer /Investigating Officer can seek further clarification from any party and may request to meet with them or any witnesses. The aim is to complete any initial review within 28 days of the Deputy Monitoring Officer receiving the subject Members response to the complaint.
21. At the end of his/her investigation, the Investigating Officer will produce a draft report with recommendations. This in the first instance will be sent to the Monitoring Officer and the Independent Chair of Standards Committee or such lay member of the committee as the Chair may appoint.
22. The Monitoring Officer will review the Investigating Officer's report after consulting with the Independent Chair of Standards Committee. If the Monitoring

⁵ If the subject Member is the Group Secretary, the complaint will be copied to his or her Group Whip. In the case of a Parish or Town Council without structured political groups, the Monitoring Officer could consider involving the Chairperson of the Council.

Officer is not satisfied with the investigation he/she can ask the Investigating Officer to reconsider the report or specific elements.

23. If the Monitoring Officer and the Independent Chair of Standards Committee are in agreement with the Investigating officer's recommendations, copies of that draft report will be sent in confidence, to the complainant and to the Member concerned, to give both an opportunity to identify any matter in that draft report which they disagree with or which they consider requires more consideration.
24. Having received and taken account of any comments which maybe received on the draft report, the Deputy Monitoring Officer /Investigating Officer will send his/her final report to the Monitoring Officer and the Independent Chair of Standards Committee.

Special provisions – member/member complaints

25. Where a complaint is made by one councillor against another councillor, the Monitoring Officer, following consultation with the Independent Chair of Standards Committee may refer the matter to the relevant Group Secretaries/Group Whips for them to mediate between the parties.
26. After a 28 day period the Group Secretaries/Group Whips will provide a report to the Monitoring Officer and the Chair of Standards Committee with a report on whether a resolution was possible and if not what steps have been taken to resolve that matter⁶.
27. If the matter cannot be resolved or if mediation is not thought to be possible then the Group Secretaries/Group Whips can refer the matter back to the Monitoring Officer.
28. If required the Independent Person is available to provide advice on the severity of the complaint and what form of resolution they would consider appropriate. Providing guidance does not prevent the Independent Person from giving a view to Standards Committee about the complaint at a later date.

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

29. The Monitoring Officer will write to the complainant, the Member concerned and to his/her Group Secretary/Chief whip notifying that the Monitoring Officer is satisfied that no further action is required, or that the complaint has otherwise been resolved and enclose a copy of the Investigating Officer's final report.
30. The Monitoring Officer may consult with the Independent Chair of Standards Committee and share a copy of the Investigating Officer's final report

⁶ This can be used as evidence at any full hearing

Note - Although there is no internal right of appeal, the complainant or the member who is subject of the complaint may refer the Monitoring Officer's decision to the Local Government Ombudsman if there is some fault in the way that he/she has considered the complaint and there is sufficient injustice to warrant their involvement.

What happens if the Investigating Officer concludes that there is evidence of a failure to comply with the Code of Conduct that requires a determination by Standards Committee?

31. Where that there is potential evidence of a failure to comply with the Code of Conduct the following options are available to the Monitoring Officer :

- If there appears to be criminal misconduct, the Monitoring Officer will refer the case to the Police.
- The Monitoring Officer can seek, in consultation with the Independent Chair of the Standards Committee, to resolve the complaint informally by getting the Member to acknowledge that their conduct was unacceptable and apologise, or engage in other remedial actions on behalf of the authority.
- Refer the matter to Standards Committee for full hearing.

Local Resolution

32. The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, he/she will consult with the Independent Chair of Standards and the parties involved to agree what would be considered a fair resolution which also helps to ensure higher standards of conduct for the future.

33. Such resolution may include;

- i. An explanation by the subject Member of the circumstances surrounding the complaint;
- ii. An apology from the subject Member;
- iii. An agreement from the subject Member to attend relevant training or to take part in a mentoring process;
- iv. An offer by the subject Member to engage in a process of mediation or conciliation between them and the complainant; or
- v. Any other action capable of resolving the complaint.

34. If the Member complies with the suggested resolution, the Monitoring Officer will report the matter to the Standards Committee [and if appropriate, the

Parish/Town Council] for information as well as the Group Secretary/Group Whip, but will take no further action.

35. Where the Member makes a reasonable offer of local resolution, but the complainant is not prepared to accept the offer, the Independent Chair of Standards Committee will take account of this in deciding whether the complaint merits a full hearing.

Stage 3 – Standards Committee Hearings

36. The Monitoring Officer will provide for consideration by the Standards Committee the original complaint, the Investigating Officers report and details of efforts made to resolve the matter informally.
37. The Monitoring Officer must arrange for a meeting of the Standards Committee (or if appropriate a relevant Sub-Committee⁷) to be convened to consider the commissioned report of the complaint.
38. The Independent Chair of Standards Committee will in consultation with the Monitoring officer and Standards Committee determine the make-up of any sub-committee.
39. If the complaint relates to a Parish or Town Councillor, one of the co-opted Parish Members will be invited to attend the Committee meeting. The Parish Member will not be entitled to vote at the meeting, but will be entitled to speak at the discretion of the Chair/Deputy Chair.
40. The Standards Committee or sub-committee will consider directions to enable the matter to proceed to a Final Hearing
41. The following people⁸ will also be invited to attend the Final Hearing meeting:
- a. The complainant;
 - b. The subject Member;
 - c. The Independent Person.
 - d. Any witnesses
 - e. Or any other person as determined by the Chair of the Standards Committee and/or the Monitoring Officer

42. The Monitoring Officer will attend the meeting in order to advise the committee.

43. At the beginning of the meeting the Committee will be asked to consider whether the complaint should be considered in private in accordance with the provisions of

⁷ Such Sub-Committee will be made up of at least 6 Members from the Standards Committee.

⁸ No person shall sit on a full hearing if they have previously considered any element of the complaint in order to avoid any potential conflict of interest.

Rule 10 of the Access to Information Procedure Rules relating to exempt information. If the meeting is to be held in private the press and public will be excluded⁹.

44. After initial consideration of the commissioned report, the Committee will take statements from the following parties (either in person or in written form if the person is unable to attend the meeting):
- a. The complainant; and
 - b. The subject Member.
 - c. Or any other person as determined by the Committee
45. The Committee may also ask questions of anyone present at the meeting in order to reach a conclusion on the complaint.
46. Before reaching a final decision on the complaint, the Committee must seek, and take account of, the view of the Independent Person in relation to the complaint.
47. If the Committee is unable to reach a conclusion on the complaint on the basis of the information before it, it may adjourn the meeting and request that the Monitoring Officer seeks the further information required. However, when doing so the Committee should consider whether the information will be readily available to the Monitoring Officer.
48. Once the Committee is satisfied with the information before it, it must decide the following issues:
- a. Whether the subject Member has failed to comply with the Members' Code of Conduct;
 - b. Whether further action is warranted; and
 - c. What form of action might be appropriate.
49. If the Committee concludes that, on the balance of probabilities, the subject Member did not fail to comply with the Members' Code of Conduct, this will conclude the complaints process. In such cases no further action will be taken in respect of the complaint, although the Committee may still wish to consider making a recommendation to the authority with a view to promoting and maintaining high standards of conduct in general.
50. If the Committee concludes that, on the balance of probabilities, the subject Member has failed to comply with the Members' Code of Conduct, the Committee must go on to consider whether action should be recommended in respect of the subject Member, and what form of action might be appropriate. Before doing so, the Committee may hear further representations from the subject member and

⁹ The Committee may invite people to remain in the meeting if it is considered that they could provide information relevant to the complaint.

the Independent Person. Such recommendations may include proposed changes to internal procedures and practices or training for Members in general.

51. The recommendations available to the Committee include¹⁰ but are not limited to:

- a. A formal letter to the subject Member from the Chair of the Standards Committee;
- b. Formal censure by a motion of full Council; or
- c. Removal by the authority of the Member from a relevant Committee(s) subject to statutory and constitutional requirements.

Furthermore the Hearings Panel may:-

- Reprimand the Member;
- Request that the Member be required to make an apology at Council;
- Publish its findings in respect of the Member's conduct;
- Report its findings to Council for information;
- Recommend that he/she be removed from any or all Committees or Sub-Committees of the Council;
- Recommend to the Leader of the Council that the Member be removed from the Cabinet.
- Recommend to Council that the Member be replaced as Executive Leader;
- Instruct the Monitoring Officer to arrange training for the Member, which the Member is obliged to attend;
- Remove from all outside appointments to which he/she has been appointed or nominated by the Council;
- Exclude the Member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, Committee and Sub-Committee meetings.

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

52. The Committee may make a recommendation in relation to one or more of the above sanctions to full Council or, if appropriate, the Town or Parish Council,

¹⁰ The committee may not decide to disqualify or suspend the subject Member as a Councillor.

the Group Whip or the Chair of the Standards and Conduct Committee. The Chair will confirm any such recommendations in writing within five working days of the Committee meeting.

53. The Committee may also make general recommendations to the authority with a view to promoting and maintaining high standards of conduct within the authority. As stated above, such recommendations may include proposed changes to internal procedures and practices or training for Members in general. The Monitoring Officer will be responsible for communicating such recommendations to the relevant Committee or officer for consideration.
54. Within five working days of the meeting the Independent Chair of the Standards Committee will write to the complainant and the subject Member explaining the final decision of the Committee and detailing any recommendations made.
55. There is no right of appeal against a decision of the Committee.

ANNEX 1 - ROLE OF THE 'INDEPENDENT PERSON'

Role of the Independent Person

The role of the independent person is set out in Section 28 of the Localism Act 2011.

Independent Members will be invited to attend meetings of the Standards Committee, with agreement of the Chair, and will be provided with agendas and minutes of such meetings.

As part of its arrangements under which decisions on allegations can be made, each principal authority must appoint at least one independent person.

The independent person's views will¹¹ be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate.

The authority may also seek the independent person's views on any complaint. However, there is no requirement to do so, or to take those views into account. Where a matter is referred to the Standards Committee or its Sub-Committee for determination, the Committee will seek the views of the Independent Persons before reaching its conclusions. Those views will be recorded in any decision notice.

Independent Persons will consider all the information relating to a complaint, the views of the parties involved in the complaint, the Code of Conduct and the law as it affects standards matters, before offering their view.

The Monitoring Officer may contact the Independent Person by telephone, email, in writing or arrange a meeting. Any communication should be formally recorded.

The Independent Person will be provided with sufficient information in order to provide their view and be given sufficient time to consider that information before providing their view. This will change on a case by case basis.

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Section 28 (7) of the Localism Act 2011,

Arrangements put in place under subsection (6)(b) by a relevant authority must include provision for the appointment by the authority of at least one independent person—

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

(b) whose views may be sought—

(i) by the authority in relation to an allegation in circumstances not within paragraph (a),

(ii) by a member, or co-opted member, of the authority if that person's behaviour is the subject of an allegation, and

(iii) by a member, or co-opted member, of a parish council if that person's behaviour is the subject of an allegation and the authority is the parish council's principal authority.

The Independent Person should provide their views in written form, even if the views have already been given verbally.

Finally, a member or co-opted member of the authority (or of a Parish Council in the area) may seek the independent person's views on an allegation made against them at any time.

As part of its arrangements under which decisions on allegations can be made, each principal authority must appoint at least one independent person.

The Independent Person's view **may** be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate.

The authority may also seek the Independent Person's views on an allegation that it has not decided to investigate. However, there is no requirement for the authority to do so, or to take those views into account.

Finally, a member or co-opted member of the authority (or of a Parish Council in the area) may seek the Independent Person's views on an allegation made against them at any time.

